

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 30th June 2021**

The House met at 7.00 p.m.

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) in the Chair]*

PRAYERS

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, we have the requisite quorum to conduct business.

MOTIONS**ADOPTION OF REPORT ON INSPECTION VISITS TO KRA OFFICES**

(Hon. Isaac Ndirangu on 29.6.2021)

(Debate concluded on 29.6.2021)

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) left the Chair]*

[The Deputy Speaker (Hon. Moses Cheboi) took the Chair]

Hon. Deputy Speaker: Order Members! Those walking in may do so in silence. What remained of this business is for the Question to be put. I can confirm that we have the required numbers.

(Question put and agreed to)

APPROVAL OF NOMINEES TO CDF COMMITTEES

Hon. Deputy Speaker: Hon. Wamunyinyi. I am sure this is something you can do very quickly. It is a fairly straight forward matter.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Deputy Speaker. I beg to move the following Motion:

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THAT, pursuant to the provisions of Section 43(4) of the National Government Constituency Development Fund Act, 2015 and paragraphs 5(2) and (10) of the National Government Constituencies Development Fund Regulations, 2016, this House approves the list of nominees for appointment to the following two (2) constituency committees of the National Government Constituency Development Fund, laid on the Table of the House on Tuesday, 15th June 2021—

KIPIPIRI

| Name | Category | Description |
|---------------------------|-------------------|-------------------|
| 1. Moses Macharia Kamau P | WD Representative | Fresh appointment |

MATUNGU

| Name | Category | Description |
|----------------------------|------------------------------|-------------------|
| 1. Ronald Muroko Kumaruti | Male Youth | Fresh appointment |
| 2. Faluma Wasaya | Male Adult | Fresh appointment |
| 3. Nancy Lydiah Mukeyah | Female Youth | Fresh appointment |
| 4. Francisca Wabuyabo | Female Adult | Fresh appointment |
| 5. Rose Nawire Makokha | PWD Representative | Fresh appointment |
| 6. Frankilene Okome Ometty | Constituency Office (Male) | Fresh appointment |
| 7. Alice Were | Constituency Office (Female) | Fresh appointment |

For Kipipiri, it is compliance with the requirements of the law. A person with disability is being appointed to the committee. For Matungu, these are fresh appointments pursuant to Section 43(3) of the CDF Act. It is a fairly straightforward Motion, like you said.

I beg to move and request Hon. Wangwe to second.

Hon. Deputy Speaker: The Majority Whip, you have the Floor.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Deputy Speaker. I rise to second the Motion by the Chair of the NG-CDF Committee. As he has said, the Motion is purely in compliance with the law. It is important that we get the right persons to help Members of this House to deliver their mandate in their constituencies. As we approve these names, our concern is that the year has come to an end. Yesterday, the Leader of the Majority Party confirmed to this House that he received a message communicating the release of Kshs5.714 billion of the last tranche. Our collective wish as a House is that the NG-CDF Board should not sit on that money. Let it disburse the money as fast possible, so that Members can oversight the various projects as we go on recess.

With that, Hon. Deputy Speaker, I second.

(Question proposed)

Hon. Members: Put the Question!

Hon. Deputy Speaker: Okay, it seems it is the mood of the House that I put the Question.

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(Question put and agreed to)

BILLS

Second Readings

THE RADIOGRAPHERS BILL

Hon. Deputy Speaker (Hon. Moses Cheboi): Okay, Hon. Members. I have confirmed that we will step down what is coming under this Order which has been called out as Order No.10.

(Bill deferred)

THE JUDICIAL SERVICE (AMENDMENT) BILL

Hon. Deputy Speaker: We will also step down Order No.11.

(Bill deferred)

THE FOREIGN SERVICE BILL

Hon. Deputy Speaker: Order No.12 is also stepped down. Let us move on to the next Order.

(Bill deferred)

THE IMPEACHMENT PROCEDURE BILL

Hon. Deputy Speaker: That has been agreed to. What did you say? Let us confirm that.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): I was requested, through the Vice-Chair, to report on the Impeachment Procedure Bill, at Second Reading.

Hon. Deputy Speaker: Did you say to report or you want to move it?

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): To Move it. I beg your pardon.

Hon. Deputy Speaker: This is because the arrangement and the agreement I am getting from the Majority Whip is that the matter that we will be dealing with this evening is the implementation status of the report on petition regarding deplorable working conditions for workers in Kwale International Sugar Company Limited.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Okay, Hon. Deputy Speaker.

Hon. Deputy Speaker: Therefore, allow me to consult with him again and get to know. Probably, we will also get the Majority Leader himself and then we make a decision on what we need to do. Now that it is clear that we have business, we could look at this one and see whether it can be placed... Is that the position?

(Loud consultations)

That being the position, we will do yours later. We will proceed to the next one. You can proceed. That is the Committee on Justice and Legal Affairs, you are the one representing.

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): Hon. Deputy Speaker, I beg to Move that the Bill be now read a Second Time.

The Bills seeks to provide a general legal framework for the procedure for the removal from office by impeachment of the President, the Deputy President, a cabinet secretary, a governor, a deputy governor, and a member of county executive committee (CEC).

The Bill further seeks to give effect to the constitutional principles of democracy and participation of the people in impeachment proceedings as set out in the Constitution as follows:

1. Article 145 of the Constitution which provides for the removal of the President by impeachment.
2. Article 150 of the Constitution which provides for the removal of the Deputy President by impeachment.
3. Article 152 which provides for the impeachment of cabinet secretaries.
4. Article 181 which provides for the removal of a county governor.

Hon. Deputy Speaker, pursuant to the provisions of Article 118 of the Constitution and Standing Order No.127(3), the Committee invited the public to make their presentations on the Bill and sought the views of the Attorney-General of Kenya, the Kenya Law Reform Commission, the Law Society of Kenya, the Council of Governors, and the County Assembly Forum. The Committee received submissions from the Council of Governors, and the County Assemblies Forum. It observed that the Bill does not raise any significant constitutional or statutory issues and resolved that the House should proceed with it.

Further, the Committee, having extensively considered the Bill, clause by clause and submissions by stakeholders, recommends that the Bill be passed with amendments as proposed in Chapter Four of the Report.

I thank you and call upon Hon. Sankok to second.

Hon. David Ole Sankok (Nominated, JP): Hon. Deputy Speaker, this is a very important Bill and from the onset, I second. The impeachment of the President, the Deputy President, cabinet secretaries of the national Government, governors and deputy governors, and CECs, who are like ministers of the county governments, should follow a certain procedure. This is because they handle a lot of public funds yet we may not be sure and we have not aligned the Constitution to a legal framework on the procedure for removing them from office in case they mess up. This is very important. I urge the Members of this House to pass this Bill, so that we can operationalise it as soon as possible.

