

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 19<sup>th</sup> November, 2019

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

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

#### PRAYER

#### COMMUNICATIONS FROM THE CHAIR

##### VISITING DELEGATION FROM TRANS NZOIA COUNTY ASSEMBLY

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon Senators, I wish to acknowledge the presence in the Speaker's Gallery this afternoon of visiting delegation from Trans Nzoia County Assembly.

The delegation consists of Members of the House Business Committee of the County Assembly who are undertaking an exposure visit on the operations of the Senate Business Committee.

I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are -

- |                                 |   |                 |
|---------------------------------|---|-----------------|
| (1) Hon. Stephen Njoroge Karugu | - | Deputy Speaker; |
| (2) Hon. Eric Musumba           | - | Majority Whip;  |
| (3) Hon. Jane Gaitano           | - | Member;         |
| (4) Hon. Ben Mlipuko            | - | Member;         |
| (5) Hon. Margaret Wanjala       | - | Member;         |
| (6) Hon. Sarah Lubano           | - | Member;         |
| (7) Hon. Caroline Makokha       | - | Member;         |
| (8) Hon. Matthew Olango         | - | Member;         |
| (9) Hon. Margaret Mutai         | - | Member;         |
| (10) Hon. Jeremiah Wekhulia     | - | Member;         |
| (11) Hon. Rogers Barasa         | - | Member;         |
| (12) Hon. Anne Wanjiku          | - | Member;         |

*(Applause)*

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They are accompanied by -

- |                           |   |                                |
|---------------------------|---|--------------------------------|
| (1) Ms. Colleta Kisika    | - | Deputy Clerk;                  |
| (2) Mr. Eutin Nakitare    | - | Senior Research Officer;       |
| (3) Mr. Matthews Wanyama  | - | Serjeant-at-Arms;              |
| (4) Mr. Katana Ngeiwo     | - | Legal Counsel;                 |
| (5) Mr. Mohamed Noor      | - | Committee Clerk;               |
| (6) Ms. Joan Ngetich      | - | Public Communications Officer; |
| (7) Mr. Leonard Wambalaba | - | Pubic Communications Officer;  |
| (8) Ms. Lily Masulia      | - | Office of the Speaker;         |
| (9) Mr. Richard Sirengo   | - | ICT Officer; and               |
| (10) Ms. Jennifer Maiyo   | - | Welfare Officer                |

On behalf of the Senate and on my own behalf, I welcome the delegation to the Senate and wish them well for the remainder of the visit.

I thank you.

*(Applause)*

**Sen. (Dr.) Mbito:** Thank you, Mr. Temporary Speaker, Sir. Let me take this opportunity to welcome Members from my county. We are very pleased to have them here today. This is the place where we work together with them. I would like to tell them that for devolution to work, the Senate and the county assemblies must work very closely.

I thank them for the effort they have put in so far despite a lot of challenges facing our county. We still have a lot of issues we are grappling with. As they come here to bench mark, I hope that they will be able to look into issues to do with devolution and to ensure that funds from the Central Government are properly and effectively utilized for the benefit of our people.

They have come at the right time when the Standing Committee on Public Accounts and Investments (CPAIC) will be talking to our Governor tomorrow at 9.00 a.m. He will be appearing before them to answer some questions. Expect some fireworks tomorrow because we have a lot of questions for him. We need to see to it that he is answerable to our people.

Once again, I thank them for coming. Feel welcome and I hope to meet them after this session so that we can share a cup of coffee.

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

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir, for the opportunity to join you in welcoming the Public Accounts Committee from Trans Nzoia County. Trans Nzoia County is a county that is politically under my jurisdiction because the ruling party in Trans Nzoia is the Forum for the Restoration of Democracy–Kenya (FORD- Kenya), led by yours truly.

I am happy to see that the MCAs whom I personally know; each and every one of them and welcome them to the Senate. I would like to remind them that they hold the unique position in the structure of devolution as being the primary oversight institution. Before anything gets to the Senate, the county assembly is enjoined in law and the Constitution to pass budgets, to track the implementation of budgets and to audit the use of public resources.

I would like to welcome you. This is a House that is different from the other House. This is a House of people who think, talk, debate maturely and free of emotions. This is a House that does the allocation of resources to counties. The only dark cloud that befell this House is when Members were tricked into voting to open the debt ceiling, two weeks ago, but yours truly, stood firm and said, Kenyans are overburdened with debt.

I would like to encourage you that as you meet tomorrow with the CPAIC of this House, to act without fear or favour to ensure that each and every cent we vote here to come to the county is put to good use. I will be available to meet you either today or tomorrow depending on your schedule.

Mr. Temporary Speaker, Sir, as I finish, like Mr. Eliud Kipchoge said, the human being has no limit, among my MCAs in the Public Gallery, one is a former *boda boda* rider. I would like to encourage him to stand. Hon. Ben Wanyonyi Mlipuko, graduated from the *boda boda* riding troops of Kitale. He was popularly elected as an MCA. Therefore, there is no limit in what a human being can achieve.

*(Applause)*

Thank you and welcome.

**Sen. Zawadi:** Asante Bw. Spika wa Muda, mimi pia ninachukuwa fursa hii kuwakaribisha MCAs wa Kaunti ya Trans Nzoia. Mimi nilikuwa MCA wa Kilifi County. Kwa hivyo, ninawakaribisha. Vile mheshimiwa Wetangula amesema hakuna mipaka kwa yale mambo binadamu anaweza kuyatekelez. Kesho ama kesho kutwa mnaweza kujipata mko hapa. Si maajabu, inawezekana. Ninataka kuwatia motisha ya kwamba, inawezekana.

Bw. Spika wa Muda, nilipokuwa kwenye Bunge la Kaunti kulikuwa na mambo kama yale ambayo mmekuja kuangalia hapa. Inafaa mue makini sana wakati mnapoangalia kwa sababu tulipata kuna pesa fulani wanaingiza kwa akaunti kiholehole. Wanaweka mamilioni ya pesa katika hiyo akaunti kisha baadaye yule kibarua atatoa zile pesa, achukue kifungu kidogo, halafu zile zingine anapeana kwa wale wameweka hizo pesa.

Kwa hivyo, mue makini wakati mnaangalia biashara zenu mnavyozifanya ili mhakikishe kwamba mambo kama hayo hayafanyiki. Hakuna cha ajabu hapa. Mambo ni yale yale ambayo mko nayo kwa kaunti yenu na kila mahali yanaweza kutokea. Zaidi ya yote, jipeni moyo, hasa viongozi waheshimiwa akina mama. Mtajipata mko Seneti ama mpigania vitu vya wakilishi wa wanawake. Inawezekana.

**Sen. Seneta:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to welcome the delegation from Trans Nzoia County. One time, I was able to visit the county with Sen. Wetangula in a Committee that was investigating issues of maize. Some of the MCAs that we met were very welcoming and informed in terms of the functions that are devolved.

I would like to really welcome them and encourage them to learn a lot on issues that are supposed to be handled by county governments, more so, issues of budgets. Resources that we allocate should be directed to programmes that will benefit the people they serve in their county from the ward level to the county headquarters. Make sure you

address the issues of inequalities. We do not want to see some wards benefitting from flagship projects because they are favoured by the governor.

Ensure women programmes are well budgeted for. I want to encourage my colleague female MCAs to wear a gender lens when it comes to allocation of money to programmes that benefit either gender. I do not mean that money should only be allocated to programmes to benefit women, but everybody, especially our youth and vulnerable.

I want to wish them all the best as they study procedures, rules and regulations that govern the Senate. I would like to assure them of our support. I also want to assure them that recommendations of the *ad hoc* Committee on maize that visited Trans Nzoia will be implemented to the letter.

**Sen. Malalah:** Thank you, Mr. Temporary Speaker, Sir. For purposes of MCAs from Trans Nzoia, I am Sen. Cleophas Malalah of Amani National Congress (ANC).

*(Laughter)*

I would like to welcome my colleagues from Trans Nzoia County Assembly. I want to allude to the statements made by my senior, Sen. Wetangula, that no human is limited. I am a pure example of that statement. I was a MCA, just like them. Here I am. I am the Senate Deputy Minority Leader. I am also looking at greater things in future. I want to encourage them that the steps they are taking are steps that will take them places.

Secondly, I want to encourage all county assemblies to execute their mandate as provided for in the Constitution. One thing I realized about county assemblies is that they take a lot of time to ensure that the budget cycle is achieved from the budget outlook paper, fiscal strategy paper to the budget estimates. Once those budgets are passed, they do not have a focused implementation strategy to ensure that those budgets are implemented in the manner in which the respective county assemblies passed them

I would like to encourage the MCA that your role oversight, do not mix your party allegiance and party politics to dilute your core mandate of oversight. Make sure whatever resolution you make in your respective county assemblies are implemented to the letter. That is the role *wananchi* gave you and I believe, with the capacity you have, I have seen a lot of competency in the recent past in MCAs. There is a wild speculation that MCAs are people who are backward, not learned, but I have seen doctors who are MCAs.

I would like to encourage the MCAs to continue executing their mandate in the manner which is required as per our Constitution. We, as a Senate, are here to support them.

Thank you and welcome to the Senate.

**Sen. Boy:** Asante sana, Bw. Spika wa Muda, kwa kunipa fursa hii kuwakaribisha waheshimiwa wa Bunge la Trans Nzoia. Karibuni sana katika Seneti.

Kama mnavyojua ni jukumu la Seneti na pia nyinyi waheshimiwa kuangalia kama pesa za kaunti zinatumika vilivyo. Tungetaka nyinyi muwe macho kabisa kuhakikisha pesa hizo zinatumika vizuri. Tuko pamoja nao katika shughuli tunazofanya katika kaunti.

Sisi huambiwa na wakubwa katika kaunti zetu kwamba hatufanyi kazi yoyote kama Maseneta. Sisi hupigania rasilimali nyingi zipelekwe katika kaunti zetu.

Jambo ambalo ningewaomba waheshimiwa kutoka Trans Nzoia ni watuunge mkono sisi katika jukumu hili kwa vile sisi ndio jicho lao na wao ni jicho letu kule mashinani. Tunaowamba wasimame imara kwa sababu kama si wao mara nyingi pesa zinafujwa na magavana katika kaunti zetu.

Mwisho, ninawakaribisha tena katika Seneti. Sisi na wao tunafanya kazi pamoja nao.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. In a few minutes, I will welcome the Members of the County Assembly from Trans Nzoia and bring to their attention that this Senate has been investigating the medical leasing equipment. Tans Nzoia County is one of the counties where equipment is lying idle in one of the hospitals. I am reliably informed that the Committee will be visiting them next week.

We are counting on them to see that public resources are prudently spent. The country has spent so much money on this medical leasing and that equipment should have helped the people of Trans Nzoia County. A statement from them on this regard will help us in our fight that people procure equipment that is not necessary or when they have procured equipment and have not checked that that equipment is necessary.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Finally, on the welcome of the House Business Committee of Trans Nzoia County Assembly, I give this chance to Sen. Linturi.

**Sen. Linturi:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. With due respect and humility, allow me to welcome the Trans Nzoia County membership to Senate. I take this opportunity to remind them of their role as MCAs is. I do not have to over emphasize the aspect of oversight in the counties. It is their duty to ensure that whatever resources are taken to the counties are properly utilized for the good people of Trans-Nzoia, and any other county, for purposes of those MCAs that may be listening to this.

MCAs, just like many other leaders, are people that run the risk of serious compromise where certain serious issues are before them. I advise them to completely resist this aspect of compromising them by the Executive whenever they are dispensing their mandate and doing their duties. From what I have gathered, county assembly members are being cheated by the governors that; in the event that they take a firm position on matters that touch on whatever the governor is doing, they risk losing development projects in their wards.

I want to tell them that this is a lie, and ask them to look at the County Government Act Section 9 (2). The law prohibits them from becoming agents of implementing county government projects. For that matter, they should not get into that position. When you make yourself an agent of implementing county government projects, you will run away from that kind of compromise from the governors.

Finally, they must also be in a position to know the timing of the CEC members that appear before them to ensure that such matters are scheduled for debate by them. They are made when there is good time. I know of a county last week where the deputy

governor appeared before the Committee. Since there was a delay in the release of finances, the Committee was asked to decide on whether to take a long time in examining what was before them as the agenda of the day, or r excuse the CEC to deal with the matter that touches on their lives.

Mr. Temporary Speaker, I want them to understand that this Senate will go a long way to ensure that there is independence of the county assemblies, even if it means creating and getting a vote that they will use to run their own affairs. Without that, we have a problem. Devolution will be under threat.

VISITING DELEGATION FROM STRATHMORE  
UNIVERSITY DEBATE SOCIETY

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I have another communication to make. I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting members of Strathmore University Debate Society.

They are-

- (1) Njuguna Macharia
- (2) Eden Gatuiku
- (3) Wairimu Manyara
- (4) Mupa M'mbetsa
- (5) Arnold Ombasa
- (6) Kiragu Kimani
- (7) Tracy Nduta
- (8) Yvonne Nyangi
- (9) Angela Gecaga
- (10) Ali Abdilatif
- (11) Bill Muthundo

On behalf of the Senate and on my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay.

I thank you.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker Sir. Allow me to join you in welcoming this brilliant group of young men and women who are at the gallery this afternoon. As you have said, these are students from Strathmore University Debate Society.

Last week, we were very privileged to meet a number of them at an engagement between the Senate and the Tallberg Dinner, where quite a number of Senators were involved in talking to them about various things. This particular group was very excited about this interaction. They said that they would like to visit the Senate and see the Senators debate. We told them that they are most welcome to do so.

Mr. Temporary Speaker Sir, I join you in welcoming them. I am very happy that they have come to the gallery today and watch us debate. As you might have heard when we welcomed the delegation from Tans-Nzoia, we are the Senate of Kenya, and we take care of the interest of counties. Most of the issues that we discuss are issues that deal with counties. If you look through today's Order Paper, you will hear us discuss several Bills,

including the Alternative Dispute Resolution Bill, the Registration of Persons (Amendment) Bill and many others.

This particular group is also involved in debate. What was very interesting about them is that they almost go very close to the Oxford Union and Cambridge Union in terms of endearing themselves to having debates about social, economic, and cultural issues that are key for development in this country. We feel very encouraged that at this young age, they are already beginning to take into cognizance issues about this country and debate them at this young age.

They are able to express themselves even as they move forward to later on becoming young male and female politicians. By us interacting with them at the Tallberg Dinner, it gave them the energy and interest about what we do as a Senate and also so themselves as they move forward.

I found them to be a group of very young, vibrant, confident men and women. I think that this is what we need in this country. Even as we welcome them, we encourage the youth of this country to tell them that it is their time to speak.

We need to listen to the ideas that they are bringing to the fore because we need those fresh ideas.

They will see the Senators who attended the Tällberg Workshop such as Sen. M. Kajwang' and Sen. Olekina. They will also see Sen. Wetangula, whom they met earlier today. We are all working on this. We encourage other delegations of such young people to come to the Senate to hear us debate and to know that we are together in this long journey; development of this country.

**Sen. M. Kajwang'**: On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. M. Kajwang'?

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, I was requesting for an opportunity to join Sen. (Dr.) Zani in welcoming the group from Strathmore University. If you give me a minute, I will do so very fast.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. M. Kajwang', you were on a point of intervention.

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, I heard Sen. (Dr.) Zani mention my name. Naturally, I rose to defend myself from imaginary forces.

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

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, allow me to welcome the team from Strathmore University. I believe that this mission is extremely important to them because they are members of the debating club. When we were in school, we looked up to the Members of the legislature because they are the ones who shaped our perspectives and ideas around debates. I hope that the House will be orderly today for the boys and girls from Strathmore University to take away something.

Strathmore University enforces and insists on values and morals for students. I hope that they will find values and morals that they can identify with in this House. There is a serious deficit of values and morals in our public discourse and politics. I want to call upon the Members of this Senate, who include very prominent personalities like Sen. Haji, who has been chairing a very important national discourse, to live up to the billing

of this House. This House is known as a House of sober reflection and a House where young boys and girls, who are looking for inspiration and role models, can come to.

I also want to extend an open suggestion to the Strathmore University Debating Club. In the spirit of Oxford, Harvard and other universities, they should call upon members of the public, state officers and Senators to join them during their debating days. We will be willing to attend those debating days.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, there is high interest. We request every Senator who wants to contribute to this communication to limit their welcoming remarks to two minutes.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir. I am so proud to be associated with Strathmore Business School. I did my Certified Public Accountant (CPA) course Section IV and VI there and I am honoured to see them in the Speaker's Gallery.

There is a big gap when it comes to the understanding of financial issues. We need to fight corruption in this country and to do that one needs to understand the nitty-gritties. These upcoming accountants should not shy away from politics. Instead, they should join politics in order for them to make a difference. The existence of this country is under threat because of corruption.

This Senate is full of wisdom and they will find great debaters in this House. I welcome the students from Strathmore University. I also want to welcome the Members of the Committee from Trans Nzoia County Assembly.

**Sen. (Dr.) Ali:** Thank you, Mr. Temporary Speaker, Sir. I welcome the students from Strathmore University. *Karibuni sana*. I also want to welcome the MCAs from Trans Nzoia.

These students are not young and this is their time. They have a right to vie for any position in this country as soon as they turn 18 years. Most of them are 18 years old and above. I do not believe that they are the leaders of tomorrow. I believe that they are the leaders of today. With hard work, they can be anything that they want to.

An American rich man called Warren Buffet talked of intelligence, energy and integrity and he said that intelligence and energy without integrity is meaningless. Our main problem as a country is integrity. These students should know that they cannot go anywhere if they do not have integrity. They should work hard and have integrity as their motto for this country to move forward.

**Sen. (Eng.) Hargura:** Thank you, Mr. Temporary Speaker, Sir. I would like to join you and my colleagues in welcoming the students from Strathmore University. I am a parent at Strathmore University and I can confidently say that this university has a different mindset. I say that because I attended two public universities in this country. I have attended parents meetings at Strathmore University. One thing that I noticed is that those students are confident and they understand what they are talking about.