As I sit down, I have realised that there is Hon. Adagala, who is dressed in some colours that promote a certain party. I may not be a Member of UDA, although I admire their activities, but I do not know if they have already warned Hon. Adagala that she is now a Member of UDA.

Hon. Deputy Speaker, I second.

Hon. Deputy Speaker (Hon. Moses Cheboi): You know somewhere along the line you got completely irrelevant if I am not wrong. What is it, Hon. Adagala? I do not think they mentioned you. Hon. Sankok mentioned you.

Hon. Beatrice Adagala (Vihiga CWR, ANC): Hon. Deputy Speaker, I have just heard Hon. Sankok, Nominee 001, talking of the colour of my dress. Nominee 001, let me tell you... Hon. Sankok, I am ANC No.1 and have ANC DNA. Alright?

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members. Let us go back to business.

(Question proposed)

Well, I can see the Members are anxious. We can have a few Members speaking. Let me see from indication all the Members who want to speak. Let us start with the Leader of the Majority Party. The rest of the Members who want to speak can press the intervention slot so that I do not have to pick out your name from the other side. We do not need to go through the list if we are not so sure you are going to speak.

I see three Members who want to speak. So, those are the ones who will speak.

Proceed.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Deputy Speaker for this opportunity. I rise to support the Bill on impeachment procedure. It is one of the Bills coming from the Senate. It has been waiting for debate since 2018. It is something that caught our attention and we felt that we needed to fast-track it. It was published in 2018 and eventually passed in the Senate in June 2019 and was then referred to this House. It has been waiting for us to consider it. Let me also thank the Departmental Committee on Justice and Legal Affairs for having taken time to consider this Bill. The Bill has since gone through the public participation stage. I thank Hon. (Ms.) Shamallah for stepping in for the Chair and the Vice-Chair, who were not present to move the debate. At least we have it moved.

Impeachment was introduced within the framework of the Constitution of Kenya, 2010. Impeachment is a very sensitive issue in this country, especially now when we are looking at what happens amongst the governors. We have had several attempts at impeaching governors. The first governor to be subjected to impeachment in this country survived the process and is about to complete his second term. In between, some other governors have been impeached and have gone home. So, the whole issue of impeachment, if we may recall from ancient history of England, was about looking at people who had committed high crimes and misdemeanours and needed to be removed from public office or to ensure that they did not continue with the bad behaviour. That works within the framework of Parliament, as the custodians of the law and overseer of public funds. At the county level, it takes place within the framework of the county assemblies.

Unfortunately, through the various impeachments that have been attempted, some have been successful and not others. Lessons learnt from that is that there should be some uniformity in the manner the process takes place and hence the need to have some legal framework to structure and standardise the procedure. This is what this Bill intends to do, to create a framework for determining what is impeachable and what is not impeachable, how to impeach and how not to impeach, with a view to ensuring that all the county assemblies apply some uniform situation.

As I said, impeachment is supposed to be remedying some wrongs that are committed during governance. When you appear before a county assembly or an assembly of the national Parliament, it is not exactly the same as when you appear before a court of law. The standard approved is probably slightly different. I am sure the lawyers in the House will attest to that fact. We need to ensure that whatever process is used can protect an innocent person, but at the same time, it should not let the person who has committed high crimes go scot-free just because of the process that has been applied. So, this law will be targeting officials who have demonstrated to the county assembly and the public at large that they are unfit to hold public office because of the ills they have done.

The process does not end at the county assembly. There are checks and balances in case of lapses at the county assembly level. The Senate has the ultimate responsibility for confirming an impeachment. Also, people can still have recourse to the court system. We saw the action taken by the County Assembly of Nairobi against the immediate former governor, which was subsequently confirmed by the Senate. The impeachment has since been confirmed by a court of law. People can still go to the highest appellate court, if they are not satisfied with a verdict by a lower court. So, this Bill will address some of the chaos and vengeance that we have seen. County governors have been complaining that they are being impeached by the MCAs for refusing to offer them trips or do certain things to favour them.

In the case of Martin Wambora, the Governor of Embu, the court observed that: “It is no way forward legitimate exercise or constitutional function for a house of assembly to remove the governor or deputy to achieve a political purpose, or organise the data clearly outside the grounds provided for impeachment.”

I think that was an eye opener in terms of what was happening. It was very clear that evidence was being adduced to fit a certain pre-conceived conclusion whereas it should be the other way round. So, I have looked at the Report of the Committee and I am very happy with it. I am also happy that the Senate took it upon itself to come up with this Bill. The Senate is mandated to protect devolution. Devolution cannot take place effectively if public funds, like the Kshs410 billion that was sent to the county governments, cannot be accounted for.

Over the last eight years, we have sent over Kshs2 trillion to the counties. If we cannot show what that money has done in the counties, it shows that some of the money has been leaking and not translating into service delivery for the people. This law will help some of those people who may cite unfairness since there will be a proper procedure to be used. The legal basis that will be used to impeach one governor will be the same law that will be used to impeach other governors. I am sure by the time we are through with this Bill, this House will have enriched it to ensure that the standard approved is good, and everyone feels fairly treated in the way they are removed from office, should an impeachment process eventuality come to fruition. So, I have faith that this Bill will seal the existing loopholes. At the very least, the Bill should remove the confusion on the intent of impeachment as a tool to engineer good governance as well as the confusion in respect of the constitutional standard for impeachable offences.

I find the whole issue of impeachment from a political process. I have been a victim in this very House. I am not sure whether it was impeachment. I do not know what it was, but it was purely from a political angle. In those days, it was so easy. Somebody would just bring a Motion, although the Standing Orders were very clear that you could not discuss a Member without giving him three days’ notice. However, in my case, for some reason, all this was thrown out of the window. A notice was given in the morning and there was debate in the afternoon to discuss me, totally disregarding the Standing Order that said that you could not discuss a Member without giving him three days’ notice. In the case of discussing the Government, you are supposed to give 14 days’ notice. The discussion was not even about Amos Kimunya, but about the Minister for Finance, which was discussing the Government. It required two weeks’ notice, but it was done within a day. That is historical.

However, the lesson we learn from that is what informed the changes that took place while writing the Constitution of Kenya, 2010 and the law, in terms of how to impeach a Cabinet Secretary. I took personal initiative in the Constitution to ensure that future CSs are protected from unfair impeachment. For example, you can disagree with a Member at the lobby and he/she comes and says that we must impeach this CS.

In the 10th Parliament, we saw a lot of impeachment threats, but when things are properly codified in the law, everyone feels protected. Yet, if you are guilty, you will be found guilty anyway. At least, you will not be subjected to negotiating not to be impeached. If you do not level well, like I did not during those days, then, you will be told to go and at the end of it all, the rest is history.