I wish them a fruitful day in the Senate even as they listen to our debates. They need to know that the future of this country is in their hands and they need to prepare themselves for it.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. I want to take this opportunity to join you in welcoming the students from Strathmore University and wish



them well. We all know that it is not easy to be young right now because Higher Education Loans Board (HELB) wants to publish the names of its defaulters in the national newspapers yet these young people have joined the Kenya tarmacking network.

I challenge them to be innovative. I know that Strathmore University is one of the best institutions in the country. We wish them well and they should learn what they can while here. They should not allow anybody to tell them that their day will be tomorrow. They should know that this is their day. They are not the future. Instead, they should know that the future is now. They are welcome to join leadership and politics. Some of us are ready to mentor them.

I also want to welcome the MCAs from Trans Nzoia County and wish them well. I know that their party leader, Sen. Wetangula, has spoken about it. However, I want to assure Sen. Wetangula that with Building Bridges Initiative (BBI) in mind, we shall ensure that Trans Nzoia County becomes a Jubilee stronghold in 2022.

**Sen. Wetangula:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Wetangula?

**Sen. Wetangula:** Ordinarily, Mr. Temporary Speaker, Sir. I would not want to altercate with my distinguished learned junior. However, as we say, “every dream is legitimate and valid, including wild ones.” I, therefore, tell my colleague from Nandi that Trans Nzoia is very clearly Ford Kenya; and it will remain so, forever and ever, Amen.

*(Laughter)*

**Sen. (Dr.) Ali:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. (Dr.) Ali?

**Sen. (Dr.) Ali:** Thank you, Mr. Temporary Speaker, Sir. I have been informed by the Senator from Trans Nzoia that the County Assembly of Trans Nzoia is Jubilee while the County Government is Ford Kenya.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Let us proceed, Hon. Senators. Proceed, Sen. (Dr.) Musuruve?

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to join you in welcoming the MCA of Trans Nzoia in the House. I also thank you for giving me this opportunity to welcome the students from Strathmore University in the House.

Mr. Temporary Speaker, Sir, Strathmore University is known as an institution of learning that has a mission of ensuring that they create an all-round Student who will go back to the society and ensure that he is serving it. It is also committed to lifelong learning and service to the society. That is why some of them are here to learn from the leaders.

This is a noble opportunity because there are some teachings that the classroom can never give. For instance, the teachings that the students will get here are from interacting with the leaders. They will pick a leaf from the leaders. By the time they go

back to the university, they will not be the same. This is a good opportunity for them to come here and listen to us as we debate issues of national importance. Eventually, even when they take over the baton, they will know some of the key issues that are important and salient in our nation.

I congratulate you for welcoming the students in the House.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. On 12<sup>th</sup> June, it is in the headlines of various newspapers that Strathmore University had defeated Harvard Law School in a competition that was held in Geneva, Switzerland. That was one of the most important days of my life. I was very proud to note that a university in Kenya could compete with Ivy League Universities. I have also visited Strathmore University severally to participate in different Senate and Strathmore joint meetings.

I am quite pleased that today, the students who belong to the Debating Club are here. I encourage you to come here because, as young legislators or even as legislators in this country, we do not always know everything. It is about time you spent some time with us and share your knowledge with us. That way, whatever we do, it is to better the future and to ensure that this country does not go to the dogs.

Recently we made some very controversial decisions in this House, which have put the future of this country at risk. Yes, some of us might be able to afford to pay the debt. However, if we do not take advice from you, your children might continue having many challenges in terms of meeting their daily needs. This is because most of the money in this country will go into paying debts.

I welcome them. I also welcome the MCAs from Trans Nzoia County. I am extending an invitation for them to come tomorrow – if they are going to spend the night here in Nairobi – to participate in the proceedings of the CPAIC. I believe that we will be hosting the Governor of Trans Nzoia County tomorrow to go through the fiduciary responsibility.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Temporary Speaker, Sir. I join my colleagues in welcoming students from Strathmore University, and also MCAs of Trans Nzoia to this House. I associate myself with Strathmore University, because my daughter is a student there. I believe that she is one of the debaters, but I do not know whether she is here. The feedback I get back at home is that Strathmore is a very good debating school. They are currently the world champions in debate. I am sure that they have come to the right place to continue deepening their knowledge in debate.

Mr. Temporary Speaker, Sir, the direction that the world is taking is resolution of issues on the basis of persuasion, civility and debate. I, therefore, encourage our children to continue entrenching the culture of debate, dialogue and persuasion, because that is how the society can move forward.

To the MCAs of Trans Nzoia, you represent a county that hosts great expectation for us, Kenyans. It is a county that feeds Kenyans. It is a good county. I hope that you will take the privilege bestowed upon you by the people of Trans Nzoia to ensure your County Executive delivers for yourselves and for Kenyans.

**Sen. Wambua:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to join you and colleagues in welcoming the students from Strathmore. As some of my colleagues have said, I have also had an opportunity to pass through the Strathmore

Business School, where I undertook a course on executive leadership. I encourage the visiting students to pursue debate as a way of exchanging ideas, appreciating and tolerating different perspectives in life.

As for the visiting delegation from Trans Nzoia County, I encourage and challenge them that they have a responsibility under the law and the Constitution to undertake primary oversight on the use of funds allocated to the county government.

Lately, we have witnessed unholy alliances between county assemblies and the executives. It should be remembered by the visiting delegation and by all MCAs that the county governments in this country constitute both the Executive and Legislative Arms. As much as the Legislature would want to assist the Executive to undertake the projects, they have a primary role to undertake oversight and ensure proper use of public resources.

I welcome them.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Finally, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. I am glad that I came when you are still on this Order. Otherwise, the students from Strathmore would think that their Senator is a truant, and does not come to the House. I assure them that their Senator is always in the House and he is doing his best to represent them in Nairobi City County and in the House.

Mr. Temporary Speaker, Sir, many years ago, I was in a similar debating society. I am glad---

**Sen. Malalah:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Malalah?

**Sen. Malalah:** Mr. Temporary Speaker, Sir, I would like to remind my good Senator for Nairobi that Strathmore University is a national institution, and not an institution for Nairobi City County. We have students all the way from Namulungu in Kakamega County. He does not own Strathmore University by virtue of the fact that he is the Senator for Nairobi City County.

*(Laughter)*

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

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, not only is Strathmore University in the heart of Nairobi, but in Nairobi West--- There are 47 counties, but one ‘super’ Senator. Therefore, even the students from Kakamega are mine.

Mr. Temporary Speaker, Sir, the point I was making is that they must see what they do, not as a destination, but as the beginning of a journey. This country is ripe to be reset in many aspects. It is this generation of young people like them – and some of us, who are in the House; and even some who might be older, but have good and young ideas – that will change a country. Every generation must be able to define its moment and its course. I am sure that we will walk towards that path of redeeming our country with these young people. The world is an oyster. Let no one ever tell you that there is something that you cannot do. I wish you all the best as you go on with your studies.

Finally, Mr. Temporary Speaker, Sir, I also want to welcome the MCAs from Trans Nzoia, which is also my other county. The substantive Senator is Sen. (Dr.) Mbito,

but that is my home county in addition to Kakamega. I am glad that they are here. These are Members that I know very well. They have excelled in many respects.

Mr. Temporary Speaker, Sir, I want to echo what the Members here have said. That in many counties, we are seeing almost an unholy alliance that is being formed between governors and MCAs. Consequently, oversight is not being done. I am confident that these Members will not let that happen, and that they will take care of our County of Trans Nzoia. *Karibuni* Nairobi City County. I am sure it feels good to be welcomed in Nairobi by your own, when you are in Nairobi and when you are back at home.

### STATEMENTS

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Hon. Senators, let us commence with Statements pursuant to Standing Order No.48(1).

The Senator for Taita-Taveta County is not present. So, we will proceed to Statements pursuant to Standing Order No.51(1)(b).

**Sen. Khaniri:** On a point of order Mr. Temporary Speaker, Sir. I have a Statement under Standing Order No.48(1).

I know it is not in the Order Paper, but it has been approved. I have the green light from the Speaker to proceed.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Okay, proceed Senator.

#### INABILITY TO MANAGE AND MITIGATE NATURAL DISASTERS IN THE COUNTRY

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, thank you for your indulgence.

Pursuant to the provisions of Standing Order No.48(1), I rise to seek a Statement from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources concerning the inability to manage and mitigate natural disasters in the country.

Mr. Temporary Speaker, Sir, in the Statement, the Chairperson should explain-

(1) Why Kenyans across the country are still experiencing adverse negative effects of floods and drought caused by normal and predictable weather conditions.

(2) Explain the measures taken by the national Government to encourage counties to set aside funds to be used for implementation and mitigation of effects of climate disasters as stipulated in the National Climate Change Action Plan (NCCAP) 2018/2019.

(3) Explain the measures put in place by the national Government to promote harvesting, storage and distribution of rainwater for domestic use across the country during dry seasons.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) Ali:** Thank you Mr. Temporary Speaker, Sir. I wish to thank the Senator for Vihiga County for bringing this Statement.

This country is in a mess. When there is drought in Northern Kenya, people die as a result of lack of water. There is also hunger and all manner of things. When it rains like

now, there are floods, hunger, inaccessibility and all manner of problems which results in people suffering. They get hungry because they cannot access food.

This has been happening on and off for the last 50 years. Every time when there are these problems, we complain here in both Houses of the Senate and the National Assembly, year in, year out, yet nothing happens. The national Government does not have any disaster mitigation action. Actually there are no policies or plans. The National Drought Management Authority (NDMA) has been there for the last 20 years. We do not know what it does.

Mr. Temporary Speaker, Sir, I would like this Committee to look into this issue seriously. There is also the Special Programmes Docket in the Office of the President. I do not know what they do. A lot of money is misused being put into these issues and nothing happens to those people who suffer in those rural areas.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Statement by my good friend, Sen Khaniri.

This House was created to defend the interests of counties and their governments. I do not think it is the role of the national Government to encourage county governments to come up with mechanisms on how they can harvest water. It is our duty and we need to take it up seriously.

We need to engage the county assemblies. I am quite happy that some of the MCAs from Trans Nzoia are here today. If you experience drought and floods in your county, the first thing you should do is to ensure that you have a disaster management policy in place. In your budget, the first thing to do is to settle pending bills which you should pay out. The second charge in your account should be the issue of disaster. This is a problem. I do not think us complaining, lamenting or even asking my good friend, Sen. Mwangi to investigate this matter will resolve the problem. It is about time that we came up with proper legislation and engage county assemblies so that we can take our people's interest at heart.

The national Government will not give us a solution. They have not given us a solution for all those years. I remember during the *nusu mkate* era, there was a Disaster Management Coordination Board (DMCB) which was trying to coordinate from different Ministries. It is about time that we think of a permanent solution.

I thank you, Mr. Temporary Speaker, Sir.

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Hon. Senators. Consult in low tones.

**Sen. (Dr.) Ali:** On a point of order, Mr. Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. (Dr.) Ali.

**Sen. (Dr.) Ali:** Unfortunately, my good friend Sen. Olekina has sat down. However, is he in order to mislead the public and the House that the national Government has no role when most of the money, over 90 per cent of the budget of Kenya, is with the national Government and the counties only get a mere 11 per cent?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Hon. Senators.

**Sen. M. Kajwang'**: On a point order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. M. Kajwang'?

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, is the Senator for Narok in order to disclaim the role of the national Government when it comes to disaster management yet in the Fourth Schedule of the Constitution, the 24<sup>th</sup> function of the national Government is disaster management, including some of the disasters that are happening in the Mau? Is he in order to mislead this House?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, we will proceed.

Sen. Olekina, you need to respond. Are you in order?

**Sen. Olekina**: Mr. Temporary Speaker, Sir, I am quite in order. Article 189 of this Constitution talks about cooperation between the national and county governments. If the national Government has decided to give a blind eye on things that are happening in our county governments, should we follow suit? I think it also behoves us---

**Sen. Sakaja**: On a point of information, Mr. Temporary Speaker, Sir.

**Sen. Olekina**: Can I just finish?

**Sen. Sakaja**: On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senator, do you wish to be informed?

**Sen. Olekina**: Absolutely.

**Sen. Sakaja**: Mr. Temporary Speaker, Sir, it is normal for colleagues to allow information and not to be hesitant. I do not know what the hesitation was.

Quickly, I would like to inform Sen. Olekina as well as the House. Sen. M. Kajwang' has pointed out the Fourth Schedule about the roles of the national Government and clearly, there is disaster management. Part 2(12) talks about fire fighting and disaster management as a county function. This is what we call a concurrent function that both arms of government have to deal with. Therefore, it is not right to just blame one side.

Mr. Temporary Speaker, Sir, because of that, this House passed a Bill sponsored by Sen. Mutula Kilonzo Jr. and myself. We co-sponsored this Bill on disaster management and cooperation between national agencies and the counties. The question we must ask ourselves as a House is why that Bill has been stuck in the National Assembly for more than nine months - actually possibly more than a year.

They have decided to designate it as a money Bill and they have gone to the budget office and the National Treasury to find out. That is the real problem because there are resources in the national Government and county governments that should deal with flooding; one day it is flooding, tomorrow it is drought. The framework is there. That is where the focus should be.

I would like to urge Sen. Khaniri or if I can do it through this intervention, that that is part of the question that the Committee on Lands, Environment and Natural Resources needs to ask; not just on policy because there is also another Bill coming from the national Government to deal with concurrence of the disaster management function.

What happens is everybody knows this work has to be done by somebody, but somebody will not do it because they think somebody else is doing it. Money is being stolen through purported disaster management.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, let us proceed.

Sen. Olekina, you are well informed and your time is over. You have already concluded.

**Sen. Olekina:** It is only fair for me to conclude.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): One minute.

**Sen. Olekina:** Thank you, Sen. Sakaja. This is precisely the point I was trying to put across. We cannot be shifting blame. We can learn from the mess in the health sector. May be that is not a very good example. However, the national Government took over that role which is supposed to be implemented by the county governments.

I thank Sen. Sakaja for informing this House. It is about time that we followed through so that we see an end to this problem. If that legislation can be implemented fully, then we cannot be passing the blame. I know Sen. Mwangi is very good, diligent and he can give a solution. However, it behooves us to come up with those solutions in this House.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, we have to make progress. Since I have seen high interest in this Statement, I will request every Senator who would wish to contribute to limit their respective contribution to only two minutes.

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, I wish to support this Statement and say that we have left our natural resources in a disorganized manner for far too long. Communities have cried out over and over again. We know what the issues are and what happens every year. At one time and one season we have a lot of water and the next time we do not have it. The next thing is that we have communities that need to have certain money or assets. Although they have been very rich in supplying certain natural resources, they end up not being able to do that.

There are so many Bills that are stuck on this. Recently, we have seen many Kenyans asking about the oil sale that was done and what sought of revenue went back to the communities. In this House we have worked so hard overtime to ensure that this sector is organized. We have the Disaster Management Bill that Sen. Sakaja has mentioned and the Natural Resources Bill. Unfortunately, all these have ended up as being money Bills at the National Assembly.

Through this Statement, we need to put these issues across. This is because communities are suffering and looking unto us to be able to make these decisions. We would, therefore, like in this Statement to have clarity about the way forward, what we will do with these Bills, policies that need to be put into place, what will go back to communities and what communities do when there is drought and too much rain in their communities.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Faki:** On point of order, Mr. Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Attention, Sen. Malalah and Sen. Faki. You are constantly on interventions. What is it, Sen. Faki?

MAANDALIZI YA UCHAGUZI WA SHIRIKISHO  
LA KANDANDA NCHINI

**Sen. Faki:** Mr. Temporary Speaker, Sir, it was not constantly on intervention. I wanted to draw your attention to a Statement that I requested last week. I requested for a Statement on the Football Kenya Federation (FKF) elections, which are scheduled to take place this weekend. I wanted to find out whether the Statement was assigned to any Committee and what the Committee is doing with it. This is because the elections are scheduled to start this weekend. If they proceed, then whatever I requested for in the Statement will be overtaken by events.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Noted, Sen. Faki.

**Sen. Sakaja:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Sakaja?

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, that Statement came to our Committee and we have deliberated on the matter. We understand the urgency; the elections will be happening in the next few days.

In our deliberations we, as a Committee, said that these elections are governed by certain rules. As a Committee, we will not be able to injunct, stop or to interfere with them since we have the Fédération Internationale De Football Association (FIFA) rules that are currently prevailing. Sen. Poghio and Sen. (Dr.) Milgo who were in the Committee put it clearly; that on the larger issues of FKF we are dealing with and we have invited them. But in terms of an election that is coming, we have seen what happens when Government or Parliament interferes before it is done.

Mr. Temporary Speaker, Sir, if anything is done outside the Sports Act, then we will have recourse as Parliament or through the court process. However, between now and then, we cannot preempt the action and say that it is unlawful, yet it has not been done. The lawyers can help me with that. That is the predicament we found ourselves in. The FIFA rules are very sensitive when it comes to stopping a process that is already ongoing, intervention or interference by courts, Executive or Parliament.

That was our deliberation as a Committee today. We have listened to them on a raft of issues, including the Sports Act being implemented by all the federations, including the issue of the Sports, Arts and Development Fund. Sen. Mutula Kilonzo Jr. is aware of that since he asked a question on that. We will deal with those ones based on our mandate and powers.

What we have advised is that if anybody is aggrieved when that is done this weekend, there are now legal avenues that can be pursued. If it can come to us, then we will not be injuncting and going against the FIFA rules and the Sports Act.

**Sen. Wetangula:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Wetangula?

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, when Sen. Faki brought the Statement, the distinguished Senator for Nairobi City County, who is also my distinguished nephew, was not in the House.

*(Sen. Sakaja spoke off record)*



Were you?