I am happy that we now have formal frameworks in terms of how to treat people, so that the good ones can continue and those who have fallen by the wayside can be sort from the wheat and the chaff separated. I do not wish to continue in a clause-by-clause basis because this is very clear. By the time we get to the Committee stage, we will look at amendments that need to be made to ensure that this law becomes the best in terms of impeachment, especially for people in the counties.

I want Members of this House who want to become governors to seriously review this law because it could apply to them. There are a number of Members who have expressed interest of moving to the counties as governors. So, even as we pass this, it will be important for them to spend some time looking into this law, so that as we pass it, they do not say: Was I the one who passed it"? Just like some Senators keep saying they were in Naivasha when we passed the Constitution and downgraded the Senate to a lower House. They become the first to go to the Senate and complain that it is a lower House yet they are the ones who did it at that point. What goes round, comes around. Let us be very careful.

With those words, I beg to support.

Hon. Deputy Speaker: So, the next speaker is Hon. Akoth Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I support the Impeachment Procedure Bill and agree with the Leader of the Majority Party that it is important that we have it to remove subjectivity and bring objectivity in the issue of impeachment. So that the former Governor of Nairobi, Hon. Sonko, cannot complain and end up working in a *mjengo* because of having lost his livelihood.

Listening to the Leader of the Majority Party, I think he needs psychosocial support. I know he needs it because he keeps talking about how he was impeached on the Floor of this House and I was among the ones who impeached him. We shouted very loudly "Kimunya must go". I do not remember why he had to go, but at that point, it made sense. I am not saying he had no reason not to go.

Hon. Deputy Speaker: Who have you said requires psychosocial support?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): He needs psychosocial support.

Hon. Deputy Speaker: Who requires that?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): "Kimunya must go". He is here now and needs psychosocial support. I want to agree with him that for those seeking to become governors, this is a law they need to look into very keenly. Unfortunately, I can see quite a number of them are not here, probably they are looking for resources this evening, so that they can increase their chances of winning. Probably, this is more important because you can win and within one month, you have left. It is basically straightforward, but there are a few things that we need to look into.

For instance, one of the things stated as grounds for removal is gross misconduct. What is gross misconduct? This is very subjective because where I come from, when you dance, it is considered very nice and can add you votes because you are a good dancer. But when I used to visit my good friend, the late Hon. Joyce Laboso, she would tell me that when you go there, you should just take your gospel songs and not those dances of Omondi Long'lilo and the rest. A gross

misconduct in her constituency is not necessarily gross in my constituency. Therefore, if we leave it blank by not defining what it is, then it may be subject to abuse.

The other concern that I have is if you look at Clause 4(4), it states that the Clerk of the National Assembly shall submit the proposed Motion to the Speaker. After how long? When people want to play politics, they can decide to submit it to the Speaker after six months and will still be within the law. So, we need to tighten such issues, so that the people meant to be impeached are impeached.

Another issue of concern to me, which I wanted to countercheck with the Constitution, but I did not have time, is the select committee that makes a decision which is final and does not go before the House. I hope to have time before it comes to the Committee of the whole House. It is easy to compromise few people than the entire House, even though I know sometimes when the stakes are high, this may also happen. So, these are some of the areas I am concerned about. Another issue I have is on Clause 9(4) and (5), which do not give days within which the impeachment procedures should be brought. I know there are other issues which, if I have time, I will bring out, but if I do not, I will bring to the attention of the Committee so they can look at them.

In Clause 16, we are talking about the select committee and how to appoint it. Sometimes in politics, what looks like common sense is never common. You can find in a House, if the Speaker is favourable to them, the ruling Government deciding to appoint Members from the entire Government side and ignoring the opposition. We have seen it happen in the past and can happen again. So, let us not presume common sense in law. You must write what you intend. So, if you are talking about the membership, what is the ratio of Government to opposition in that committee?

Again, looking at the introduction of the Motion under Clause 21, I would like to encourage that when introducing a Motion, it should not be in technicalities, but on substantive issues, so that we do not have a situation where instead of a governor or President working, they are worried about impeachment Motions coming their way. Once the substantive issues have been dealt with, it should be a done deal. Again, I can see Clause 25, which provides that:

“(25) Article 182(4) to (6) of the Constitution shall apply where a vacancy occurs in the office of a governor and that of a deputy governor under this Act”.

I know, even if it is tedious sometimes, it is good to replicate. I have noticed many ministries do not refer back to the Constitution, but when it is provided clearly in an Act of Parliament, they follow it.

Finally, on the provisions which are of concern to me, is Clause 32(2) which states:

“(2) All proceedings under this Act shall be open to the public unless in exceptional circumstances where the person presiding over the proceedings has determined that there are justifiable reasons for the exclusion of the public”.

What are these justifiable reasons? I know a lot of time when we leave things loosely like this, it becomes very easy to exclude the public. It should be an issue that has to do with security or other serious issues that can lead to exclusion of the public.

Otherwise, I support and I hope the Committee has taken note and can bring amendments to the areas that I have raised. Thank you.

Hon. Deputy Speaker: Hon. Tong’i.

Hon. Richard Tong’i (Nyaribari Chache, JP): Thank you, Hon. Deputy Speaker, for the opportunity to also speak to the Impeachment Procedure Bill (Senate Bill No.15 of 2018). I associate myself with the comments of the Leader of the Majority Party and Hon. Millie Odhiambo. There are some gaps that this Bill must address because principles of management say

that that which cannot be measured should not be rewarded. If we are not able to measure what performance is, then we should not be able to reward it. We have seen governors who have been given opportunities to serve our people, but what they have done is to enrich themselves.

I keep wondering what happened to county governments. We used to have county governments which were collecting so much money, which was enough to run their counties and municipal councils. However, after some time, things have changed until the other day governors were giving an ultimatum to the Government that if they do not receive money from the national Government, they will shut down the services. One looks back and wonders what used to happen in those municipal levels because they were paying their salaries in however small way. Nevertheless, we had service. So, this Impeachment Procedure Bill will come in handy to tame some of those excesses that we are experiencing today. I think it is only fair that we have a tool to use to manage impeachment, which is important for the good of the country.

The main intention of most people who are looking for an opportunity to serve as governors is also to amass as much as possible, so that they can increase their chances of becoming something bigger beyond the county. However, with this Impeachment Procedure Bill, I think people will get into the office knowing that we have a way of recalling them back using a standard tool which is not subjective and which is acceptable and recognised by the law. We do not have scenario that we had in Wajir, where we have a governor who has been impeached and he is still in office. It is total chaos. We have not had this Bill in place, but with it, we know what exactly happens. The deputy governor has been sworn in lawfully, but the former governor still insists he is in office lawfully. So, who of the two is serving the public? That is the kind of confusion that we want to cure by this Bill. I think it has come in handy and timely and we need to move with speed to have it implemented, so that our people will get services which they rightly deserve from the leaders.