*(Sen. Sakaja spoke off record)*

I contributed to this Statement and so did Sen. Orenge and a few others. The football management in this country is a disaster. It has embarrassed everybody to the extent where we gave an example. Even our neighbour, Somalia, has defeated us in football. What other countries do, and I expect---

**Sen. Haji:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Haji?

**Sen. Haji:** Mr. Temporary Speaker, Sir, I rise to defend the neighbouring country. Although Somalia was a failed State, now they have a President, Cabinet and Parliament. Therefore, they have very good footballers.

*(Laughter)*

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

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, I do not think my good friend, the BBI Chairman is defending Somalia because it has a President. He should declare his interest.

*(Laughter)*

What the Committee should and must do, is not to become legalistic and hide behind the shield of FIFA rules. I know for a fact, and Sen. Sakaja is right, that FIFA is very sensitive to any form of interference in the management of football under the affiliates. I believe FKF is an affiliate.

Mr. Temporary Speaker, Sir, however, extra ordinary problems require extra ordinary decisions to alter the situations. A country like Nigeria is a good footballing nation; it has at times suspended the management of football and met the wrath of FIFA. They have been suspended from FIFA for two to three years and rebuilt their football, so that we get profiteers, charlatans and con people out of the management of football.

People who run our football are just looking for money. The Committee should deal with Ministry of Sports, Culture and the Arts. Invite Amb. Amina and ask her what extraordinary measures she is undertaking to streamline the management of football. You will be acquitted sufficiently, my nephew, once you do so.

Do not come and tell us about FIFA rules because we know them.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Chairperson of the Committee, I request that you make your final contributions on this matter.

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, I need to clarify one thing. One, I do not need to be acquitted because I am not on the stand. It is the football of Kenya that is on the stand.

The Committee has said clearly that we are dealing with this. In fact, Sen. Wetangula has made a good case of the approach we are taking; that the matters and

problems in our sports management and even within football are so deep that they need to be looked at comprehensively.

It cannot be that we are just rushing to beat a deadline of an election on Saturday. If we sit down and invite the Cabinet Secretary, the Sports, Arts and Social Development Fund led by Hon. Moody Awori and his team, because they have Kshs8.1 billion that is supposed to go to sports--- Aside from FKF, there are also other federations with issues, but agreed to start with football. We want to thoroughly look at how it is being managed; whether it is doing right and where the rain started beating us.

Mr. Temporary Speaker, Sir, it is not a rush to beat the deadline of Friday because there is an election. If we see it fit, in a week or two when we have dealt with this issue and sat down with them properly, that we need to interfere and suspend it, it has been done before. It can be suspended, so that we get our act right.

Yesterday, we were sitting at the edge of our seats to see what will happen to us with Togo. This is because we do not know which match we will win or lose. We have lost confidence in how we are performing. Therefore, we want to do it comprehensively. Sen. Wetangula, you have been in football, and you know that I have also been in football. I am the patron of our biggest team in this country, AFC Leopards, and I know there are problems all over.

Let us not do it in a rush just to show that we have intervened. We do not want to do it for Public Relations (PR). We want to be very thorough because football speaks to the heart of millions of Kenyans and young people. I understand Sen. Faki's problem and urgency, but I am just urging that we take this route. It will be better in the long run for football management.

**Sen. (Dr.) Ali:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. (Dr.) Ali?

**Sen. (Dr.) Ali:** On a point of order, Mr. Temporary Speaker, Sir. I need your direction on this; we were discussing a Statement on disasters and now we are discussing Football Kenya Federation (FKF) and its politics. Is there a disaster? Could you give us direction?

*(Loud consultations)*

**The Temporary Speaker** (Sen. Lelegwe): Order, Sen. (Dr.) Ali! You are out of order. This is a request and intervention by the Senator for Mombasa County requesting the response of the FKF Statement.

The Chair has already shed light on that and now we proceed.

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir. Sen. (Dr.) Ali should be informed that actually football is a disaster and that is what we are discussing; disaster in football.

Mr. Temporary Speaker, Sir, I want to encourage the Chairperson of this Committee that the point that Sen. Faki, the Senator for Mombasa County, made is that what is going on is not an election, but a mock election. It is pre-rigged before they even start holding elections. So, this requires urgent intervention.

**The Temporary Speaker** (Sen. Lelegwe): Order, Hon. Senators!

Sen. Poghishio, proceed.

**Sen. Poghiso:** On a point of order, Mr. Temporary Speaker, Sir. I think in a way, we have an issue to talk about called football. In the middle of an existing Motion that is going, football has suddenly taken over to the extent that we do not know whether we are now answering Sen. Faki or we are still seeking clarification on football.

May I ask that you give direction on where we are because the Motion on the Floor is about the disaster away from football? I think the back and forth in football has taken over and now we do not know where we stand.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, we are on Statements under 48(1). I request Hon. Senators to stick to contributions on the Statement as read by Sen. Khaniri. Already the Chairperson of the Committee on Labour and Social Welfare has given information from the Statement on the clarification raised by the Senator for Mombasa County.

Finally, I request Sen. Wetangula to make his contributions on that Statement. That is the final contribution.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, on the Sen. Faki Statement?

**The Temporary Speaker** (Sen. Lelegwe): Yes.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, Sen. Faki made an intervention and then the Chair, rightly so, allowed the Chairperson of the Committee to respond. His response elicited my intervention because when Sen. Faki brought the Statement, we actually literally brought it together---

**The Temporary Speaker** (Sen. Lelegwe): Sen. Wetangula, make your final intervention now on the Statement.

**Sen. Wetangula:** Okay, Mr. Temporary Speaker, Sir. I am on the matter.

My final Statement on this matter is that yes, the Committee may have decided to do what they are doing, but there is a way the Committee can summon the Cabinet Secretary, FKF Chairperson and any other person involved, including but not limited to the Attorney-General.

The FKF, even as they are clouded with questionable integrity, they are busy doctoring and manipulating elections of FKF and locking out clubs in many parts of the country to perpetuate themselves. I am telling them to stop the elections for a period of three or four weeks to ensure that every legitimate participant is given time to participate; that is not interfering with FKF. I think that can be done. I encourage you, my distinguished nephew, to do so.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, finally, we have to make progress.

I will call the next Statement under Order No. 48(1), that is Sen. Outa.

#### BRUTAL KILLING OF SIX BOUNCERS IN BUMALA, BUSIA COUNTY

**Sen. Outa:** Thank you, Mr. Temporary Speaker, Sir. I rise under Standing Order No. 48(1) to seek a Statement from the Committee on National Security, Defence and Foreign Relations concerning the brutal killing of six bouncers from Kisumu County, in Bumala, Busia County on Friday, 15<sup>th</sup> November, 2019.

In the Statement, the Committee should -

- (1) Explain what led to the brutal murder of the six bouncers in Bumala, Busia County.
- (2) State what measures have been taken to ensure the perpetrators of the heinous act are brought to book.
- (3) Explain what measures are in place to avert such events from recurring in future.
- (4) State what action the Government is taking to help the bereaved families to offset mortuary and burial costs.

Mr. Temporary Speaker, Sir, before I was elected as Senator, I was a Member of Parliament for Nyando Constituency for two terms. That is where we have lost young people in a manner that is still not well understood. It is my request to my Chairperson who is here, that these perpetrators must be brought to book. This heinous killing whereby innocent people who had just gone to a funeral in Busia County ended up being slaughtered like cows.

It is now my plea even to the people of Kisumu County to be calm as the Government comes in because this has created a lot of tension within Kisumu County. I want the Government to move with speed because killing people from one area at once and in one day is a big loss. I plead to with the Chairperson to move with speed as we go to lay them to rest this Friday so that these perpetrators are brought to book.

**Sen. Haji:** Mr. Temporary Speaker, Sir, many years ago, I was a District Officer in Nyando Constituency. First of all, I wish to send my condolences to the bereaved families.

Secondly, I wish to undertake that the Statement that has been requested by my colleague Senator will be addressed maybe in a weeks' time if possible.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to add my voice. I commend sen. Outa for coming up with this Statement.

It is really painful that six members of a family can just die like that. It is also contravening Article 26 of our Constitution that everyone has a right to life. It also compromises the issue of security. It is unfortunate that this thing happened. We should never condone mob justice in whatever form. People should never take the law in their hands.

There is need for the Committee to ensure that it follows this issue up to the end and ensure the perpetrators of these heinous activities are brought to book. It will then serve as an example to other people who do such a thing. It is very painful because these were innocent people. They were not murderers, but they were treated like murderers. At the end of the day, some people have lost their spouses, children and so on because of this act.

The Committee should act with speed so that justice is not delayed for these affected families.

**The Temporary Speaker** (Sen. Lelegwe): Thank you. Sen. (Dr.) Mbito, proceed.

**Sen. (Dr.) Mbito:** Thank you, Mr. Temporary Speaker, Sir. This Statement by Sen. Outa is very timely, because right now, something is very wrong with our Police Service. Such incidents are becoming rampant, given that just the other day, we had an

issue in Saboti, in my County, where two university students were lynched by mobs. This is an issue that---

**Sen. Haji:** On a point of order Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it Sen. Haji?

**Sen. Haji:** Mr. Temporary Speaker, Sir, is the hon. Member in order to accuse the police, whereas it is public knowledge that this was mob justice?

**Sen. (Dr.) Mbiti:** Mr. Temporary Speaker, Sir, it is common knowledge that it is the duty of the police to take care of the public. Whenever we have public gatherings, it is the police to ensure security of the people of Kenya. Therefore, we need to call upon the police to pull up their socks, because such instances of mob justice are increasing.

The other day during the elections in Kibra, we saw a whole Member of Parliament (MP) being attacked by the public as the police stood there just watching. What is their work, as a Police Service? Is it not to protect Kenyans?

*(Applause)*

I call upon the police to take their work very seriously, because they are abdicating their duties.

Thank you.

*(Applause)*

**Sen. (Prof.) Onger:** Thank you, Mr. Temporary Speaker, Sir. I request the Committee, while answering this unfortunate situation where innocent people from Nyando were murdered when they had gone to attend a funeral---

If you watch carefully, these days during the prime news, there is hardly any by-line in the news without mention of murder here and there. That, in itself, is a reflection of a downward trend in our social fabric, and how the public is responding to certain stresses and strains in the society.

Mr. Temporary Speaker, Sir, when the Committee will be looking at this singular case, they should carry out a social audit to find out why there are rampant murders throughout the Republic of Kenya. These murders do not even spare the young children, the middle aged or the old people; it cuts across the divide of the age groups.

There is something that the security organs should lay their hands on, because it is becoming very common to see murders left, right and centre, sometimes even without a reasonable cause.

Mr. Temporary Speaker, Sir, this Statement is timely. Maybe we should take that opportunity, through the Chair of the Committee of National Security, Defence and Foreign Relations or the Committee on Labour and Social Welfare, to give us an update of what is happening in this nation.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Finally, Sen. Farhiya.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I thank Sen. Outa for bringing this Statement. This week alone, after going missing for some time, a lady was killed together with her three children. There are also two ladies who have separately been murdered in spouse-related issues.

From the killings that have been going on, it looks like life in this country has lost meaning. Morality is no more because someone should have some compassion to ensure that, at least, life is precious and, therefore, we should not kill people.

Mr. Temporary Speaker, Sir, I also wish that the Committee's investigation should also extend to these three cases that happened this week. I also advise ladies out there who are listening; please get this. Sometimes the writing is on the wall, and we just refuse to see it. Please, move on. Do not allow these maniacs to come and kill you in the name of having a husband, who is just an animal.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Thank you, Sen. Farhiya.

Hon. Senators, we have to proceed. The Statement stands committed to the Committee on National Security, Defence and Foreign Relations.

The next statement is by Sen. Iman.

UNIDENTIFIED STOWAWAY ON KQ  
FLIGHT TO HEATHROW

**Sen. Iman:** Thank you, Mr. Temporary Speaker, Sir. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Roads and Transportation, concerning the unidentified stowaway who fell from the Kenya Airways flight to Heathrow on 30<sup>th</sup> June, 2019.

In the Statement the Committee should:

- (1) State the identity of the stowaway who fell off the Kenya Airways plane moments before it landed at London's Heathrow airport on Sunday, 30<sup>th</sup> June, 2019.
- (2) Explain the circumstances under which the stowaway got access to the Jomo Kenyatta International Airport (JKIA), into the plane; and,
- (3) Explain the measures put in place to prevent the recurrence of such situations in the future.

Thank you.

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

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir. The issue being raised by my colleague, Sen. Iman, is very important. In the last few weeks, we have seen various Government agencies trading blame over what should be regarded as a very serious issue of national security.

Mr. Temporary Speaker, Sir, the dangers on the lives of the people who were in that flight cannot be over-emphasized. That the Kenya Airports Authority (KAA) was not prudent in executing its mandate, is not in question. However, what worries us more is that instead of giving a better explanation on the measures they intend to take so that, first of all, such instances do not recur, and giving the identity of this gentleman, all we are seeing is blame game; where nobody wants to take responsibility.

It is important for this matter to be put to rest. For us to assure the rest of the countries that use the JKIA that we are a serious country; and that we take security seriously, then the country deserves to know the truth.

I request that instead of the usual 14 days, this matter be expedited, and this House be briefed properly on it within the next seven days.

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

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I support this Statement, as well. This is an issue that has captured the nation. The very nature of the gruesome way that it happened is also shocking. It also highlights very clearly the issue we talk about; the issue of youth unemployment. There is desperation.

This Statement probably wants to delve even deeper, and try to find out the identity of the stowaway, which is still a question in dispute. That is amazing and a little bit shocking. As my colleague Senator has just said, there is also the issue of security at the airport and the people in the aeroplanes. There is some sort of loose nut there that needs to be tightened, as far as security matters are concerned. This is an unfortunate situation and an incident that we need to get to the bottom of.

Therefore, I hope that through the Committee, they will give us the right answers to those questions.

Thank you.

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

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Statement. I am very careful in terms of the procedures that should be followed, because I keenly followed this issue. Recently, I remember that Kenya started its direct flights from Nairobi to the United States of America (USA). Therefore, this is a very sensitive matter. I am concerned that if it is not handled properly, we may end up losing that status.

What *Sky News* did in airing that story is to show that the Kenyan authorities are not taking security seriously. I am glad that Sen. Iman raised this matter. She might have raised it because she lived in London for many years. However, it is being disputed. I saw a story on the *British Broadcasting Corporation* (BBC); that the Kenya prison officers identified the images which were used as that of a person who is alive. So, we have to be careful.

I am happy that this matter has come to this House of reason so that we can assure the world that Kenya, particularly, Jomo Kenyatta International Airport (JKIA), is safe. I have travelled around the world, and JKIA is an important and safe airport. So, I do not know whether we should take this as the gospel truth or fake news. We should not allow fake news to destroy our international standards.

Mr. Temporary Speaker, Sir, as the Committee looks into this matter, we must be careful. Otherwise, we will end up losing our status because Kenya is being seen as one of the most developing nations in Africa and somebody somewhere wants to destroy that image.

I hope that the Committee will take this matter seriously. I assure the world that Kenya is a safe place and they should treat this as fake news. *Sky News* should pay for it.

**Sen. (Dr.) Milgo:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Statement by Sen. Iman. It is unfortunate that this happened in a place that purports to have tight security. One wonders how the stowaway managed to get into the wheels of

the flight. This is because when passengers board a flight, there are strict measures that are taken.

We are being told many stories, for example, that the stowaway was a cleaner which means security in JKIA is in question. In addition to this issue which affects our transport system and brings us a bad name, it is also a sign that our youth are really suffering due to unemployment.

We have noted this one case, but there are many others who normally drown into the sea when they board ships in pursuit of better lives elsewhere. That is why we need to look after our youth so that we avoid cases where we lose them at an early stage.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, we now proceed to Statements, pursuant to Standing Order No. 51(1)(b).

Proceed, Chairperson Standing Committee on Justice, Legal Affairs and Human Rights.

ACTIVITIES OF THE COMMITTEE ON JUSTICE,  
LEGAL AFFAIRS AND HUMAN RIGHTS

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No.51 (1) (b) to make a Statement on the activities of the Standing Committee on Justice, Legal Affairs and Human Rights for the period commencing 1<sup>st</sup> July to 30<sup>th</sup> September, 2019.

Mr. Temporary Speaker, Sir, before I report on the activities of my Committee for this period, allow me to take this opportunity to thank the Fourth Estate for the incredible coverage that they have given to my Committee.

Through this publicity and commitment by Members, our activities have made great impact in institutional processes and mechanisms and to the greater public, as I will demonstrate shortly.

In respect to legislative proposals, the following are the proposals that we considered-

(i) Proposed law of Succession (Amendment) Bill, 2019 by Sen. Halake Soka, MP that seeks to provide for gender equity in succession matters.

(ii) Proposed Parliamentary Powers and Privileges (Amendment) Bill, 2019 by Sen. (Dr.) Agnes Zani, MP that seeks to provide for a structured mechanism through which Parliament is able to receive reports, from the Executive, independent offices and constitutional commissions, on the resolutions passed by Parliament.

(iii) Proposed Constitution of Kenya (Amendment) Bill, 2019 by Sen. Mutula Kilonzo Jnr., MP and Sen. Farhiya Ali, MP that seeks to give effect to the two-thirds principle as envisioned in the Constitution of Kenya.

(iv) Proposed Elections and Related Laws (Amendment) Bill, 2019 by Sen. Ephraim Maina, MP that seeks to provide for use of popular names in electoral processes

(v) Proposed Alternative Dispute Resolution (Amendment) Bill, 2019 by Sen. Kasanga, MP that seeks to actualize Article 159 of the Constitution of Kenya.

In respect to Bills, the following are the Bills that we considered-

(i) The Constitution of Kenya (Amendment) Bill (Senate Bills No. 40 of 2018);

(ii) The Constitution of Kenya (Amendment) Bill (Senate Bills No. 2 of 2019);



(iii) The Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 13 of 2018);

(iv) The Constitution of Kenya (Amendment) Bill (Senate Bills No. 16 of 2019);

(v) The Elections (Amendment) Bill (Senate Bills No. 18 of 2019);

(vi) The Alternative Dispute Resolution Bill (Senate Bills No. 19 of 2019); and,

(vii) The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bills No. 35 of 2019).

Mr. Temporary Speaker, Sir, our Committee held a series of meetings to the review of the Constitution of Kenya with a view to strengthening the framework of devolution, including the role of the Senate.

I am happy to report that the proposals made by the Committee formed part of the report submitted to the Building Bridges Initiative (BBI) which is now being considered by the President and former Prime Minister. However, we do not know whether it will survive or die on the surgery table. It is by the Deputy Speaker, Sen. (Prof.) Kindiki Kithure, on behalf of the Senate.

Mr. Temporary Speaker Sir, our Committee observed that various laws passed by Parliament in the 11<sup>th</sup> and 12<sup>th</sup> Parliament were enacted without compliance with the procedure for enacting legislation as set out under Part 4 of Chapter 8 of the Constitution.

The Committee, therefore, resolved that an audit of the laws enacted in the 12<sup>th</sup> Parliament be undertaken with a view to identify the laws that were enacted un-procedurally. We, therefore, conducted a thorough audit of the laws where over 20 laws were identified as having been enacted un-procedurally.

Mr. Temporary Speaker, Sir, I thank Senators for the walk of justice to Milimani High Court.

The key concerns were the non-compliance with Articles 1(1), 2, 2(2), 3 (1), 6, 10, 50 (1), 93 (1), 94 (1) and 2, 94 (5), 96 (1), 96 (2), 97 (1) (b), 98 (1) (a), 98 (1) (b) (c) and (d), 109, 110, 114, 159, 165, 258 and 259 of the Constitution.

Under the leadership of the Rt. Hon. Speaker, a law suit was filed at the High Court.

I thank your office for the wonderful support. I also thank you for being on the forefront. I saw the happiness on the face of Sen. Mutula Kilonzo Jnr. and those of the Leadership of the House.

*(Loud consultations)*

Mr. Temporary Speaker, thus far, the case has been mentioned twice---

*(Loud consultations)*

I wish Senators from the coast region could listen to this.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, consult in low tones.

**Sen. Cheragei:** Mr. Temporary Speaker, Sir, they have been asking how far our case is. So, it is important---

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

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, thus far, the case has been mentioned twice; on 17<sup>th</sup> September, 2019 and 28<sup>th</sup> October, 2019. On both occasions it was mentioned to confirm whether a bench had been constituted by the Chief Justice to hear the case.

On 28<sup>th</sup> October, 2019, the court stated that it was aware that there was a bench, but did not have details of the judges that were to be on the bench. The bench is supposed to serve the Senate with a mention notice for directions on how the case will be heard. In the meantime, a mention date has been fixed for 21<sup>st</sup> November, 2019 for further directions. I urge the Senators who will be available on the mention date to attend.

Mr. Temporary Speaker, Sir, I take this opportunity to urge the Chief Justice to urgently appoint the bench. This is not just a matter about the Senate but constitutionalism and upholding the rule of law.

Our Committee has been visiting prisons to inquire into the administration of law and justice and human rights conditions in prisons. We have found that there are many challenges including poor infrastructure, children being put up in the same cells as adults, delays in handling of cases, leading to backlog, high bonds and bails being issued to petty offences, prison land being grabbed, amongst many other challenges.

We have had several discussions with those charged with management of the prisons on these issues and we will soon be proposing legislative and policy interventions to strengthen the legal and institutional framework of prisons.

Mr. Temporary Speaker, Sir, arising from the visits, our Committee, together with the Senate Standing Committee on National Security, Defence and Foreign Relations, has paid bonds and bail, from individual Members' personal resources.

I thank Sen. Faki and Sen. Mutula Kilonzo Jnr., who visited and paid bails and bonds that are less than Kshs5,000 for inmates who in most cases are unable to raise such monies and have been given long sentences over petty offenses.

Last month, Justice Odunga declared Section 46 of the Prisons Act unconstitutional and issued orders that prisoners serving long term---

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

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, allow me to complete the sentence.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): There is a point of order from Sen. Sakaja.

**Sen. Sakaja:** On a point of order, Mr. Temporary Speaker, Sir. I am quite shocked.

Is it in order for my colleague and fellow Chairperson, Sen. Cherargei, while talking about a very noble action that was done by both the Committee on National Security, Defence and Foreign Relations and the Justice and Legal Affairs Committee; where we bailed out 23 prisoners in Kitui County and as a result, more than 100 prisoners were released the next day, to only mention the Members of his Committee, yet the largest contributions were from Sen. Wetangula, I and other Members of Committee on National Security, Defence and Foreign Relations?

Can he remember to mention the rest of us who are not in his Committee?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Cherargei, you need to give credible information to this House.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, my apologies for that. I thank the Vice Chairperson of the Committee on National Security, Defence and Foreign Relations for pointing that out.

For Sen. Sakaja to be at rest, I appreciate our party leader and Senior Counsel, Sen. Wetangula, Sen. Sakaja of Nairobi City County, as well as many other Members of the Committee on National Security, Defence and Foreign Relations. I was not being biased; my heart just loves my Members more.

Last month Justice Odunga declared Section 46 of the Prisons Act unconstitutional and issued orders that prisoners serving long term sentences be released after serving two thirds of their terms. This is critical as it will assist with rehabilitation and decongesting the penal system.

Mr. Temporary Speaker, Sir, our Committee has held many consultative meetings with the Multi Agency Team on Anti-Corruption on the issues, to expedite resolution of cases and the challenges that they are facing in the fight against corruption.

I hope that even as the austerity measures against the Judiciary are taking place, I request the National Assembly who are considering the Supplementary Budget to be careful as they make budget cuts meant for Judiciary. Lack of sufficient resources will ensure that the fight against corruption will not succeed because the Judiciary will not have enough resources.

During our discussions, our Committee proposed that the Office of the Director of Public Prosecutions considers implementing the issue of plea bargaining to resolve cases. I am happy to report that the guidelines on plea bargaining are now in place and I take the opportunity to congratulate the Director of Public Prosecutions, Mr. Noordin Haji, for taking this bold step.

This will not only help to reduce the length of trials but also help to decongest the penal institutions which are currently filled with inmates serving life and death sentences.

Mr. Temporary Speaker, Sir, we will be tabling our report and Draft Bill on Anti-Corruption before the end of this Session. I, therefore, urge the investigative agencies that fight corruption in this country to continue with their work and ensure that corruption is brought to an end.

As you are aware, on Thursday, 26<sup>th</sup> July 2018, the Senate adopted the Report of the Select Committee on Solai Dam Tragedy. Our Committee was mandated by the Senate to monitor the implementation of several of these resolutions.

In the course of this implementation, it came to our attention that the Njokeria Dam in Nakuru County was leaking. The Committee wrote to the Ministry of Environment and Forestry, Ministry of Water, Sanitation and Irrigation and NEMA, notifying them of the Committee's intention to visit the Dam to assess its status and inviting these institutions to avail a report on the status of the dam.

Even though this visit did not take off as planned, I am happy to report to this House that recently we saw NEMA visiting the dam and we are expecting a status report on the dam to be submitted to the Committee and subsequently, we will submit a comprehensive report outlining measures to address such issues.

Mr. Temporary Speaker, Sir, going forward, the Committee intends to carry out the following key activities during the next quarter:

- a) Meeting with stakeholders to address the challenges facing prisons and the justice system. I am happy to report that on Friday last week, the Chief Justice, Deputy Chief Justice and the entire Judicial Service Commission had a discussion with our Committee, courtesy of the Office of the Speaker of the Senate, hon. Lusaka. I am glad to report that we will continue to have discussions to ensure the administration of justice in the country is well taken care of.
- b) Comprehensive review of elections and related laws. On this particular matter, I urge all Senators who are advocates and any other interested Senator to join our Committee in conducting this review. I would like to emphasize that it has come to the attention of my Committee, that most Senators are proposing amendments to the Elections Act. I have made proposals before to the SBC and to your Office to have an audit review of the entire elections laws in this country so that we can have an omnibus amendment rather than piecemeal amendments.
- c) Consideration of the Petitions before the Committee namely-
  - i. Mass examination failure at the Kenya School of Law.
  - ii. The state of corruption, procurement, recruitment, abuse of office, public participation and marginalization in Nyamira County.
  - iii. Arbitrary cancellation of Kimwarer Dam and scaling down of Aror Dam in Elgeyo-Marakwet County.
  - iv. Implementation of the Truth, Justice and Reconciliation Commission Report.

Mr. Temporary Speaker, Sir, that is the status report of my Committee. I thank the Office of the Speaker of the Senate for the wonderful support, the Clerk Assistant to my Committee, Ms. Kavata Musyoka, the entire secretariat, my colleague Members and all the stakeholders that have made all the activities successful.

I thank you.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Thank you, Sen. Cherargei.

I request Sen. Halake to move a Motion on the election of the Temporary Speaker.

**Sen. Halake:** Mr. Temporary, Speaker, Sir, before I move the Motion, kindly allow me to congratulate Sen. Cherargei and his team for the comprehensive report. I have been a client to that Committee and I can report that they do a good job.

*(Interruption of debate on Statements)*

## PROCEDURAL MOTION

ELECTION OF A SENATOR TO PRESIDE OVER SITTINGS  
OF THE HOUSE PURSUANT TO STANDING ORDER NO.15  
AND ARTICLE 107 (1) OF THE CONSTITUTION

Mr. Temporary Speaker, Sir, I beg to move that-

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Pursuant to Standing Order No.15 and Article 107(1) of the Constitution, the Senate elects Sen. Sakaja to preside over, in the absence of the Speaker and the Deputy Speaker, the sitting of the Senate for the remainder of the day.

I beg to move and request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to second the Motion with a few comments. I think that Sen. Halake is more than competent enough to sit as Chair. She has sat before and I have told her that I pray that she becomes the Speaker of this House one time in her life time.

*(Applause)*

More importantly, I read the history which Sen. Halake profiled in a newspaper recently. I can confirm that she has more qualifications than all of us think.

Congratulations Sen. Halake from the 'Mama na Baba Party' .

I beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): This matter does not affect counties. I will, therefore, proceed to put the question.

*(Question put and agreed to)*

*(Resumption of debate on Statements)*

Hon. Senators, we now proceed to Statement (b) under---

What is it, Sen. M. Kajwang'?

**Sen. M. Kajwang':** Mr. Temporary Speaker, Sir, as a Chairperson of a Committee, I know how much work goes into preparing that report. I also know how much a committee is expectant that when they report to the House, the House shall be seized of their report and it shall provide meaningful commentaries.

Would I be in order to be allowed to make a few comments on the wonderful report that has been brought by Chairperson of the Committee on Justice, Legal Affairs and Human Rights?

Could I proceed?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): That is okay, Senator. You may proceed.

**Sen. M. Kajwang':** Thank you. It is not easy to be a Chairperson of a Committee, particularly, of the Justice, Legal Affairs and Human Rights, considering that, that is the Committee where all the senior counsel in this House find their place.

I congratulate Sen. Cherargei, the Chairperson of that Committee. He has steered it very well. When he was first appointed as the Chairperson, we wondered how long he would carry this cross, but he has borne it very well. I wish him a fruitful three years to the end of this Parliament.

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

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

Allow me to comment on only two issues out of that report. One is on the work of the Committee on matters to do with prisons and borstal institutions.

In the 11<sup>th</sup> Parliament, the Chairperson, who happens to be the distinguished nephew of Sen. Wetangula---. I take note that the distinguished nephew is now on the Chair.

The Committee on Justice, Legal Affairs and Human Rights is dealing with the Prisons Act. It is going around prisons in this Republic to ensure that they conform to the requirements of the 2010 Constitution.

However, in the 11<sup>th</sup> Parliament, I was the Vice-Chairperson of a select Committee that was constituted by this House which was chaired by Sen. Dullo. We went around borstal institutions. We went to Shikusa, Shimo la Tewa, Kamiti and Kodiaga. We even took a foreign trip to Sweden to see how the correctional facilities and services were.

We came up with a draft report and a draft Bill. I want to encourage the Committee on Justice, Legal Affairs and Human Rights, to pick the good things from what we did in the 11<sup>th</sup> Parliament and fast track the enactment and amendment of the Borstal Institutions Act. This is because, as we speak and do all the analysis and public participation, the fact remains that we only have two borstal institutions in this Republic; that is Shikusa and Mama Ngina. There was an effort to establish a borstal institution at Kamiti, but it is not considered a serious one.

A borstal institution is a place where juvenile offenders are detained; it is not approved school. All these children who are being jailed by our courts as sexual offenders or as petty juvenile thieves are not taken to Kodiaga Maximum Prison or Kamiti Maximum Prison, yet we only have two borstal institutions with a very limited capacity. We need to be fair to the youth of this country.

We need to look at these institutions as correctional rather than punishment centers. I urge the Committee not to take another two years. We already made very good recommendations and came up with a draft Bill. Take it and bring it out to the public domain, enact it so that we can open the way for establishment of other borstal institutions and the proper reform of correctional facilities.

**The Temporary Speaker** (Sen. Sakaja): Thank you. Kindly wind up!

*(Laughter)*

**Sen. M. Kajwang'**: A strange autocracy has visited the Chair!

*(Laughter)*

**The Temporary Speaker** (Sen. Sakaja): I do not understand the excitement by Members.

Sen. M. Kajwang', kindly wind-up.  
What is it Sen. Mutula Kilonzo Jnr?

**Sen. Mutula Kilonzo Jnr:** Mr. Temporary Speaker, Sir, is it in order for the distinguished Senator for Homa Bay, the Chairperson of CPAIC, to purport, allege by innuendo that some autocracy, which is despotism, has visited the Speaker of this honorable House?

**The Temporary Speaker** (Sen. Sakaja): Sen. M. Kajwang', you are completely out of order. Just wind up. The Speaker has just started.

*(Laughter)*

**Sen. M. Kajwang':** Strange, indeed!

Finally, I urge the Chair to come up with an abridged version on the Senate position on constitutional reforms. We are going on a long recess and everyone is trying to influence public debate on the institutions that they run.

The governors are talking of *ugatuzi*. The National Assembly is saying that constituencies shall not be abolished. What about the Senate? What kind of Senate do we want? Is it going to be an Upper House with veto powers? Is it going to be a council of leaders of majority for county assemblies or is it going to be a base for promotion of Members of County Assemblies (MCAs)?

My view is that this Senate must be a place where governors aspire to come to. It should be natural that once you have become a governor, you progress to the Senate rather than moving from the Senate to go to the village to become a governor.

May you order that the Chair circulates that abridged version before we go on recess?

**The Temporary Speaker** (Sen. Sakaja): Thank you, Sen. M. Kajwang'. Those are very good interventions. This is a House of record. The last Senate already pronounced itself on certain things with respect to the Constitution.

It would be good for us to hear strongly the voice of the Senate through the Committee on Justice, Legal Affairs and Human Rights on the matter of any impending review of our laws. Therefore, Sen. Cherargei, please take note.

Let us move on to the next Statement by the Committee on Lands Environment and Natural Resources.

Before that, Senator for Nyandarua County, let us hear what Sen. Cheruiyot's intervention is.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir. I was on the queue to also make similar sentiments. I will be brief because we have already been forewarned of the consequences that can befall us.

*(Laughter)*

I note with a lot of pride the work that has been done by the Committee on Justice, Legal Affairs and Human Rights Committee under the stewardship of my good friend, Sen. Cherargei. It was earlier observed that when this Committee was being formed, this side of the House had picked the youngest of the troops of legal minds to

lead that Committee. However, slightly close to two years that this Committee has been in existence, Sen. Cherargei has led it with great distinction and honor.

This Committee has achieved tremendous things, including being listed before this House this afternoon. I congratulate him for that. That is testament that given a chance, the youth are the answer to the problems in this country.

Secondly, there are two things that this Committee is handling that are of great national importance. The Chairperson spoke to it. I know that the Independent Electoral and Boundaries Commission (IEBC) Amendment Act is before this Committee. It will be of great importance that they quickly bring forth the issues that are placed before them. They should either agree or disagree with the proposals made by the National Assembly. As a House, we should stamp our authority by raising our voice on what we think needs to be done at the IEBC.

We need to do this because as a country, we have a knack for never learning from our mistakes. The Kriegler Commission of 2009, recommended that, if we do not want to have trouble in our electoral process, we should ensure that two years before an election we should have the IEBC properly constituted.

The big political players are not speaking to this yet we know that the IEBC as constituted at the moment suffers great challenges in terms of raising quorum and the commissioners. What will happen if at a very critical time one of the three available commissioners is indisposed for one reason or the other? The Commission will not be able to sit and transact business. We do not know for how long this will be done.

It would be proper if this exercise is concluded before the first quarter of next year, so that the Commission has more than two years to prepare the country for elections. On many occasions, we hear issues about why we ask questions, yet we know that in the last three elections, the referee, for one reason or the other, either by omission or commission, has been central to the dispute.

*(Sen. Wetangula walked into the Chamber)*

It is good that the distinguished uncle to the Speaker is walking in and listening to me as I say this. Our party leaders and the people who are at the forefront of political parties need to put a voice to the challenges that the Independent Electoral Boundaries Commission (IEBC) faces. These matters are squarely before this particular Committee. It is my sincere hope that this Committee will expedite this particular request and give the country direction.

Finally, is to exert a point that I have mentioned each and every afternoon that I get an opportunity to speak in this House. We are the only ones who do not know how powerful we are. The testament of what this Committee was able to achieve in Kitui, simply by walking into Kitui Prison and having people who had been jailed wrongly, stayed in those particular prison walls for periods beyond what was expected for them to be set free confirms that people take the Senate of this country very seriously. It is only that sometimes we do not give ourselves that honour.