Thank you, Hon. Deputy Speaker, for the opportunity. I support the Bill, though with some amendments when it comes to the Floor of the House next time.

Hon. Deputy Speaker: Thank you very much. Hon. Maanzo Kitonga.

Hon. Dan Maanzo (Makueni, WDM-K): Thank you, Hon. Deputy Speaker, for giving me an opportunity to support this very important Bill. The impeachment is also for the President, Deputy President, governor, deputy governor, cabinet secretary and also county executive committee members. This has not been documented previously, but has now been documented.

We have had experiences of impeachment cases in the last eight years for governors. One time, there was an attempt to remove a deputy governor in Machakos and when it went to the Senate, it did not survive. If you look at the wholesome activity, especially at the county level, you find that a lot of times, if a governor fails to agree with the assembly, purely for political reasons, then an impeachment can ensue and there will be gaps. When impeachment goes up to the final stage, we have seen they have a recourse in the High Court. You have seen how the Governor of Embu has survived through the High Court with court orders and was able to serve his full term. We have also had unfortunate cases where governors totally lost, went to the High Court and totally lost and appeals are still lying. Therefore, there is need to come up with a law which concretises all the issues in this, the main reason being abuse of the Constitution or misconduct of a governor or whoever is being impeached in one way or another.

Hon. Deputy Speaker, if you go clause by clause, you will realise that the Committee did a very good job. It even analysed the constitutional background and what laws allow this particular Bill to come into force. It is all there in the Report. One of the challenges is the political situation and what it can be if it is moved politically. If it is perpetuated by malice and the politics of the day prevail, when the matter still goes to the Judiciary, which is very independent and is expected

to act so, sometimes some justice may still fail to be done on the side of the Judiciary after they analyse the facts. You may find that whatever that governor was supplying fails and there was a need to stabilise the positions which are very important, so that the moment you are elected as governor or president, you are not watching your back at any given time. If there is political fallout, you are likely to constitute the necessary numbers for there to be an impeachment on any of those seats. That is why political rearrangements keep on happening and probably it becomes very expensive for a president or even a governor.

On political hate, it is very easy to find faults with anyone who is serving in any of these positions, which may amount to breach of the Constitution, abuse of office or gross misconduct. The words “gross misconduct” are very ambiguous. There are so many incidents which may amount to gross misconduct even from a personal conduct. Even from Chapter 10 of the Constitution, one can easily be framed. It may even be a real story. Photographs have been put in place or when one is doing private discussion or joking, the matter might end up being taken as gross misconduct. So, there is every need to regularise this and frame it because the courts have been grappling around what a proper impeachment procedure should be. Although the mandate of the Senate is to deal with devolution, I can see they have come to a reign which started in the National Assembly and then served to the Senate. That is the impeachment of the President or the Deputy President. It can be done by the two Houses. It was very kind of them to also handle this. Probably, they would have chosen to deal with the devolved functions.

However, you have again seen that the consequences of this amendment will also affect amendments in the County Government Act, so that a county government Act does not conflict with this new law which is being proposed. The numbers are specified in a case of the county executive; ministers or secretaries of the county. In fact, quite a number so far have been sacked by the governors. Other than recourse in court, which takes a long time, most of them just give up. The governor just simply drops you, either through a letter, or you become *persona non grata* to the county government meetings. There have been very many occasions which have resorted to impeachment.

When the Senate reinstated the Deputy Governor of Machakos County who had been impeached, he went back to the county and he had no office. He did not have an official car, he did not have a salary and there was nothing he could do. So this particular law is very important. I believe at the Committee of the whole House, we should look at amendments which will make it better and seal any loophole which we have seen in practice, bearing in mind that this is a purely a political process and can affect anyone. For as long as the politicians are not on one side and mistakes can be found, this Bill will help the governors and the people dealing at that level not to breach the Constitution or not to do something which amounts to gross violation of the Constitution. That is subject to interpretation by the courts because I still think there is a leeway, whenever it happens, someone could still find themselves in court. I do not know whether the people who impeach have a recourse in court. If you move an impeachment motion and it fails, as it had been suggested in some judgment and as I have seen previously, does the court have a say on that particular matter or it is purely a matter of this House?

I think it should be specified when we finally refine this law at the Committee of the whole House, so that it becomes a good product for use in the country, bearing in mind that anyone of us including you, will find themselves either President or Deputy President or governor at one point. When we make this law, we must know that we are also making it for ourselves.

I thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: Very well. We go to Hon. Koyi Waluke.

Hon. John Waluke (Sirisia, JP): Thank you, Hon. Deputy Speaker for giving me a chance to speak to this Bill; the Impeachment Procedure Bill (Senate Bill No. 15 of 2018). It was long overdue for this Bill to be brought on the Floor of this House because many of the governors have suffered innocently. They have been impeached when the laws had not been put in place. The Bill will bring changes in the county government and even in impeachment of the President, Deputy President and Cabinet Secretaries. I know to impeach the President is not easy, this has mostly affected the governors.

For instance, the former governor of Nairobi County, Hon. Sonko has really suffered. He has no job, yet he was elected by the people to serve them in Nairobi. This Bill will control the MCAs who are naughty. Some of them decide that they want to make money and decide to impeach a governor for no reason. After interrogations in some of the impeachment Motions in the Senate, some of the governors have been found to be innocent. We have been seeing this even where I come from, Bungoma County. Sometimes there are differences between the MCAs and the leadership of the county and they decide that the governor must go home. This week when it came to the Senate, it was proven that it was just differences that existed in Bungoma County. So, it is good. I want to thank the committee that brought this Bill so that it can guide and help those who may be affected.

Some people are greedy. In political realm, sometimes you can be affected innocently, but with laws in place that can govern, help and direct how this should be done, it will be good for all of us in politics.

We have an example of Wajir County. Wajir County now has two governors. The one who was elected by the people and was impeached and the one who was sworn in after the impeachment. After impeachment they appointed the Deputy Governor who was also sworn in legally as the governor and is in office. The court then reinstated the one who had been impeached. So, this Bill is going to clear such messes.

Therefore, I support this Bill.

Thank you.

Hon. Deputy Speaker: Okay. Next is Hon. Athanas Wafula Misiko Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Deputy Speaker for the opportunity to also make some contribution on the Impeachment Procedure Bill (Senate Bill No. 15 of 2018). Recently, I was expressing my anger and displeasure in delay of Bills. This is one such Bill of 2018 and my other Bill of 2019. I had committed it to the Committee towards the end of 2019. Now that the Impeachment Procedure Bill is before the House, I want to state that I do support it. The Bill is important because it seeks to clearly provide for the procedure and a framework through which matters of impeachment can be handled. This is also a very important Bill because you will agree with me that there has been so much drama about impeachment in the country.