Therefore, it is a challenge to us. The Committee on Justice, Legal Affairs and Human Rights has shown us that it is possible, using the instruments of the Senate, to provide solutions to the challenges that this country continues to face.

Thank you.

**The Temporary Speaker** (Sen. Sakaja): Thank you, Sen. Cheruiyot. Chairman of the Committee on Justice, Legal Affairs and Human Rights, you have heard the comments from Members. We hope you remember the Swahili saying, '*mgema akisifiwa, tembo hulitia maji.*' Continue performing in that distinguished manner.

There is one important issue that has been raised, which the Committee should appraise the House. It is the matter of IEBC. Was that issued in your Statement and is there an update that you can give to the House on that matter of the Act that is possibly before the House?

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. There are two things that I had requested the Senate Business Committee; that we allow this Committees to do a full audit review of the election laws.

Two, there is an amendment that has come from the National Assembly that we are considering at the moment. Our report is ready and we will be ratifying it soon. Next week, we shall table the report on the IEBC (Amendment) Act, especially on the selection panel of the IEBC Commissioners.

**The Temporary Speaker** (Sen. Sakaja): Mr. Chairman, Sir, your Committee does not need to be allowed by anybody to do that review of the electoral laws. You have the mandate under the Standing Orders to do that.

As the Senator for Kericho has said, this House is being looked upon to give direction on these matters. I would allow only one comment briefly, as I encourage Senators. If you look at Standing Order No.51 (3), the statements made by Committee Chairpersons are very important because our House works through the Committees.

It is good for those statements to always be available before hand, so that Members can actually interact with what Committee Chairpersons say they have been able to achieve.

Senator for Bungoma, kindly proceed.

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir. As the father of the Committee system in this Parliament, I feel very proud when I hear Committees giving a treatise of what they have been doing and what they plan to do.

Sen. Cherargei, in his youthful state, has acquitted himself very well in steering this Committee and achieving a few miles, including but not limited to leading our House to court to enforce our rights. I do remember him chairing the Committee to prepare the pleadings. Even when some Members were engaging a reverse gear, we were able to herd them into the proper perspective.

Mr. Temporary Speaker, Sir, I would like to comment on three things very briefly. One, the Committee should continuously speak loud and clear in protection of the independence of the Judiciary. Increasingly, the Executive in this country is very uncomfortable with the Judiciary. The Executive has embarked on a retributive attitude and conduct toward the Judiciary, including, truncating their budgets to make it impossible for them to work

Even if we do not preside over budget proceedings of the country, this Committee must be on the frontline of speaking for the Judiciary. This is because in the absence of an independent and strong Judiciary, there is no country left. When the State is in conflict with its citizens, and when citizens are in conflict with each other, the refuge we go to is the Judiciary. We may not like the decisions they make, but they are there to arbitrate and resolve our disputes.

An independent Judiciary is the cornerstone of a functioning democracy. That is why at the end of the last elections, aggrieved as we were, we did not tell our supporters to get into the streets with stones and crude weapons. We went to the Judiciary and they made a decision.

Two, the Committee should follow what the Senator for Kericho has said; the electoral system in this country. As we speak here, since 1993, the only time we went to elections and Kenyans did not lose life and property was in 2002/2003. Every election has had disputes that led to people losing lives, property and the country being divided even more.

We need to fix our electoral system and the Committee must be on the frontline on this, so that when we go to elections the winners do not get foolishly exalted and the losers do not get foolishly vanquished. When we finish an election, we should know we have a country to keep and run. This Committee must do its work in this regard.

Three and more importantly, the Committee must be on the frontline in guarding and protecting the integrity and authority of this institution, the Senate. We are now in a constitutional mood; what one of my friends calls the constitutional moment. This Committee should lead this House in propagating our views and ideas in the possibility of taking them to the next level in rewriting and redrafting our Constitution, so that it becomes a proper Upper House, with revision of each and every piece of legislation from the Lower House, as it is done in comparable jurisdictions.

Mr. Temporary Speaker, Sir, this is the only country in the world with a bicameral system where legislation from the 'Upper House' is subjected to a veto in the 'Lower House.' Everywhere in the world the House of veto and revision is the Senate. The appellate House is the Senate. We need to have this Committee, together with the galaxy of legal minds in this House, to lead the country in restoring the dignity of the Senate as a House that must be truly a House within a bicameral system.

Lastly, I would like to encourage the Committee, that there are areas under their jurisdiction, that I did not hear the Chairperson mention. There is the office of the Ombudsman that is so critical in the administration of justice in the country. It is an office that is virtually dead. We do not hear of what the Ombudsman's office is doing.

This is an office that doubles both as a public defender and a crusader for justice for the downtrodden. We do not hear anything about this office. The only time I hear about the Ombudsman is when we see the Chairperson of the Ombudsman walking through Parliament corridors and reminding everybody that she was previously a Member of Parliament. We want to see the office of the Ombudsman working to protect Kenyans.

Mr. Temporary Speaker, Sir, a group of people from western Kenya bought land in Nandi County in 1979. They have lived there for 40 years.

They have litigated with the family, the person who sold the land died, and it is the sons and the grandsons of the person who sold the land. I salute the Cabinet Secretary of Lands and Physical Planning, who comes from the same county. She visited the land, addressed the dispute and gave a way forward that was very reasonable. We shall either buy another piece of land for the family that originally owned this land or buy the people who bought the land another piece of land to resettle them.

Mr. Temporary Speaker, Sir, I do not know whether you recently saw bulldozers and other machinery descending on families in the night and pulling down every structure. We saw one man who dug up the grave of his father and carried the skull on his head to demonstrate anger. What is the office of the Ombudsman doing? They have not even uttered a word about this.

**The Temporary Speaker** (Sen. Sakaja): That matter is before the House, if I am not wrong.

**Sen. Wetangula:** Was it a Statement? I was mentioning it in passing.

**The Temporary Speaker** (Sen. Sakaja): Please move to wind up.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, that matter is very painful to everybody. The leadership in Nandi, right from the Governor, has spoken against that brutish behavior, and I salute them for that.

Let me end by encouraging the Committee to remain seized of what they must do to give credit to this House by prudent and positive work that will help this House hold its own in the midst of this helter skelter that we see every day.

**The Temporary Speaker** (Sen. Sakaja): Sen. Chergei and your Committee, take note of those comments, and the earlier direction that your Committee take up this matter and report to the House on your plan of action when it comes to the constitutional amendments that Senate deliberated on during the last Senate and this Senate, as well as the electoral laws and the Independent Electoral and Boundaries Commission (IEBC). Well done.

Next Statement for this Order, No.51 (1)(b).

The Chairperson of the Committee on Land, Environment and Natural Resources.

#### ACTIVITIES OF THE COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

**Sen. Mwangi:** Thank you, Mr. Temporary Speaker Sir for giving me this opportunity to give my Statement.

I rise pursuant to Standing Order 51 (1)(b) to make a Statement on the activities of the Senate Standing Committee on Land, Environment and Natural Resources for the period commencing 1<sup>st</sup> July, 2019 to 30th September, 2019.

Mr. Temporary Speaker, during the period under review, the Committee held a total of 11 meetings within the precincts of Parliament and nine sittings during site visits and report writing sessions. The Committee considered one legislative proposal on a Bill, pre-publication scrutiny of a Bill, adopted Petition reports---

I have a problem with my eyesight today. So, I call upon one of the Members of my Committee, Sen. Halake, to present this report to the House.

**The Temporary Speaker** (Sen. Sakaja): I will indulge you, but you could have done that from the beginning. That is in order.

**Sen. Mwangi:** Mr. Temporary Speaker, Sir, I thought that my eyesight would work. I was sick for the last one week in hospital, and I think this is what is affecting me.

**Sen. Mwangi:** Pole, Sen. Mwangi. We wish you quick recovery.

**Sen. Halake:** Mr. Temporary Speaker, Sir, I wish my Chairman quick sight recovery.

Let me just start afresh, because I cannot remember exactly where my Chairman had reached.

Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No.51(1)(b) to make a Statement on the activities of the Senate Standing Committee on Land, Environment and Natural Resources for the period commencing 1<sup>st</sup> July, 2019 to 30<sup>th</sup> September, 2019.

During the period under review, our Committee held a total of 11 sittings within the precincts of Parliament and nine sittings during site visits and report writing sessions. The Committee considered one legislative proposal on a Bill, pre-publication scrutiny of a Bill and adopted seven Petition reports, handled eight Statements and undertook a county visit to Isiolo. The Committee also held three engagements with stakeholders.

In respect of legislative proposals, the Committee considered the following proposals

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(a) The Geology Bill, 2019.

(b) Wildlife Conservation and Management (Amendment) Bill, 2019.

With regard to these legislative proposals, the Committee held workshops involving relevant stakeholders in order to polish up on the proposals before submitting it to the Senate.

Mr. Temporary Speaker, Sir, regarding Statements, pursuant to Standing Order No.48(1), three Statements were referred to the Committee during the period under review as listed below-

(a) Statement requested by Sen. Mutula Kilonzo Jnr., on the plight of persons affected by the construction of Kibwezi-Kitui-Kabati-Migwani (B7) Road.

The Committee has already began interrogating the matter, whereby it began with the Kitui section of the road. During the Senate *Mashinani* program the Committee interrogated the person affected on that part and obtained responses from Kenya National Highways Authority (KeNHA), as well as from the National Land Commission (NLC).

Further, the Committee has gone forward and scheduled a visit to Makueni section of the road scheduled for 15<sup>th</sup> November, 2019, so as to provide a comprehensive report on the matter in due course.

Mr. Temporary Speaker, Sir, please allow me to report progress on this. We have since visited this section, held public participation and took the National Land Commission, KeNHA, the Ministry of Water and Irrigation and other interested parties in this.

(b) On the Statement requested by Sen. Naomi Masitsa Shiyonga on the Destruction Caused by Hippos in Kakamega County, the Committee has written

to the Ministry of Tourism and Wildlife on the matter and is awaiting a concrete response not later than 22<sup>nd</sup> November, 2019.

- (c) On the Statement requested by Sen. Abshiro S. Halake on the Eviction Notice Served on Residents of Isiolo by the Department of Defence to pave way for expansion of Kenya Defence Forces (KDF) training camp in the County, the Committee has met the Cabinet Secretary of the Ministry of Defence and the National Land Commission on the matter and further held a site visit to receive submissions from the affected residents of Isiolo County on 27<sup>th</sup> September, 2019.

The Committee made headway as the Ministry of Defence committed to work on solutions to solve the current impasse on the matter and a resolution was made that the three stakeholders; Ministry of Defence, Ministry of Lands and Physical Planning and the National Land Commission embark on getting a way forward and report back to the Committee on 4<sup>th</sup> December, 2019, when they will be expected to appear again before the Committee.

The Committee also would like to inform the Senate that arising from a Statement requested in the Senate by Sen. Mwaruma regarding residents living around Ikanga Airstrip in Voi, Taita-Taveta County, who had not been compensated during the expansion of the airport and had complained of land grabbing and historical injustices by the Kenya Airports Authority (KAA); that the KAA have since owned up to these allegations. The KAA has also said that they would be working closely with the National Land Commission to harmonize the list of the affected residents and compensations would begin by 31<sup>st</sup> December, 2019.

The Committee is also considering the Statement requested by Sen. (Dr.) Ochillo-Ayacko on mining activities in Migori County and will be getting in touch with the Sen. (Dr.) Ochillo-Ayacko to schedule a favourable date for the Committee to visit the small scale artisanal miners in Migori County. Since it is a grave matter, the Committee would not wish to rush on the matter and is committed to obtaining a lasting solution to the persons affected by mining in this county.

The other Statements pending from the previous reporting period that the Committee was able to obtain submissions from the relevant Ministry, and is awaiting supplementary questions should they arise from the respective Senators who had requested them include-

- (a) Statement requested by Sen. (Dr.) Abdullahi Ali on the Status of the Bute Mega Dam Project in Wajir County.
- (b) Statement requested by Sen. Beatrice Kwamboka on Water and Sewerage in Nairobi City County.
- (c) Statement requested by Sen. (Dr.) Alice Milgo on the recent move by the National Environment Management Authority (NEMA) to ban the non-woven polypropylene carrier bags.

Mr. Temporary Speaker, Sir, the Committee has so far interrogated and completed interrogations on the following Statements requested that were pending from the previous reporting period:

- (a) Statement by Sen. Anuar Loitiptip on the Land Crisis in Lamu County.

(b)Statement by Sen. Johnson Sakaja on compensation of Nairobi residents in Mihang'o Ward, Embakasi East Constituency, by the Kenya Power and Lighting Company for the illegal demolition of their houses.

Mr. Temporary Speaker, Sir, with regard to Petitions, the Committee has one of the most critical mandates that directly affect the citizens. As a result, 28 Petitions have so far been referred to the Committee. The Committee has so far satisfactorily concluded investigations into 11 of the Petitions and tabled reports in the Senate respectively.

The Committee has completed investigations on seven of the Petitions and has embarked on report writing and will be tabling the reports in the Senate, in due course. On the remaining 10 Petitions, the Committee has begun inquiries and is scheduled to meet six Petitioners regarding their Petitions on 20<sup>th</sup> November, 2019.

Mr. Temporary Speaker Sir, in respect to county visits, in the period under review, the Committee undertook a very successful visit to Isiolo County. During the visit, the Committee inquired into the various matters arising from the Petition and Statements referred to it. The Petition was submitted by residents of Ngaremara in Isiolo County, on the alleged illegal encroachment of their community land by the School of Artillery (Kenya Defence Forces); while the Statement requested by Sen. Halake Abshiro was directed to the Committee on 24<sup>th</sup> September, 2019.

The Statement was about an eviction notice served on residents of Isiolo by the Department of Defence to pave way for expansion of the KDF Training Camp in the County.

The Committee collated useful views from the public and stakeholders on various matters and the Petition Report indicating the resolutions and way forward for the people of Isiolo would be tabled in the Senate once investigations into the matter are completed by the Committee.

The Committee would like to highlight the following areas that will form part of its business for the next quarter -

- i). Tackling developing concerns in the housing sector which is one of the pillars under the Big Four Agenda. The Committee intends to host a High Level Conference on Affordable Housing with all the 47 CEC's in charge of housing and the relevant Government implementing agencies in March, 2020.
- ii). Engage relevant stakeholders on the matter of human-wildlife conflict that has continued to be a challenge.
- iii). Engage the National Treasury and other stakeholders on the matter of mining royalties and the status of disbursements to communities.

Allow me to congratulate the Members of this Committee. We have the largest portfolio and the heaviest workload. You can actually see that from the 28 Petitions that we received in one session. This Committee oversees seven Ministries and that has forced us to sit every single day.

A lot of accolades should go to our Chairperson, who actually collapsed while in the line of duty when we were visiting different counties. He is committed and hardworking and we are privileged to have him steer our Committee. We encourage him to continue with the same spirit. We also thank our Vice Chairperson, Sen. Prengei and

the other Members who have worked tirelessly. This Committee has worked day and night to ensure that the Senate serves Kenyans.

**The Temporary Speaker** (Sen. Sakaja): Thank you, Sen. Halake, for stepping in for your Chairperson. I also want to congratulate the Committee for the work that it has done. Is there any Member who wants to comment on the Statement by the Committee on Land, Environment and Natural Resources?

Okay, next Order.

## BILLS

### *First Reading*

#### THE LIFESTYLE AUDIT (NO. 2) BILL (SENATE BILLS NO. 21 OF 2019)

**The Temporary Speaker** (Sen. Sakaja): Hon. Senators, pursuant to Standing Order No.140 (1), the Bill stands committed to the relevant Committee.

*(Order for First Reading read – Read the First Time  
and ordered to be referred to the relevant Committee)*

Next Order.

### *First Reading*

#### THE FISHERIES MANAGEMENT AND DEVELOPMENT (AMENDMENT) BILL (SENATE BILLS NO. 22 OF 2019)

**The Temporary Speaker** (Sen. Sakaja): Hon. Senators, pursuant to Standing Order No.140 (1), the Bill stands committed to the relevant Committee.

*(Order for First Reading read – Read the First Time  
and ordered to be referred to the relevant Committee)*

Next Order.

### *Second Reading*

#### THE CARE AND PROTECTION OF CHILD PARENTS BILL (SENATE BILLS NO. 11 OF 2019)

*(Sen. Kwamboka on 6.11.2018)*

*(Resumption of Debate interrupted on 13.11.2018)*

**The Temporary Speaker** (Sen. Sakaja): Members, for reasons obvious to you, we shall defer division on Order No. 10 and the next Order.

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*(Bill deferred)*

### MOTION

#### ADOPTION OF CPAIC REPORT ON INQUIRY INTO FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY2014/2015

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo-Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot County Executives for Financial year 2014/2015 (1<sup>st</sup> July, 2014 to 30<sup>th</sup> June, 2015), laid on the Table of the Senate on Wednesday, 9<sup>th</sup> October, 2019.

*(Sen. M. Kajwang' on 22.10.2019)*

*(Resumption of Debate interrupted on 06.11.2019)*

*(Motion deferred)*

**The Temporary Speaker** (Sen. Sakaja): Members, pursuant to Standing Order No. 42, for the convenience of the Senate, I will rearrange the Business as follows:

We shall move to Order No. 13, the Alternative Dispute Resolution Bill (Senate Bills No. 19 of 2019), before looking at Order No. 12.

### BILL

#### *Second Reading*

#### THE ALTERNATIVE DISPUTE RESOLUTION BILL (SENATE BILLS NO. 19 OF 2019)

*(Sen. Kasanga on 13.11.2019)*

*(Resumption of Debate interrupted on 13.11.2019)*

**The Temporary Speaker** (Sen. Sakaja): Sen. Wetangula had 19 minutes remaining.

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir. I had just started speaking in support of this Bill when the House rose. I cited the case from Nandi as one of the reasons as to why we need alternative dispute resolutions.