All the time, there have been attempts by MCAs, members of the leadership to occasion impeachment even when it was not necessary. With this kind of a law being enacted, it will clearly state what reasons will inform what exactly would be the misconduct that would inform the decision for impeachment. This should be defined in a manner that is simple and understood. What would be required to have been committed by a person so that impeachment can take place?

Like my colleagues have said, we have seen some impeachment motions having taken place, then they are overturned because some are politically motivated. When we differ, like Hon. John Waluke mentioned in the case of Bungoma, when the Senator of Bungoma disagrees with the Governor, he goes ahead to organise for impeachment. You know, the thought of impeachment

has always been the answer when some of these guys get broke. So, there must be clear provision. We must state exactly what will have been committed by one, even if it is a member of County Executive Committee (CEC), Deputy Governor, Governor, Cabinet Secretary, President or his deputy. This must be defined beyond doubt. When we read, we want it to be clear. Nothing should be hidden when it comes to crime or misconduct. They have to be made very clear.

Hon. Deputy Speaker, you have seen so much money being wasted. There has been wastage arising from these impeachments. People travel long distances in trucks carrying many documents to the Senate. You even hear some stories of—I do not want to get into them—how they come to appear before the Senate and they report to some offices in town before they go there. This has occasioned so much wastage. Money that should have gone to development, say, to construction of a road, is wasted on the road to bring witnesses to Nairobi, to the Senate, for no reason.

I, therefore, want to express my pleasure and support towards this Bill. I hope that my colleagues will support and pass it. We have noted that there are certain provisions that will need to be clarified so that there is no doubt as we move forward.

I also wanted to mention the fact that as we deal with the issue of impeachment of executive officers, we would also like to address the issue of recalling Members of County Assemblies (MCAs) and Members of Parliament (MPs). That law needs to be re-looked at so that those that are supposed to be recalled are actually recalled. There should not be witch-hunt of any form when you are doing your work. There could be people planning on how to get you out of Parliament or out of the county assembly. So, the law must also be made very clear when it comes to recalling an MP, MCA or a person elected to a certain position. If we strengthen the law related to this, we will make sure that there is harmony in the country. People will benefit. There will be more contribution. People will be working towards enhancing livelihoods and this country will move a step forward.

With those few remarks, I once again thank you for giving me the opportunity. I restate that I support this Bill.

Hon. Deputy Speaker: Okay. Hon. Caleb Luyai.

Hon. Caleb Luyai (Saboti, ODM): Thank you, Hon. Deputy Speaker, for giving me an opportunity to also add a voice to this Bill. I rise to support.

The sovereign power belongs to the people. It is only delegated to elected leaders. It is pertinent that we give a procedure of taking that power away through impeachment. Of course, we do not have a history of impeachment of a president or a deputy president in this country, but the impeachment of governors has been a daily occurrence. It is a common phenomenon. It is paramount that we have a clear procedure that will guide our MCAs on how to remove governors from office, because it has been a chaotic exercise.

We have left the governors at the mercy of greedy MCAs who look for every reason on earth to remove their governors. If we have a clear procedure, we are going to tame these MCAs whose appetite to impeach is high. We will also need to bring some sanity to our county governments so that we do not just elect a governor and later on leave him at the mercy of the greedy MCAs or those with different political ambitions. So, it is a Bill that will help us manage the county governments.

Hon. Deputy Speaker, we borrowed our Constitution from other jurisdictions with advanced democracies, not knowing that our society has different aspects of democracy. It is ripe enough to align it to our society. It is important that even as we borrow from other constitutions, we make sure that we align them to our society. So, it is an important Bill that will guide us even

as we seek to strengthen devolution. Remember we are talking of more resources to the county governments.

The Building Bridges Initiative (BBI) talks about more resources to the counties, 35 per cent. Let the resources find county governments with clear procedures of removing corrupt governors who misuse resources. A procedure must be in place. If there are Members here who are intending to go for gubernatorial positions with the intent of simply grabbing as much as they can, then they will fall into these impeachment procedures that have been laid down. We need to curb the bad behaviour of greedy leaders whose intention is to enrich themselves.

I rise to support. Thank you for the opportunity.

Hon. Deputy Speaker: Hon. (Prof.) Jacqueline Oduol.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker. I also support this Bill. I do so agreeing, as has been pointed out, that it is extremely important given the experience that we have had. We, indeed, know that the sovereign power is with the people. We also know that once the people elect leaders, they would like, as much as possible, to have an atmosphere that would enable efficient, effective, and meaningful leadership. This is even as we recognise that there tends to be some differences of opinion that could be difficult to grapple with.

As I support this Bill, I am reminded that yesterday, as we looked at the County Governments Bill and even today as we also discussed another Bill, there was opinion expressed that there are times when all we might need to do as we develop Bills is to make reference to the relevant sections on the Constitution. We might not need to repeat it. Hon. Christopher Omulele, while in the Chair, indicated to us this afternoon that we need to remember that it is usually important to repeat. This is the main point that I want to use as a way of indicating my support for this Impeachment Procedures Bill.

Hon. Deputy Speaker, I have looked at the procedures. As has been mentioned by Hon. Odhiambo-Mabona, if I look at the procedures on removal of a CEC member, that is, the ministers at the county level, listed here are: incompetence, abuse of office, gross misconduct, physical and mental incapacity, gross violation of the Constitution or any other law.

In my point of view, it is a bit of a challenge because it would seem to imply that someone can violate the Constitution a little bit. The problematic issue is the gross violation. More important is the ambiguity when we talk about gross violation. We know from what Members have said here and from practice that we have referred to Chapter 6 of our Constitution in a number of Acts.

Looking at the points and concerns that have been raised, key concerns have been with regard to corruption, lack of integrity or clearly demonstrated ways that are not acceptable for leaders according to our Constitution. I support this Impeachment Procedure Bill because its objective is very important. It seeks to give us very clear guidelines on the procedures that would need to be followed in the case of impeachment of a Senator or a Member of the County Assembly and any other body or persons that would be responsible.

However, as we go to the Committee of the whole House and the Third Reading, it would be useful for us to look at what has been pointed out by other Members. The Bill is giving us clarity or direction in a context where we have experiences. It is my view that we need to bring out what we have learnt from those experiences a lot more clearly and deliberately. For example, we know that we would like to avoid a situation where we would hold hostage governors, as has been indicated, or alternatively a situation where those in leadership such as governors might on the other hand sometimes also go a bit overboard.

Therefore, as I support the Bill, I want us to look at what we have seen and look at it from both sides of the coin. We should consider the fact that we want to see justice and also a way in

which those elected into office, be it a President, Deputy President, governor or a member of the county assembly, can be given justice, should the need arise. They should be presented with a situation where they can defend themselves. The law is clear that one is not guilty until they have been proved so. On the other hand, we also need to be aware that part of the challenge that is giving us headache in the county is that at the county level, when one becomes a governor and gets power, they do not necessarily need to be held accountable because they will have other ways by which they can get people to respond to what they say.

I am not just telling a story. I am aware of a CEC member from my Siaya County who was let go on grounds of incompetence. It is not clear how one defines incompetence. I support the Bill. Given the lessons that we have learnt and what we know, let us not leave so much ambiguity. When we talk about incompetence, we need to know what it is we are talking about. We will also need to be clear on what gross misconduct means. Instead of saying that we are talking about gross violation of the Constitution or any other law, the Constitution is a key law from which we can derive a lot of specificity. I urge that we go directly to Chapter 6 because if we were to take it a lot more seriously and make it a reference point, a lot of the issues would be handled.

With that, I support the Bill.

Hon. Deputy Speaker: Thank you very much. Let us have the Mover to reply.

Hon. (Ms.) Jennifer Shamalla (Nominated, JP): Thank you very much, Hon. Deputy Speaker. I thank all the Hon. Members for their valuable contributions with regard to this Bill.

I am in absolute agreement that there should be no gaps left whatsoever. We do not want a situation where politicians and governors are spending their entire time putting out fires because of witch-hunts and are unable to do what they were elected to do. The Departmental Committee on Justice and Legal Affairs welcomes amendments from Hon. Members.

With those few remarks, I beg to reply.

Hon. Deputy Speaker: Looking at the numbers in the House, can I confirm if we have Members in other holding areas? Hon. Members, we do not have the required number for me to put the Question. That will be deferred to the next available opportunity, probably tomorrow afternoon.

(Putting of the Question deferred)

Let us move to the next Order. What is it, Hon. Kaluma? You seem to have an issue. I see there is an intervention.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Deputy Speaker. I had wished to contribute to this particular Bill. Unfortunately, the time has caught me flat-footed. I am happy with the direction that we will proceed with the Bill tomorrow because we cannot have Bills repeating what is already in the Constitution and other laws. That is a Bill we should reject tomorrow.

Hon. Deputy Speaker: You misunderstood. The matter is settled. It has been replied to. You are a little late. I did not see you press any button. I did not see that. I am here. You remember, I asked you to press the intervention slot. That is a matter that is settled. It will be put to Question tomorrow.

We proceed to the next Order.

Second Reading

THE NATIONAL COHESION AND PEACE BUILDING BILL

Hon. Deputy Speaker: Order, Hon. Oundo. You have pressed the normal button. I gave guidance on this particular matter, so that I know those who are contributing to this one and those who wish to contribute to the next one. Those who wish to contribute to the next one should press the intervention button. Maybe you did not get that clearly. What is it, Hon. Oundo?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Deputy Speaker, I seek your indulgence. When the direction was given, I was not in the House. I assumed it is the normal procedure where you press...

Hon. Deputy Speaker: I can tell you that you are third on the list. There are two things that would happen, if I gave you an opportunity which you did not require. It means that you lose out on your chance to speak to the Order that you had wanted to, probably the next one. That is why I was very clear. Hon. Kaluma, definitely you did not press the button. I think you have just arrived. On the ordinary list, you were sixth, just after Hon. Passaris. That is a matter under the bridge.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): We will deal with it in the Committee of the whole House.

Hon. Deputy Speaker: Perfect. Order No.14 is stood down.

(Bill deferred)

Let us go to the next Order.

MOTIONSTATUS OF THE REPORT ON DEPLORABLE WORKING CONDITIONS
AT THE KWALE INTERNATIONAL SUGAR COMPANY LIMITED

Hon. Deputy Speaker: Who will move this Motion?

(Hon. Godfrey Osotsi stood in his place)

Proceed.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Deputy Speaker, on behalf of the Chair of the Committee on Implementation, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Implementation on the implementation status of the Report of the Departmental Committee on Labour and Social Welfare, on a Petition regarding Deplorable Working Conditions of Workers at the Kwale International Sugar Company Limited, laid on the Table of the House on Thursday, 26th November 2020.

As you are aware, the Committee on Implementation was established pursuant to the provisions of Standing Order No. 209. It is mandated to scrutinise the resolutions of the House, including those contained in adopted committee reports, Petitions and also all undertakings given by the national Executive. We examine whether such decisions or undertakings are implemented.

In places where they have been implemented, we scrutinise the extent of implementation and whether it has taken place within the minimum time necessary. While doing this, I

acknowledge that the Committee faces a number of challenges. One of the major challenges that we face which the House needs to help us at some point is that most of the resolutions that are passed by this House, especially in Petitions, are usually challenged in courts. That creates a lot of delays when the Committee is making decisions or even following up on some matters.

The other major challenge is that we play games. Some of the parties which are involved play a lot of delaying tactics with the Committee. Eventually, the Committee takes quite some time to resolve a matter. As you know, Standing Order No. 201 requires that within 60 days of a resolution being made in this House, the Committee is supposed to follow up on its implementation.

This matter arose as a result of a Petition that was presented to this House pursuant to Standing Order No. 225(2) (a) by Hon. Zuleikha Juma Hassan, Member for Kwale, on behalf of both the current and former employees of the Kwale International Sugar Company on 26th August 2015. You can see that it was even read in the 11th Parliament, but not in the 12th one. The petitioner requested the National Assembly, through the Departmental Committee on Labour and Social Welfare, to investigate the circumstances behind the poor working conditions of the workers at the company and intervene to review the terms of the workers favourably.

*[The Deputy Speaker
(Moses Cheboi) left the Chair]*

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) took the Chair]*

Our Committee took up this task. We had several meetings with a number of parties. For instance, we had a meeting with the management of the company on 15th November 2018. Subsequently, we visited the company on 28th to 31st March 2019. We held a meeting with the management and the workers of the Kwale International Sugar Company Limited. We also had a meeting with the officials of the Ministry of Labour and Social Protection in the county. We had oral and written submissions. Hon. Zuleikha Juma Hassan was also in attendance in this inspection visit.

We also had meetings with the Ministry of Labour and Social Protection here in Nairobi on 31st October 2019. We had a further meeting with Kwale International Sugar Company Limited on 30th October 2020. We also had a meeting with the late Member for Msambweni, Hon. Suleiman Dori, on the same.

When we visited the factory, it was not operational. However, the Committee had meetings and looked at various facilities at the factory, including the modified trucks for transporting the workers. We also visited the clinic which has a pharmacy and laboratory. We noted that the factory's operations had stopped for 18 months from June 2018 to November 2019.

During our investigation, the Committee established the following with regard to implementation of the recommendations of the Departmental Committee on Labour and Social Welfare:

(1) The management of the company should within 90 days of tabling the Report issue letters and contracts of appointment to all the employees.