It is an indictment on all of us for a case to stay in court for 40 years to a point where the grandchildren of the people who were litigating to be the ones now asking to be enjoined in the case. We have a similar case in Kitale of a farm called Mengo Farm which has been in court for close to 30 years. Somebody now wants to evict families that are almost second to third generation.

This Bill will help in a way to reduce the backlog in our courts. In as much as going to court is a constitutional right in this country; it is sometimes turned from hope to a nightmare.

In the past, we used to have judges like Judge Aragon and others who would go to court at 9.00 a.m. and adjourn all the cases on his case list by 9.30 a.m. and that would mark the end of his day. He would then walk to Trattoria Restaurant to enjoy a cup of cappuccino yet he had done nothing. If a lawyer appearing before him insisted on going on, they would actually lose the case. The lawyers would just allow him to adjourn the cases.

We need speedy resolution of disputes. The 2010 Constitution provides for this and it is the foundation of this Bill. We do have the arbitration process which is commonly used in commercial disputes such as construction contracts and similar engagements. That is where parties sign for arbitration as the first point of call in dispute resolution. We also have this in the Political Parties Act.

In fact, Ford Kenya, Wiper and Amani National Congress (ANC) are having difficulties with the Orange Democratic Party (ODM) for receiving political party funds and keeping all of it without caring that we are partners. We signed that the first point of call is arbitration. We are, therefore, trying to move to arbitration to see whether we can resolve the matter there. In doing so, we will lessen the burden on the Judiciary, which already overburdened and under pressure from the Executive through budget cuts.

When we are dealing with Alternative Dispute Resolution (ADR), I want to encourage the proponent of this Bill. I have seen that in Clause 27, we are talking of traditional conciliators. Let me take, for example, where Sen. Abshiro comes from; the people who resolve traditional disputes are not necessarily educated. However, they have wisdom, respect and their decision is likely to be binding to the parties to the dispute. We should, therefore, not be too hard, trying to say there must be a committee, and that they must be recognized.

When parties have a problem, you will find that traditional structures have their own way of dealing with things. You will also find that there is an elderly person who is acknowledged, appreciated and respected. Therefore, when people have problems, they just walk to him, and tell him: "Somebody is encroaching on my land;" or "Somebody is demanding to take away my cow;" or "Somebody has taken away my daughter and is refusing to pay dowry;" and so many such things. Therefore, the law should recognize those talents without putting too much expectation on them in terms of education or committee making and so on, and so forth. It should be simple, accessible and fair as possible; and justice is grounded in fairness. Whoever can do a fair act to people in dispute is dispensing justice.

I know parts of this country where, for you to even start talking of forming committees to deal with disputes, is not feasible. People simply have a problem and they

want somebody to help them. I remember that in our early days, my late grandfather was a village elder and people would walk to his home in the morning and raise their concerns. For example, they would tell him, “So and so’s cows broke the fence and ravaged my crops;” or “So and so’s bull has crossed the fence and harassed my cows;” and so on, and so forth. They would then solve these disputes very easily and get things moving.

Therefore, Sen. Kasanga should look at Part 4, and simplify it as much as she possibly can. Some of this dispute resolution through traditional means should also be put under some form of administrative structures of counties. Now that we have devolution, not everything should be done through Nairobi, Garbatulla, Bungoma, Mt. Elgon, Trans Nzoia, Makueni or anywhere. People can acquire acknowledgment and respect and be recognized as people who can help.

I have seen, again, that Sen. Kasanga, in clause 22, you need to look at---

The fact that People are going to ADR mechanisms for resolution of their disputes should never close doors for them to go to the courts, if they wish. Therefore, in Clause 22, when you say that, “Conciliation records must be confidential and cannot be used in any other proceedings,” that is not the way to go. When People go to a conciliator, and you know Kenyans; we used to have a magistrate who used to receive bribes from both the complainant and the accused, and then say: “Now I can hear them fairly;” because each one had done their bit of the bargain. This happens.

Therefore, when you have this convolution of justice and perhaps one of the parties has influenced the conciliator more than the other, and he passes a decision that is evidently unjust to one, the door to justice to the High Courts must be available.

We also have cases where the conciliator, by consent of the parties, makes a decision and then one of the parties, either mischievously or by reasons beyond their control, are unable to abide by the decisions reached by the conciliator. Those conciliators and ADR teams do not have the capacity to issue orders that can be enforced by law enforcement agencies. Therefore, just like when an arbitration is done and concluded, it is normally filed in the High Court so that the parties to it can enforce it and get the fruits of their justice from the arbitrator, if one of the parties decides to freak out.

In trying to speed the wheels of justice, these innovative mechanisms are critical and important. This is because we know that justice, in the conventional system that we know, is very expensive. For you to go to court, you must have some properly drafted documents called plea deals; you must file them, and sometimes you need a lawyer to read the law, interpret it for you, and then go and argue your case. It costs money. If you lose unfairly, and you want to go to the next level of appeal, it costs money. By the time you reach the Supreme Court, members of the public sometimes find that it is not worth the matter.

This is because you are probably pursuing a subject matter of a monetary value of a Kshs1 million, and by the time you are done, a lawyer has creamed off you Kshs5 million. You, therefore, weigh your options and see whether you can put that money to a different use or continue pursuing a principle of justice that is counter-productive to your own finances.

These alternatives are very important. We must, upon passage of this Bill, encourage public awareness. There are people who may not know that there is such a law that can help them; or those who may not know that they can sit together, if you have disagreed, and say, “We agree to Sen. Halake to be our dispute resolution person; we submit all our facts and we abide by what she will tell us.” That way, people can get to know that it is not just the courts that can arbitrate.

Equally important, is the simplification of the process, so that when you are going to ADR, form should not be a big issue. It is the substance of the matter that is important. You cannot be constrained that, “You must go to a local internet café and type your papers;” because you can even go and make an oral presentation. The person you have agreed upon to listen to you has a duty to listen to you, make notes and give you a verdict that you can live with.

I know that in the villages, for example, you will find dowry disputes or burial disputes, where somebody passes on and there are two or three families claiming the body. You will find that *wazee* sit under a tree, and in two or three hours, they will come to an amicable solution, and nobody asks for pleadings. At the end of the day, nobody is told: “You will pay costs of this.” They just agree that *wazee wakunywe busaa kidogo, na mambo inakwisha*; things are then resolved. This is how we must simplify our process of justice.

Mr. Temporary Speaker, Sir, as the Senator for Nairobi City County, with the largest population of any county in Kenya, I am sure you encounter this every day. Every time I go to my office, I find people from Kayole and everywhere standing there with a file that used to be white and now it is totally grey or brown. They have been walking with it from person to person to assist them because somebody with money and influence has taken their plot and dispossessed the family completely. He or she has no money to go to court, pay a lawyer, bribe anybody or to enforce anything; they want you to help them.

It is this kind of process that will help such invalid persons in our community; invalid in terms of inability to have money so that they can be listened to. Sometimes, even when they do not have a good case, being listened to is a sense of justice; that somebody was able to walk into the office of Sen. Kasanga or Sen. (Dr.) Musuruve and you gave them two, three or five minutes to listen to them, so that they are able to download their frustrations with the wheels of justice.

I know that it is very difficult to deal with some issues that are going on in the villages. This Bill is very clear as it outlaws any alternative dispute resolutions in matters such as impregnating school children. We have seen, in some places, an adult impregnates a 14-year-old which is evidently a criminal offence and you cannot compromise on crime. However, the parents of the girl sit with the man because he has a bit of money and say: “We will just agree. You will marry our daughter. Give us a few cows and we end there.” That is concealing crime and such issues should never get into anything called alternative dispute resolution. This is because people who do such things do not deserve to live among decent people.

Any parent of a young girl who has been made pregnant by an adult and acquiesces to this kind of process is also guilty of a criminal offence of being an accessory to a crime after the fact.

**The Temporary Speaker** (Sen. Sakaja): Sen. Wetangula, does this Bill provide for what you are saying?

**Sen. Wetangula:** I am saying it outlaws.

**The Temporary Speaker** (Sen. Sakaja): Does it?

**Sen. Wetangula:** Yes, it does. It says that those things cannot go to alternative dispute resolution. I am praising the drafter of the Bill for including this because if you just say we embrace alternative dispute resolution, then we will be opening the country to chaos.

She has done very well. You cannot subject criminal activities to alternative dispute resolutions. They must be dealt with within the criminal justice system which we also encourage to dispense justice faster.

Equally important as I come to an end because I see my time is running out, I have seen that Sen. Kasanga has provided for advocates to appear before these processes, which is okay. However, we should not transfer the problems that are bedevilling the law courts to other centres of dispute resolution. This is because part of the problem of the backlog of cases in the High Court and other law courts are lawyers; I am one of them.

Mr. Temporary Speaker, Sir, you will find a lawyer with six cases for hearing on one day and he can only represent one. Sometimes people do not come to your law firm because they want any lawyer; they want you as the lawyer. Therefore, let us not transfer the burden that lawyers have placed on the Judiciary into other dispute resolution mechanisms.

If you have a problem to do with land, anybody with sufficient knowledge on land can come and help you present your case. It does not have to be a qualified lawyer or an admitted advocate. If you have a problem of accounting with somebody who has cheated you in business, you do not need to look for a lawyer; get somebody with sufficient knowledge in accounts to put your figures together, present them for you and be listened to. The Bill provides that you can come with a lawyer or any other expert, which is okay. Of course, people have the right to have the confidence of being represented by lawyers where they want. We should also give them an opportunity to get Okiya Omtata or anybody of that calibre to go and make a representation for them and have justice done.

More importantly, I encourage Sen. Kasanga to also have some penal clauses in cases where people who are appointed as dispute resolution facilitators turn into corrupt cartels. This happens, you find a conciliator is given an opportunity to reconcile parties and starts engaging in bad practices. I know that the Bill provides that such a person can disqualify himself or herself. However, if such a person is found culpable, he or she should be punished by law. You cannot accept to solve problems between people and end up multiplying problems between them through dubious and devious moral behaviour. That is not acceptable.

Mr. Temporary Speaker, Sir, I want to end here by saying that this is a very important Bill. As a legal practitioner in this country for many years, I know the pain that the ordinary citizens go through to access justice. I know the pain that the ordinary

citizens go through to be dispossessed because the wheels of justice turn too slowly. To find a better way of dealing with this matter is a very big relief.

In fact, like I said earlier, we have the Office of the Ombudsman and in the Constitution, we provide for the office of the public defender. These are some of the things that office should be doing. The Office of the Ombudsman is supposed to be a simplified version of the office of the Attorney-General and Solicitor-General, to help people in matters of dispute and to ensure matters of violation of people's rights are dealt with. However, they have maintained a loud conspiracy of silence; you do not hear or see them, they do nothing, they see and they say nothing. They are just there and this is the problem with this country.

Mr. Temporary Speaker, Sir, you will find that people placed in offices, enter officers that are of public good and start wearing regional and ethnic blinkers so that when people who come from your community or from your region do wrong things, you do not see them. You are only able to see things because they are being done by communities that do not belong to you. That is very wrong and dangerous for a country that is striving for unity and fairness across board.

Mr. Temporary Speaker, Sir, I hope that the fruits of this Bill will flow to everybody and every corner and that sufficient public knowledge will be impacted to people to know that now they do not have to sell a portion of their land to go to a lawyer or to court. They can look for somebody knowledgeable enough to help them get to a panel somewhere, get justice, have that justice enforced, and get their rights.

*(The red timer went off)*

As I finish, if you could give me one or two minutes.

**The Temporary Speaker** (Sen. Sakaja): Yes, take two more minutes.

**Sen. Wetangula:** The highest levels of injustice in this country are in areas of land ownership. People are dispossessed of their land every day. People have bought land and eventually somebody comes and becomes so legalistic, everybody knows.

We should start having a situation where like in marriage, if any of your neighbours can stand up and say: "We know for sure that Sen. Halake is married to Mr. Halake or whoever and have been living with us", nobody asks for a marriage certificate. It is called common law presumption of marriage.

Mr. Temporary Speaker, Sir, we have the Registered Land Act that says, and I am sure you know this, that if you have been living in your land for the last 12 years, you acquire adverse possession. However, people go to court and courts do not care. How do you evict somebody who has been living on a piece land for 40 years at midnight? Where is justice in this country?

These are the big questions that we must deal with because when a grandson of a land seller emerges today and says: "My grandfather never sold any land", and he was not even there. The justice system listens to such people and delivers judgements and the police are brought into the loop to go and superintend the eviction.

The case of Nandi which you said is seized by some Committee in this House, as I finish because that is where I started, even the Governor of Nandi said he was not in any

know of what the police were doing. I called Cabinet Secretary Karoney and she told me: "I visited that land and gave options on how to resolve the issue because I was fully aware that there is a serious problem."

You cannot evict families of close 6,000 people. Right now, they are living by the roadside. I understand that the grandchildren of the person who had sold them land are not taking the land to live on; they are trying to sell the land to other people at better value. We cannot live like that; it is immoral to say the least.

Mr. Temporary Speaker, Sir, I beg to support this Bill.

**The Temporary Speaker** (Sen. Sakaja): Very well spoken, Sen. Wetangula. I am glad to note that the sponsor of the Bill, Sen. Kasanga, was very busy taking down notes. I am sure that some of the comments will enrich the Bill. However, Members are free to propose any amendments, either through the Committee or on your own Motion. A lot of what has been said, if taken into consideration, can give us a way out of a lot of the issues we have within our legal system.

Let us have Sen. (Dr.) Musuruve to comment on this.

**Sen. (Dr.) Musuruve**: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to support this Bill. I commend Sen. Kasanga for coming up with this Bill. Indeed, it is a noble Bill because there are times when cases take too long within the corridors of justice. There are instances when justice is actually delayed. Once justice is delayed, it is not impactful even for those who have been seeking for it.

Before the colonial days, there were alternative ways of resolving conflicts; even traditionally. Land, marriage and responsibility issues that keep coming up used to there during those days. There was a way in which our forefathers were able to resolve these issues amicably. Even in polygamous families of those days, all the siblings were able to unite as one. They knew each other and in case of any dispute, there were traditional ways of ensuring that all the families were cohesive.

It is time that we also rethink about the traditional ways of solving issues, so that we ensure that people coexist. There is need for communities to live in harmony. Sometimes issues are taken to courts and even people who have been neighbours for long turn out to be enemies, just because of the way in which courts resolve issues.

Mr. Temporary Speaker, Sir, I wish to thank Sen. Kasanga for coming up with a Bill that will effect Article 159 (2) of the Constitution, which talks about alternative ways of resolving a dispute. Here, we are talking of issues like reconciliation, where people can reconcile in the event of a dispute. There can also be mediation where there are disputes, so that someone arbitrates even on issues where, for example, neighbours have a heated debate. Eventually, these neighbours resolve to become friends once more.

This Bill also states that in as much we talk about alternative dispute resolution, even the traditional ones should concur with what is in the Constitution. They should not seek to solve disputes in ways that are repugnant to justice and morality. For example, traditionally, there could be a dispute concerning land or maybe a certain person wants a piece of land. That person engages the owner of the lands and become friends, and traditionally marries off his very young daughter to a very old man. That can be very repugnant to our Constitution.

Therefore, in as much as you are talking about traditional ways, the Bill actually seeks to ensure that it protects such issues. The Bill also seeks to protect anything that will be inconsistent with the Constitution. The Bill is, therefore, advocating that any written law that is acceptable should not be flouted in the process of resolving conflict.

Mr. Temporary Speaker, Sir, another object of this Bill is to provide effective mechanisms for dispute resolution. There are quite a number of ways of resolving a dispute. According to this Bill, one can take different approaches in resolving a dispute. You can combine arbitration with any other way of resolving a dispute, as long as at the end of the day, the dispute has been resolved.

Another object is ensuring access to justice. If there are alternative ways of resolving a dispute, then such ways can be an effective way of ensuring that the disputants get justice at the end of the day. In addition, when talking of alternative dispute resolution, it is also important, according to the proponent of this Bill, that the entire community is involved.

Mr. Temporary Speaker, Sir, I wish to give an example of what could be happening between neighbours. Neighbours could have a heated argument over a fence or a tree that is on the border of either sides. One could argue that the neighbour has taken three steps of his land and so on. Such disputes could seem trivial, but could have a lasting impact that is negative even to the families of the disputants. Such situations can lead to two families becoming enemies. I have seen cases where someone says: “Do not interact with that family, they are enemies of our grandfather or do not even eat any mango that falls from the tree in the neighborhood because something bad will happen to you. Those are enemies.” Such cases are there

Traditionally, these cases were resolved amicably. In such cases, arbitrators can come on aboard and bring two parties on board, and in an amicable way, ensure that the conflict is resolved.

Mr. Temporary Speaker, Sir, some people may take others to court and say: “This tree is bringing problems in my compound.” The court will forever be there but these neighbors will be enemies forever. They will keep remembering that one of them took the other to court. However, if such a problem is solved amicably or there is an alternative way of ensuring that these neighbours come together and solve the problem, they will continue being friends, and their grandchildren will also continue being friends.

It is important for other ways to be brought on board with regard to resolving conflicts. The Bill also talks about principles that guide alternative dispute resolution. One of the principles is voluntary participation of both parties. Conflicts cannot be resolved if both parties do not want. There is need for both parties to be aware of the conflict that is there. The two parties must confirm that there is a conflict between them. When they have the right information, the two parties can be brought on board, with an arbitrator or mediator coming to solve the problem.

The problem should be solved within the shortest time possible. The more you take long to solve a problem, the worse it becomes.

Mr. Temporary Speaker, Sir, for good neighbourliness in counties – I am looking at it from a communal perspective - it is important for people in the same community to be involved in conflict resolution and live harmoniously. That way, in case anything

should happen like an attack, you can always go to your neighbor for help. However, in a situation where neighbours have tried to solve a conflict legally and it has not worked, you do not expect these neighbours to be friends. In case of an emergency, you do not expect these neighbours to be there for each other. It is important for neighbours to live harmoniously.