The implementation status of this recommendation is as follows:

(a) The company continues to issue letters of appointment to all the employees before they join this employment;

(b) The company had formulated contracts for long-serving casual workers, but had not issued them. The issuance of the contracts was to be done in March 2020, but it was suspended due to COVID-19 pandemic. As I talk to you now, I cannot authoritatively tell the House the exact situation at the moment.

(2) The management of the Sugar Company should adhere to the wage guidelines as per the *Kenya Gazette* Notice No. 91 of June 2015, and also pay arrears for the salaries paid below the legal threshold effective in June 2015.

The implementation status of this recommendation is as follows:

(a) The company complies with the minimum wage requirement as per the Regulations of Wages (General) (Amendment) Order, 2018;

(b) The total wage arrears arising from non-compliance with the Legal Notice No. 91 of 2015 is Kshs3.69 million. The company liaised with the County Labour Office for the cases of employees who left employment and cannot be traced. It is awaiting the feedback from the County Labour Office on the matter.

(3) The management of the company should provide protective gear and enforce safety measures, regulations and use of protective gear in the company as required by the law.

The implementation status of this recommendation is that:

(a) The company has issued requisite Personal Protective Equipment (PPE) to all employees as per the requirement of the Work Injury Benefits Act No. 13 of 2007.

Recommendation No. 4 is that the management of the Kwale International Sugar Company Limited should provide proper sanitation, food and water to its employees.

The implementation status is that the company has constructed enough toilets and hand washing basins for its workers thus ensuring that the workers do not queue for long periods to go to the toilet or hand washing facilities. In this case, the sanitary facilities for men are 27 toilets, 22 hand washing basins, 11 urinals and 5 bathrooms. For the female employees, they have 15 toilets, 11 hand washing basins and three bathrooms.

Secondly, water bowsers continued to fetch clean drinking water for the employees working in the field on a daily basis.

Third, they also have a staff canteen in place that offers meals to employees at subsidised rates and is payable through the check-off system.

Forth, since the global spread of COVID-19, the company continues to implement or adhere to the measures and guidelines that have been put in place by the Ministry of Health and the World Health Organization (WHO).

In the foregoing, the company increased water points and hand washing facilities in strategic areas of the company premises as well as continuous availing of hand washing soaps, toiletries and alcohol-based sanitisers to the employees for use.

The fifth recommendation was that the management of the company should provide better alternative modes of transport for the employees and further, provide separate compartments for tools and workers in the mode of transport.

During the visit, we were able to confirm that there were four trucks, four vans and four minibuses which had been modified to provide comfortable spaced seats for the employees to comply with the traffic requirement and the Ministry of Health and the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works protocols for public and private transport.

However, the only thing we could not confirm because the company was not operational then was for us to actually see the employees in those trucks. We could only see the modified trucks.

The sixth recommendation is that the management of the Kwale International Sugar Company Limited should provide medical schemes for its workers and ensure compensation for those who have been disabled or injured while at work.

The status is that employees access medical services at the company clinic and they also have a Memorandum of Understanding (MoU) arrangement with Msambweni County Referral Hospital for treatment of its employees. Secondly, the Kwale International Sugar Company Limited continues to sensitise its employees on the requirement, roles, regulation governing the work injury, compensation scheme and the process.

Seventh, the company has fully complied with Work Injury Benefits Act, 2007, requirement in terms of compensation of employees injured at workplace.

The Committee noted that the company has implemented most of the recommendations of the Report of the Departmental Committee on Labour and Social Welfare, except for the wage arrears arising from non-compliance with the Legal Notice No. 91 of 2015 which had been determined to be Kshs3.69 million. The Committee notes that there is also a pending claim for compensation of work-related injuries totalling to about Kshs5.4 million.

The Committee also observed that the company needed time to implement what they had undertaken to do especially on improving employees' welfare. When we were there, they had indicated to us that they will make further improvements to the welfare of the employees and they required more time to do that.

The Committee also notes that the company operations had been stopped for 18 months from June 2018 to November 2019. Further, approximately 4,200 acres of land that was issued to the company by the national Government was occupied by the squatters.

The Committee recommends that the company expedite the payment of wage arrears of Kshs3.69 million arising from non-compliance of Legal Notice No. 91 of 2015. The company should also ensure total compliance to the laws and regulations pertaining to employment. Further, the Directorate of Occupation Safety and Health under the Ministry of Labour and Social Protection should expedite the process of pending compensation claims to work related injuries totalling to Kshs5.4 million.

Further, on squatters living on the company's land, the Committee proposes that the Kwale International Sugar Company Limited and the local leadership hold dialogue in order to find an amicable solution as the company had expressed willingness to allocate some parcels of land to the squatters. When the late Hon. Member of Parliament (MP), Hon. Suleiman Dori, appeared before us, he alluded to this fact that he had engaged the company on this matter.

I also want to state that Hon. Zuleikha who is the County Women Representative of Kwale presented this and she had a lot of challenges with the company, including the company taking her to court. We need to be very clear, as Parliament, that when MPs are executing their duties, they need to be protected so that they can perform their work. When you present a petition to Parliament, you need to be protected as a petitioner and the person being petitioned against should not turn around and start other machinations against you. I am sure Hon. Zuleikha will be able to talk about that.

All in all, our role as a Committee is to simply look at the recommendations of the primary committee and find out whether those recommendations have been implemented or not. We do not

go beyond the recommendations that are presented to us as a Committee. As I explained in detail, most of these recommendations, save for the payment of the claim, have been implemented.

However, the situation changes. One of the challenges we faced as a Committee is that, today, you find that recommendations have been implemented but, as you move on, you find that some of those people backtrack on some of the recommendations. That is one of the challenges that we face as a Committee.

Otherwise, this is the position of the Committee. I now beg to move and request Hon. Silvanus Osoro to second.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osoro.

Hon. Silvanus Onyiego (South Mugirango, KNC): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to second the Motion on Implementation Status of the Report on a Petition regarding Deplorable Working Conditions of Workers at the Kwale International Sugar Company Limited.

I stand at a very trying moment myself when my name is trending all over as being one of the MPs who do not speak in Parliament by the naysayers who actually claim that we do not speak. They know little of the work that the MPs do behind the scenes or outside the plenary, including the Report that I am seconding here today.

The Kwale International Sugar Company Limited (KISCOL), as an investor who came to this country to invest, has had positives in terms of employment of people, providing solutions in the sugar sector and even in exposing the Kwale region. However, Hon. Zuleikha's Petition opened the other side of KISCOL that most people did not know. Notably, what needs most of the attention of the Members of this House is the status or rather the conditions under which their employees were working within the environment of KISCOL. Even as the Departmental Committee on Labour and Social Welfare moved, since they were petitioned in the last Parliament, they equally had their challenges - the dodging, the hide and seek and everything, and people moving from one side to another and not being reachable for report writing and investigations. Even then, there is always a positive. It has been years but, at the end of the day, the Committee came up with a Report and moved it. That is why our Committee moved with speed to make sure that we confirm whether the Report and the recommendations by the Departmental Committee on Labour and Social Welfare were implemented.