Another guiding principle is that of impartiality by the conciliators, mediators or resolvers. When it comes to a conflict, the mediator needs to be as sober as a judge, impartial and not try to side with one person at the expense of the other. This is because the mediator also has an image to protect. Not everyone can be a mediator.

Traditional mediators should be people who are really conversant with the traditions of a given place or community. Not just anybody from anywhere can be picked to become a mediator. A mediator should be well versed, sensitive, objective and impartial for the purpose of ensuring credibility of the mediation or conflict process.

Mr. Temporary Speaker, Sir, a mediator can also merge different ways of resolving a conflict as long as he is able to meet his goal. That is, reconciliation, conflict resolution, mediation and even negotiation.

Conflict resolution should result into be a win-win situation and not a winner-takes-it-all. So, the mediator should ensure that he mediates in such a way that both parties are satisfied that the mediator has taken the right approach.

In the event of mediation, for example, in a situation where there is a land dispute, there is need for witnesses to be present. However, sometimes witnesses can die and then there is no one else to give a witness account. Therefore, there is also need for written information so that it can be referred to at some point. Written communication is more permanent than audio communication. Even in a community, people can refer to the written communication and say there was a conflict between family A and B concerning this piece of land. As a result, village elders came, the arbitrator was there and this is what was reached. Whatever was reached should be upheld up to the last minute so that people do not flout agreements.

There are times when people flout agreements where people had agreed on a certain thing. Some days or weeks later after the conflict is over, some people go back to what they used to do. So, there is need for a written agreement and to have photocopies made of the agreement. This will ensure that both disputants have the written communication and they can always refer back to it in case of anything.

I support this Bill by Sen. Kasanga, and I hope it will be taken with the seriousness that it deserves together with the Ombudsman Bill also to ensure that there is service delivery to *wananchi* in the counties and everywhere else.

Mr. Temporary Speaker, Sir, I support.

**The Temporary Speaker** (Sen. Sakaja): Very well spoken, Sen. (Dr.) Musuruve, and a very good analogy on the mango falling from one neighbour's house.

Maybe for the benefit of the House because the word "conciliator" and "mediator" are being used interchangeably, maybe the Sponsor can inform the House whether it means one and the same thing. I have heard some Senators talk about conciliator and others about mediator. Are we talking about one and the same thing, Sen. Kasanga?



**Sen. Kasanga:** Thank you, Mr. Temporary Speaker, Sir. These are two different things. Conciliation and mediation are two different processes. They are both Alternative Dispute Resolution (ADR) processes but it is the way the ADR is conducted that then defines what is mediation and conciliation.

Secondly is also the outcome. A mediation outcome has a report that you can file in court like for the court annexed mediation, then it is filed back to the courts; or where there are just two parties, they all countersign and say this is the agreement we have come up with.

A conciliator on the other hand is a little bit more informal. There is no necessarily any document that can be an outcome of the process. It can just be a general agreement amongst the parties. That is the critical difference.

**The Temporary Speaker (Sen. Sakaja):** Thank you. I think the House is better having received that information from Sen. Kasanga.

Let us have Sen. M. Kajwang', Senator for Homa Bay County.

**Sen. M. Kajwang':** Thank you, Mr. Temporary Speaker, Sir. I purposely came back to make sure that the Chair is not lonely this afternoon.

**The Temporary Speaker (Sen. Sakaja):** The Chair can never be lonely.

*(Laughter)*

**Sen. M. Kajwang':** Mr. Temporary Speaker, Sir, I also came to lend my voice to this Bill on ADR that has been brought by Sen. Kasanga who has sponsored a lot of progressive Motions and pieces of legislation in this House.

If there ever was going to be an example of the model Senator, then the smiling face of Sen. Kasanga should appear there.

*(Applause)*

I know some of us are only fit for our faces to appear on a journal on mental illness but when it comes to the real Senator by deeds and actions, Sen. Kasanga, it is.

*(Laughter)*

Mr. Temporary Speaker, Sir, on the question that you raised and where you sought clarification on the difference between conciliation and mediation, I have also been asking myself that. The definition in the Bill requires above-average intelligence to tell the difference between conciliators and mediators.

As I proceed, you will also understand and appreciate that I might be challenged to pronounce some of these words properly. So, allow me to pronounce them as my tongue finds them fit.

In this Bill, the ADR has been defined as the use of conciliation, mediation and traditional dispute resolution mechanisms to resolve conflict. The question I have been asking my friend, Sen. Kasanga, is; if you have a register or accreditation of conciliators and mediators, what then would be the qualifications for one to be a conciliator or

mediator? She has clarified to me that there is training that is preferred upon those who wish to be conciliators and mediators.

The further question was; what about church officials who have been playing this role for a long time? There are a lot of disputes that do not find themselves in courts of law. We go to our fathers, bishops and priests, pastors in churches and sometimes, they bring us together, reconcile us and play the role of conciliation - if I look at the definition that is in this Bill.

Would my pastor, who probably has 30 years' experience in ministering and solving marital and all sorts of disputes; need to go back to class to get some certification or qualification for him to be accredited? Perhaps, that might need to be looked at because the pastor, father and priest will not be doing the traditional dispute resolution. That has been defined separately and has been treated in a separate manner in this Bill.

Mr. Temporary Speaker, Sir, I would wish that Sen. Kasanga would apply her thoughts to that because that has been one of the biggest sections. I personally use their services. Whenever I have issues and small disputes involving family members and issues of a marital nature, one of the most natural and most confidential places to go to will be to the church. Indeed, certain church denominations have had the practice of confession which means that people feel comfortable dealing with the church officials, officials in our mosques or various temples.

The other issue is on accreditation, particularly for those involved in traditional dispute resolution. Are we going to extend the training and certification requirements to those involved in traditional dispute resolution?

Are we going to extend the training and certification requirements to those involved in traditional dispute resolution? The sponsor of the Bill has assured me that that will not apply to these persons applying traditional dispute resolution mechanisms.

Mr. Temporary Speaker, Sir, I guess the big question that we must ask ourselves is whether Africa had a system of settling disputes before the Western style of judicial discussion and determination was imposed on us. I have said it before, that Africa is a collection of many States which are not necessarily nations. We find nations cutting across different states. For example, you will find that the Maasai will cut across Tanzania and Kenya; or the Somali, who cut across the countries we call Somalia, Somaliland and Kenya. All these had their traditional means of dealing with disputes. The Luos from Egypt, along the Nile all the way down to Kenya, had means of resolving issues in a traditional manner. We should not allow those practices to die.

Mr. Temporary Speaker, Sir, just the other day, I was reading an article that was put up by the Kenya National Library Services (KNLS) trying to defend their role, and how much they have done to entrench a reading culture in this Republic. They were particularly put to task that most of the books in public libraries in this Republic are those that have been authored by foreigners on foreign subjects. The KNLS responded by saying that Kenyans do not publish; and that most of the published work in Kenya is curriculum material and a few story books. Therefore, there is a huge gap here, where we are required to tell the story of our conciliation, mediation and traditional dispute resolution mechanisms before colonialism or even before slavery came and interfered with the moral fabric of African nations.

Mr. Temporary Speaker, Sir, there are a few types of disputes which I personally believe would benefit greatly from this Bill, like issues of succession or inheritance. When a family loses a breadwinner – it could be the mother or the father, who was endowed financially – there is always a race to ensure that all sorts of interested parties become beneficiaries of that estate. In many of these cases, it has led to great embarrassment to the families involved. When people rush to court to seek letters of administration and orders, for them to be enjoined into the estate of the deceased, sometimes it invites media headlines which leaves the family even more pained than it was. My view is that the first port of call for issues to do with succession and inheritance, would be ADR, before we get to a point where families are airing their dirty linen in public.

Many-a-time when there is an inheritance question, that is when children who were previously unknown, come into the picture. It is also when spouses that were previously invisible come into the picture. This has happened to many families, large and small. At times, we focus on the embarrassment that is visited on the larger families. This is because we have made it a habit, that even succession issues and litigation on inheritance, when they go to the traditional judiciary, matters are prosecuted in the open. I believe and hope that once we pass this Bill, those involved in such cases, particularly the magistrates and judges, would point out to ADR as the first port of call before they go ahead with the other traditional litigation that we have seen in our courts.

Secondly are issues to do with land. Every community has got a way through which they used to deal with land disputes. Even though we have the Land Act and a Chapter on land issues in our Constitution, the modern approach and what I call the ‘English’ and ‘European’ approach to land disputes, is insufficient to take care of the variety of nations and communities in this Republic that have, over the years, evolved ways of dealing with land disputes.

Mr. Temporary Speaker, Sir, one of the areas where we constantly see conflict that has never been settled through traditional or contemporary judicial processes, is in the pastoralist areas. Those communities believe that land was given to them by God to graze their animals and to sustain and fend for themselves. We then introduce this Western concept of land tenure and ownership, where someone is told that there is an invisible cutline beyond which his cows or sheep should not venture. If the animals venture beyond that cutline, then it becomes a serious issue, where someone can be taken to court.

We then find that an innocent herdsman is taken to court, charged with trespass and jailed. Because they do not understand the law, we end up with prisons and correctional facilities which are full of helpless and sometimes clueless people, who are caught up in this modern judicial system. Therefore, there are certain land disputes that could find their way in ADR.

On issues of paternity or maternity, it is unfortunate that people have to go to court to establish whether they are the father or mother of a child; or whether they are the son or daughter of a person. A child is a gift from God, and the way it is in many communities, if a lady came to your doorstep and said that a certain child was yours, you take it as a blessing wrapped up in blankets, and raise it. You do not know what that child

will one day become. However, because of us vacating our traditional practices and values, we find that someone takes the father who has died to court to prove that he was the father, so that they can become part of that estate. These are things that are un-African. Even though we are in a global village, it is my view that we must seek alternative options to ensure that we deal with these issues.

Mr. Temporary Speaker, Sir, there are issues of paternity in very extended families. I will give you an example; in my county of Homa Bay, we have got a very huge clan called the Onyango Rabala Clan, which exists in four constituencies. They are not supposed to intermarry across the four constituencies, yet it is a population of almost 700,000 people. These people come and meet in Nairobi, where one person comes from Oyugis while the other one comes from Kanyamwa. They do not know that they are members of the same clan and that they are not supposed to intermarry. They then cohabit and have a child, who then becomes stateless, for lack of a better word, because no one is going to accept that child due to that extremely extended relationship. Therefore, should this child take the mother and father to court to say that, “Yes, I bear your blood; so you must assume parental responsibility over me.” That then contradicts the traditional perception, that the child can never be brought home and can never be acknowledged as a son or daughter of those two people from the clan that spans across four constituencies.

Mr. Temporary Speaker, Sir, those are issues that need to be looked at. We must find the right balance that will not disenfranchise children who are born in those kinds of arrangements.

**The Temporary Speaker** (Sen. Sakaja): Sen. M Kajwang’, that example sounds like a very serious issue. I hope that you are doing more about it, as the Senator for Homa Bay, including raising awareness for the members of that clan who are in Nairobi or elsewhere. It can be very disconcerting.

**Sen. M Kajwang’**: Indeed, Mr. Temporary Speaker, Sir, it is a significant matter which is normally handled by the Council of Elders. We have told our Council of Elders that they need to focus less on politics, and more on such issues that put young boys and girls at a great disadvantage.

I remember many years ago, in the 1950’s, through the leadership of one great community leader called Paulo Mboya, the elders sat down and split that clan into two. This was to ensure that not every other relationship would then be looked at as incest. You can imagine people in four or five constituencies being told that they cannot intermarry; and that any sexual relationship is described as incestuous.

Moving on, Mr. Temporary Speaker, Sir, there are also issues of war and civil strife, which are not candidates for our contemporary adversarial litigation that we witness in courts. At some point, I spent time in Uganda during the time when Joseph Kony of the Lords Resistance Army (LRA) decided to come out and negotiate with the government. The child soldiers that were engaged by Joseph Kony had committed some horrendous acts of brutality and fatalities. The question then was, “What were we going to do with these children?”

They were converted into child soldiers, indoctrinated, intoxicated, given weapons and as a result, they killed hundreds of people. The question was whether to

make them stand trial in the contemporary courts in Uganda, send all of them to the International Criminal Court (ICC) or use a traditional approach. Eventually, the Acholi, the community which was mostly affected opted to go for a traditional dispute resolution system called *mato oput*. This helped because there was nothing to do to these children. They were born in normal lives, abducted by the Lord's Resistance Army (LRA) soldiers and converted into soldiers and became killing machines. Were they to be taken to court and charged with treason? If so, they would have filled correctional facilities with people who have been victims of a complicated situation that they found themselves in soon after their birth. We must look into this.

Mr. Temporary Speaker, Sir, our own civil strife in the post-election violence that we saw, not everything needs to be dragged to courts of law.

Right now, in the case of six gentlemen who lost their lives in a moment of madness in Bumula, will the entire village be rounded up and taken to court, charged with murder and taken to prison? We must think through this. There are those of us who believe that the devil descended on that village. How do you explain six people killed in broad daylight in a span of ten minutes? Will we send the Director of Criminal Investigation (DCI) in his usual characteristics bravado followed by the Director of Public Prosecution (DPP) to hold the entire village into prison? Probably, we will not.

If we had a proper framework for alternative dispute resolution, we would say that may be there could be some cleansing approaches that fit within the traditional dispute resolutions. There could be some issues of reconciliation between the communities that are involved.

Finally, Mr. Temporary Speaker, Sir, intergovernmental relations do not need to be taken to court as the first option. I was convinced that the Council of Governors (CoGs), through the National Treasury, had come up with a version of a Bill that will give effect to Article 187 of the Constitution which talks of intergovernmental relations and particularly, which will deal with circumstances where there is a breach of trust or agreement between the two levels of Government. This is because it is expensive for Government to sue each other. The saddest thing that we have seen in the County Public Accounts and Investments Committee is that every year, we struggle to appropriate more funds to go to counties.

You were part of the mediation Committee and you know how difficult it was to convince the entire nation that counties needed more money.

If you go back to the budget of counties and you will see how much they spend on litigation. Sometimes, the county government is suing the national Government or a Senator, like in the case of Kakamega County, where the Senator was sued by the county government because he said a County Executive Committee (CEC) Member was incompetent. So, the Senator and the Deputy Speaker were sued by the county government using public funds which the Senator has advocated to be released.

Some things are comical even in our case. We walked all the way to Milimani to seek some judicial interpretation on relations between the Senate and the Executive. If we had a proper structure for alternative dispute resolution, it would have helped.

I hope that as we go along to do public participation, the CoG and the Executive will come up with additional suggestions on how to enrich this Bill to take care of those matters.

It is interesting that when we were in a select Committee looking at reforms to prisons and Borstals institutions, someone who is committed to jail rising from a civil debt is fed by the person who complains. If you go to Shimo la Tewa, you will find 20 people lounging and fed by the person they conned in the first place. I believe that issues like civil debts should be sorted out using Alternative Dispute Resolution (ADR) instead of sending someone to jail for a month or two and then he uses resources from the person who has been swindled in the first place. It does not make sense.

**The Temporary Speaker** (Sen. Sakaja): Sen. M. Kajwang, clarify your point. When you say that they are being fed by the complainant, is it by virtue of the complainant being a taxpayer or directly?

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, it is directly and not through the taxes. If a person is committed to jail on account of a civil debt, it is the complainant who will feed him or her. It is untidy. You will find that space in our correctional facilities is taken up by such characters. The sad bit is that the person is sent to jail, you feed him and when he comes out, the man will----

*(Sen. M. Kajwang's microphone went off)*

**The Temporary Speaker** (Sen. Sakaja): Please say you support on record because your microphone went off. Repeat your last statement.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I support the Bill.

**The Temporary Speaker** (Sen. Sakaja): Well spoken, Sen. M. Kajwang. Sen. Kasanga, there is a lot to enrich your Bill. It is time for the Mover to reply. Sen. Kasanga, are you ready?

**Sen. Kasanga:** Thank you, Mr. Temporary Speaker, Sir. I start by acknowledging and thanking all the Senators who have contributed to this Bill. I have taken a lot of notes and comments most definitely for improvement. The last few speakers have coloured it well.

**The Temporary Speaker** (Sen. Sakaja): Will there be a magazine on this Bill?

**Sen. Kasanga:** No. Mr. Temporary Speaker, Sir. I would have loved to hear you speak to this Bill.

As Sen. Wetangula has said, we need to create awareness. Most people do not remember that conciliators, mediators and traditional dispute resolvers do not need to be lawyers. When lawyers speak to these issues, they do so with such authority because they understand the law more than we do.

I am a practicing arbitrator, and I am not a lawyer. I am an architect. The beauty of alternative dispute resolution is that the practitioner is drawn from an industry or trade that he or she understands. Therefore, he or she is able to resolve a dispute around that issue easily and faster.

Like the objective of the Bill says, we need to foster peace and cohesion. Many times, disputes are fuelled more by ego than anything else. When a person is an industry

expert or understands a certain trade, it is easy for them to handle the issues because they understand the nature of the people.

A lot of time, lawyers complicate issues. This is because every time there is a dispute, the first person people run to is their lawyers. If this Bill is passed, there is a clause that mandates lawyers that they must first advise parties. If it is not a criminal issue or the issues that cannot be tackled under this Bill, they must advise their clients to first try conciliation and mediation.

Mr. Temporary Speaker, Sir, this is not new. In the construction industry, our law for contractors is clear that in the event of a dispute, we first try negotiations. If it fails, they go to mediation. If that fails, they go to arbitration. In fact, in construction, the law of the land is that there is no going to court. If a person runs to court, the judge automatically sends them back if their contract is one of those local contracts that we have. So, these are things that are already happening. Under mediation and conciliation, we need to have this sort of order in the industry because there is no order.

Mr. Temporary Speaker, Sir, I would like to speak on the conciliators and mediators who are being trained currently before I speak on the traditional ones. There are many institutions that train mediators and conciliators. Many people just by their own right out of age or status in the community have become conciliators and mediators. We also have a crop of people who are making a living out of mediation and conciliation. Those are the people we are targeting in this Bill. Such people are trained and then go out to offer their services in mediation or conciliate and charge per hour for that service.

Mr. Temporary Speaker, Sir, I wonder whether you attended the Breakfast Session that we had here in the Senate in 2017. The Chartered Institute on Alternative Dispute Resolution was invited to speak to the Senators on Alternative Dispute Resolution (ADR). From that forum, we learnt that someone can make money out of mediation but you have to go through a formal training where you will be awarded a certificate for you to offer your services and receive a fee.

I am worried that there are so many institutions that are training. So, it is hard to determine the quality of training that happens in those institutions or who is regulating them. Sen. Wetangula mentioned that we now have ethical issues surrounding ADR that whenever two parties go for ADR, the conciliator or mediator cuts deals with one of the parties. That means that we need order. The committee that has been proposed in this Bill needs to be formed.

The Committee should keep a regulation register of those who are trained ascertaining that they have been trained in a certain manner through certain courses and that they have passed. Anyone who required the services of a mediator or conciliator needs to go to the register and pick from there. The mediators will have been grouped into their different industries so one can pick somebody who is conversant with the issue speaking to your dispute. That is the sort of order we are looking for. Currently, under the Arbitration Act, arbitrators are already grouped in that manner so this is very possible.

Mr. Temporary Speaker, Sir, it was interesting that Sen. M. Kajwang' brought up the issue of the church leaders who have been conciliators for a long time. However, I feel that they do not fall in that category. When a church leader is doing the conciliation, they do not ask for money. They do it out of the spirit, so to speak. They help people to

live happily. I am looking at the people who earn money out of resolving disputes. If we leave them unregulated and unaccredited, we risk having quacks running around. We will then fail to gain that which alternative dispute resolution should be giving us that is; quick resolution of issues, cohesion and the other things that the objects of the Bill speak to.

I have received some backlash from industry players because of this Bill. However, I was once told by a wise person that if you get pushback from people, it means that you are doing something right. I therefore believe that we are doing something right. I am happy that the Senate is supporting this Bill. I agree that we do not need to make the process too formal. It needs to be easy to get into a mediation or conciliation. It should also be easy to get through the process. Kenyans need to be sensitized so that the level of awareness is increased such that people understand that they do not need lawyers to go through conciliation process. People need to understand that they can sit with the disputing parties, pick a conciliator or mediator and resolve their issues without making it too formal.

Mr. Temporary Speaker, Sir, I take cognisance of the fact that we need to simplify the process.

**The Temporary Speaker** (Sen. Sakaja): Sen. Kasanga, does that mean that Sen. M. Kajwang's concerns cannot be taken into account? He made a valid point. How do you take into account the issue of religious leaders who have been playing a similar role already in the society?

**Sen. Kasanga:** Mr. Temporary Speaker, Sir, I believe that the religious leader will have to continue with the role that they have been playing in ADR. The religious leaders approach the ADR from the angle of church which is spiritual. It is part of their duty as spiritual leaders to help resolve disputes. The spiritual leaders do not earn money from the mediation processes that they conduct. My concern, and what this Bill is addressing, is the conciliators who go through a training to earn money.

A lot of the conciliation that is done from the church need not have a formal process. The religious leaders carry out mediation out of the teachings of the Bible or whatever religious book that they ascribe to. I do not think that requires the formal training that Kenyans go through for purposes of earning money. I look forward to hearing from the church leaders during public participation so that I can see what their angle is and the input that they will give to this Bill. However, I am sure that they will agree with me because we do not want quacks.

**The Temporary Speaker** (Sen. Sakaja): Sen. Kasanga, I agree that makes sense. However, I only have one concern even though the Chair does not debate. I suggest that you look into how an agreement reached through that process can also have the same force if the parties deliberately went to the church and got an agreement through that. It can still have the same force as an agreement reached by the other mediators. I would to know what the public participation process will give us.

**Sen. Kasanga:** Mr. Temporary Speaker, Sir, I would like to speak about the outcome of these processes. Nothing stops two parties from going to court even after they have been through a mediation process. In fact, it is only in arbitration where the



arbitrator's word is final. However, even arbitration can still be challenged in a court of law and that is what our courts allow for. Parties should have access to justice.

One of the things that we have stated in this Bill is that there has to be a request to the court if parties are not satisfied with the outcome of a mediation process. However, parties should allow for mediation process before they go to court rather than going to wait for years for an outcome that they could easily get from a mediation process. Nobody stops parties from going from one mediation process to another until they are satisfied. Parties can also make a request to court to go for litigation if they are not satisfied with the outcome.

Part IV of this Bill touches on the traditional dispute resolution mechanism. In a different forum, we said that we have been resolving disputes since time immemorial before the explorers came to this country. We used to resolve our disputes traditionally in our own way. Many times, we say that it is the judicial process that is the alternative because there is that which we are used to and which our communities are used to. We have to pay respect and acknowledge the fact that most of our disputes in the village are resolved through the traditional dispute resolution mechanism.

Mr. Temporary Speaker, Sir, one of the beauties of the traditional dispute resolution mechanism is its informality. There is no formal process. Tribunal may sit under tree presided by one man with a lot of wisdom or it could be a group of village elders who will deliberate on issues. A decision made by the tribunal would be respected by the community. We do not want to change that in this Bill. We want to acknowledge that it gives access to justice to Kenyans who cannot reach courts, mediators or conciliators because those are too formal for them to reach out to.

Sen. (Dr) Musuruve spoke to the issue of the Bill of Rights. We have heard many stories from many Senators who spoke about it. Many times, we have witnessed cases where human rights are infringed upon by the outcome of tribunal sittings in the villages and that is part of what we are addressing in this Bill. I have received a lot of criticism from the industry about trying to formalize the justice system. Party or parties who have received an award or outcome from a traditional justice system and their basic human rights as envisioned in the Constitution have been infringed upon, they have a right to a recourse. They can go to court. What we are saying is that the traditional dispute resolution mechanism that was presided over by the elders is not final.

Many times, it has been envisioned as the end, but we are now saying no. We have a new Constitution that we must adhere to. That is what this Bill is trying to do.

There is a provision that the Committee which will be formed may keep a register of traditional dispute resolvers. Again, who is a dispute resolver? How do we say that this person qualifies to be a dispute resolver? It is very difficult, but there are those that are known. For those that are known, this committee could keep a register of them. What that allows to happen is that even when a case goes to court, the sitting judge can look at that list and say: "Why not take this case to this tribunal, they may be able to handle it."

Like Sen. M. Kajwang' has said, we have categories of disputes that will benefit from alternative dispute resolution. A lot of them have to do with cases of succession, land, paternity and maternity, war and civil strife. Right now, in a way of doing this, the court has mediation that was rolled out into the counties is. They keep a register of

mediators for certain cases, especially the ones that Sen. M. Kajwang' has rightfully put here. This is by sending them to mediation to ease the burden of the courts. A lot of them have been resolved in those platforms without necessarily going back to court.

Rather than just having a register of mediators, this Bill is providing for a register of conciliators and traditional dispute resolvers. That way, they can send more cases to a wider pool of dispute resolvers thus easing the burden of the courts.

I know that a lot of this Bill has not been understood by many Kenyans out there. They have not really internalized what it is the Bill is trying to do. However, I have taken the advice that we do not need to formalize the traditional justice system. It needs to be as simple as possible. There is a clause that requires that if a party wants an outcome from the traditional system to be written down for their own purposes because we have issues of enforcement in a lot of this alternative dispute resolution processes, then we are saying this should be possible.

I will give this an example because it was in a different forum when we were coming up with this idea. This is where you find a traditional dispute resolving tribunal is sitting and considering an issue, but in the absence of the affected party. That is not correct. We are now changing that. This happens a lot. For example, a girl has been raped, the elders sit together, but she will not be called in that forum. They will make the decision without her; maybe even her parents might not be there. The decision will be made and finalized and effected.

In a land issue, for example, where it is considered in the absence of the two parties that is not correct. That is not in the spirit of justice. The spirit of justice requires that in an alternative dispute resolution process, all parties must be represented and have full information. They must also participate in the process so that there is ownership of the outcome. We know where the issues of exclusion have taken us in this country.

In a special way, I acknowledge comments that were made by Sen. (Prof.) Onger. He reminded us that it was through an alternative dispute resolution process that we saw the end of the Post-Election Violence (PEV) in 2008. This is something that keeps eluding us because we are so busy. It is this process that saw the end of the violence and it led to a coalition government. Ultimately, it gave birth to the new Constitution. The very same Constitution that we are saying today has anchored alternative dispute resolution as key to seeking justice.

I appreciated that because he said it in a colorful way that remained us of the place we came from.

Our senior leaders went into details, reminding us on the intricacies. A lot was happening inside those closed doors.

**The Temporary Speaker** (Sen. Sakaja): I wish I was here was Sen. (Prof.) Onger spoke, but I will consult the HANSARD to see what he said.

**Sen. Kasanga:** He really coloured it nicely and reminded us that it was this process that gave birth to the new Constitution. Like Sen. M. Kajwang' has said, issues of war and civil strife are best resolved through the alternative dispute resolution. The biggest reason it is so is because of its nature of inclusion. There is no winner-take-it-all outcome. It is a win-win situation where people meet at a middle ground. That is the essence of alternative dispute resolution.

Mr. Temporary Speaker, Sir, I had the privilege of being in a forum where the Chief Justice was a keynote speaker. I was very privileged when he requested me to address the forum and speak on the Bill. He said that any process that helps to reduce the backlog of the cases in the courts is most welcome.

I know that he was speaking to this because there has been a bit of pushback from some of the other key stakeholders in the industry. What he was telling us, as key stakeholders in that forum, is: “Sit down and work together, because any process was most welcome.”

The fact that there is already something in Parliament for him, he felt very happy because he said that it was moving even faster. He spoke on various things. He first spoke on the issue of lawyers being a stumbling block towards reaching the full potential of alternative dispute resolution. The biggest reason is that lawyers feel that their income levels will be affected by the fact people may not need them, or there shall be less litigation.

It was interesting in that forum because a couple of lawyers came up to speak and said that lawyers need to be given the awareness that, that is not the case. Actually, it is on the reverse; there will still be work for them. It might not be the legal litigation and acrimonious judicial process, but through mediation and conciliation, Kenyans will still need representation. This is because many Kenyans would rather be represented in such forums. The lawyers need to understand these processes. They need to also formalize themselves with them. Therefore, they can continue earning money, but through the Alternative Dispute Resolution processes.

Secondly, in that forum, we had the Cabinet Secretary (CS), Mr. Aden Mohammed, who alluded to the fact that a lot of the backlog in the Judiciary is costing Kenyans; we are losing a lot revenue. For example, in a dispute where money is being held, you cannot pay out until it is resolved. A lot of money is being held because the cases are not moving in courts. The CS was actually asking the Judiciary: “What can they do so that we move faster?” Should we have a special court just to listen to these disputes? This has already been tried before. They have special courts just for certain disputes, and there was a cry for tax.

Apparently, a lot of tax is held because of the disputes that are pending. The question is: Is the tax collector ready to go into alternative dispute resolution to help unlock the billions that are being held because of disputes that are pending? It is amazing when you hear the statistics. I do not have them here; I wish I did. I did not know that I had 30 minutes. I would have presented the statistics. However, it is real that we need these processes to help unlock the money. Kenyans are feeling it right now; we are broke.

**The Temporary Speaker** (Sen. Sakaja): Please, feel free to share the statistics on other platforms. It is important for Members to know what is happening.

**Sen. Kasanga:** Yes, I shall do that.

Mr. Temporary Speaker, Sir, it is interesting that also the statistics that were presented on ---

My thought process is a bit affected right now. I am not used to the Chair interjecting.

The other thing that came out of that forum that was very interesting - and all of you will find this very interesting - is the amount of money it takes when you take a case through a judicial process *vis-a-vis* the savings you would have if you did an alternative justice system. The savings are in terms of money and time. You can imagine that there is no question about it. We know court cases that go on for years, and that lawyer gets paid very time he appears for a mention and the mention is adjournment. We heard one of the Senators who was talking about a judge who would just adjourn cases and go for tea. Imagine your legal person has appeared, he is charging you for that time, and your case is never heard repeatedly; *vis-a-viz* an alternative dispute resolution process where we can sit in two sittings, finish that matter and have an award drawn that is enforceable.

The statistics were read out in that forum, and again, it was amazing. We do not have local statistics and data, like many other areas in our country. The person who gave the presentation drew statistics from the USA and Britain, because they actually have numbers. You could see the difference in dollars and pounds in terms of savings - both in time and money - when you look at the two systems against each other. It was very interesting, and you can imagine Kenyans were getting very excited with the conversation that came out of that. This is how we need to be looking at it, not in any other way. We need to look at it in terms of the savings that were are making to Kenyans when we use these processes.

Mr. Temporary Speaker, Sir, as I wind up, something that was said here is that even as we sit here as leaders, we are conciliators and mediators. Whether you like it or not, your constituents come to you and you will be resolving disputes. We have seen it, time and again. I need to remind Members that you do not need to be a lawyer to be a mediator, negotiator or a conciliator. You just need to be a people person, and if it is a specific issue, it is better if you are an industry expert. That way, then you can deal with the issue.

Following that first engagement during the Breakfast Session that we had in the Senate in 2017, I want to encourage Members that a little formal training is of great advantage. Your constituents look up to you because you are out there. You can be a serious dispute resolver, and there are those who you can even charge for your services. They trust you because you are their leader.

I would look forward to guiding anyone. I had a few converts, but not enough of the leaders were converts. I would wish for a few more converts, because it is a field that I have been in. I practice both architecture and arbitration. It is very fulfilling when you get members to resolve their disputes without too many sittings. It actually feels very fulfilling. It is very good. Additionally, you will have saved many people a lot of money because you will have unlocked that impasse in the easiest way possible.

I want to again acknowledge all the Senators who have contributed. This House has passed some very critical Bills, and this is one of those. I can tell you that the Chief Justice is looking forward to seeing how far we can go. I have pledged to work with all the stakeholders; I am not working in isolation already, because even the drafting of this Bill was a concerted effort amongst several other stakeholders. I will continue in that way. I have taken heed to the fact that we need not make the process complex, but I am

passionate that we must respect our Constitution and our Bill of rights. That is the one this that I am particularly pushing for.

I want to acknowledge that the Committee on Justice, Legal Affairs and Human rights of this House has been very instrumental in helping the stakeholders come together with all their views so that we can make the Bill look good and be acceptable to all the Members.

Mr. Temporary Speaker Sir, I beg to reply.

**The Temporary Speaker** (Sen. Sakaja): Thank you, Sen. Kasanga. Very well executed.

**Sen. Kasanga:** Thank you, Mr. Temporary Speaker. I also request to defer putting the question pursuant to Standing Order 61(3).

**The Temporary Speaker** (Sen. Sakaja): So directed. We shall defer putting the question of this Bill to tomorrow, Wednesday 20<sup>th</sup> November, 2019.

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

**Sen. Kasanga:** Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Sakaja): Sen. Kasanga, that was well executed. A Member earlier on raised concern; it must have been a Member of Nairobi City County. The Member raised concern on the number of Bills that have been processed by this House but are stuck at the next stage, the National Assembly. That is a matter that this House has taken note of, and I am sure that we will follow it up.

Next Order.

*Second Reading*

THE REGISTRATION OF PERSONS (AMENDMENT) BILL  
(SENATE BILLS NO. 14 OF 2019)

*(Sen. (Dr.) Mwaura on 7.11.2019)*

*(Resumption of Debate interrupted on 7.11.2019)*

**The Temporary Speaker** (Sen. Sakaja): Thank you. This is a continuation of debate on this Bill. Sen. (Dr.) Milgo was on the Floor and she had 10 minutes left but she is not in the House, so the Floor is open. I see interest from Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to second the amendment of this Bill.

When talking of intersex medically termed as hermaphroditism. These are persons---

**The Temporary Speaker** (Sen. Sakaja): Order, Senator. You have said that you are seconding, you are contributing to the debate. The Bill was seconded by Sen. Orengo.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir. I support this Bill.

The intersex people go through a lot of humiliation, stress and violation of human rights. I support the amendment of this Bill. This Bill states that;

"intersex" means a person who is born with physical or genetic features that are—

- (a) neither fully male nor fully female;
- (b) a combination of male and female; or
- (c) neither male nor female;'

This definition will hurt the child. Article 53 (a) of the Constitution states that;

'Every child has the right—

- (a) to a name and nationality from birth;'

This definition means that the different physical and biological changes that will go on in the life of an intersex person at puberty level will not be acknowledged. That will make the child to be more frustrated.

The proposed amendment that intersex means a person who is considered born with a biological sex characteristic that cannot be exclusively categorized in the common binary of female or male due to their inherent and mixed anatomical hormonal, gonadal, ovaries and testis or chromosomes 'x' and 'y' patterns which could be apparent at birth, childhood and puberty takes in this consideration. This will help protect the rights of a child born as Jane when they become John at puberty. That is because there will be a section proposed in this amendment Bill which will now allow one to state that they are either male, female or intersex during registration. Therefore, it will help the child to be autonomous.

Intersex persons should be provided psychosocial support because they go through difficult moments together with their parents. Factoring in the changes that intersex people go through in the registration will help the child and the society to understand the various changes that those people go through.

Our Constitution states that people need to be treated with dignity. If we do not make the amendments, then it means that the child will go through bullying because sensitization has not been done. Therefore, there is need for the amendments and we should sensitize the society and the medical fraternity.

**The Temporary Speaker** (Sen. Sakaja): Order, Members. Sen. (Dr.) Musuruve, you will have a balance of 15 minutes when we resume debate on this.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Sakaja): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned to tomorrow, Wednesday, 20<sup>th</sup> November, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.