As we moved, just like the Mover has said, I will not really dwell on what has been done. I will dwell on what has not been done. In my opinion, what has not been done is more important. It is actually what brought the Petition to this House - the WIBA and the element of injury. As we recommend that, that Sugar Company implements that element of work injury benefits, we need to remind them that you cannot realize maximum profit or maximum impact if you do not take care of the people who work for you. It is very shocking that only Kshs3.69 million has not been paid in wage arrears. That little amount in all those years, in my opinion, is a delaying tactic. Since this issue started, the company was well aware that they had wage arrears that they ought to have paid. They amount to only Kshs3.69 million. The company records a huge amount of profit in their operations. It is shocking that they have not obeyed the Legal Notice No.91 of 2015. It is shocking.

There is also the issue of pending compensation of work-related claims amounting to about Kshs5.4 billion. You can imagine that local person who wakes up very early in the morning to go to work only for him not be paid his compensation upon suffering an injury. It is very important for this company to obey the law and settle those issues.

As I second this Motion, I want to air my voice with regard to the threatening of Hon. Zuleikha. Since she brought this Petition to this House, she has been threatened. She has even been

charged with defamation, a matter we are responding to. It is shocking that she has been taken to court for exercising her constitutional duty as a Member of Parliament representing the women of Kwale. It is extremely wrong. We call upon them to pay this money and withdraw the threats of pursuing a defamation case against her.

With those remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the first person on my list is Hon. Arbelle Marselino, the Member for Laisamis.

Member for Nairobi County, what is out of order? Hon. Arbelle, just hold on for a second.

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): Hon. Temporary Deputy Speaker, I am looking at the two clocks, one on my left and the other one on my right. One shows that the time is 8.50 p.m. while the other one shows that it is 8.30 p.m. I just wanted to be guided on which clock the Temporary Deputy Speaker will be following as we move through the process so that we know whether we will be reached. We have two different timings on the clocks on the left and on the right.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Member for Nairobi, the Temporary Deputy Speaker is an adherent of the Northern Star. So, he will be guided by the Northern Star.

Proceed, Member for Laisamis.

Hon. Marselino Arbelle (Laisamis, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to the Motion on the Report of the Departmental Committee on Labour and Social Welfare on the Petition regarding the deplorable working conditions of workers at Kwale International Sugar Company Limited.

Indeed, allegations can be cooked against any company or investor stating different aspects that are happening within that company. We must, indeed, also safeguard the interests of the investors who happen to bring their money into the country without allowing them to violate the laws of the country. Kenyans at large are known to be very hardworking people. In fact, at some point, Kenyans have been attributed to a walking nation although they are also a working nation. They are walking because they do not have money in their pockets. Many Kenyans who are out there and working in the informal sector earn meagre salaries. Therefore, they are forced to walk from their areas of residence to their respective places of work in order to make ends meet. Although that investor has employed quite a number of Kenyans, the same employees have been denied their hard-earned money amounting to a total of Kshs3.69 million arrears. They have not been paid those arrears to-date. This is despite the fact that the matter had been taken to court and the court had given a verdict to the effect that the payment should be made. The Report of the Committee states that the money has not been paid despite the legal notice issued by the court.

We have, within the country, other sugar companies like Nzoia Sugar Company, Mumias Sugar Company and SONY Sugar Company which are performing dismally because of mismanagement. A lot of sugar-cane is being grown in that part of the country, but the companies are performing poorly to an extent that they are being put under receivership. When a company goes down, what happens to the employees working there? I am sure that we will get a lot of that information regarding companies milling sugar when the Departmental Committee on Labour and Social Welfare visits that part of the country.

I have also read in the Report that there are work-related injuries that are attributed to almost Kshs5.4 million and the list is long. As much as I support our investors, organisations that are the defenders of employees like Central Organization of Trade Unions (COTU) and other trade unions should come out and defend the rights of innocent hardworking Kenyans.

Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Member for Nairobi, you are actually next in the line.

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): On a point of order.

The Temporary Deputy Speaker (Hon. Christopher Omulele): What is out of order?

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): As much as I love my colleague and sister, Hon. Ruth Mwaniki, I understand that the Serjeant-at-Arms had come to tell her that she is inappropriately dressed. I know she has been campaigning very hard for the Jubilee candidate in Kiambaa Constituency. She is not only wearing a Jubilee promotional campaign t-shirt underneath her coat, but she is also in tackies in the House. I think that is not appropriate dress code. While we support the Jubilee candidate, she should have left when the Sergeant-at-Arms asked her to leave, even though she is very exhausted from campaigning.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwaniki is not appropriately dressed.

Hon. (Ms.) Wangari Mwaniki (Kigumo, JP): Hon. Temporary Deputy Speaker, I have a coat on and whatever is underneath should not be my sister's concern. I am in pink and Jubilee's colour is red.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwaniki, it is not a point of argument. Please retreat and resume when you are appropriately dressed.

Hon. (Ms.) Wangari Mwaniki (Kigumo, JP): Hon. Temporary Deputy Speaker, we saw a new uniform here the other day and I thought this is just a simple Jubilee shirt. With a lot of respect, I beg to leave.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Kindly.

(Hon. (Ms.) Wangari Mwaniki withdrew from the Chamber)

Let us have Hon. (Ms.) Hassan Juma, Member for Kwale.

Hon. (Ms.) Zuleikha Hassan (Kwale CWR, ODM): Ahsante sana, Mheshimiwa Naibu Spika wa Muda kwa kunipatia nafasi hii kuchangia Hoja hii. Ningependa kushukuru Kamati ya Utekelezaji kwa kuleta Ripoti hii Bungeni. Malalamishi haya yamekuwa yakizungumziwa Bungeni kwa muda mrefu na kuchunguzwa kutoka 2015 nilipoleta malalamishi haya hapa Bungeni.

Ningependa kuzungumzia mapendekezo ya Kamati hii na kusema vile hali ilivyo mashinani. Ningependa kujulisha Bunge kuwa kwa sababu ya malalamishi haya kwa niaba ya wafanyikazi wa Kwale International Sugar Company, kampuni hiyo imenipeleka kortini kunishtaki kwa kuwaharibia jina.

Katika kuzungumzia mapendekezo ya Kamati, walizungumzia kuwa barua hazijaandikwa kwa wafanyikazi. Ningependa kueleza Bunge kuwa hadi sasa, hawajaandikwa kazi. Kampuni imekuwa ikitoa mikataba kwa wale wanaofanya kazi kwenye ofisi lakini wale wanaofanya kazi kwenye mashamba wameumia zaidi na bado hawajaandikwa. Kampuni hiyo haijaleta ushahidi wowote kwa Bunge au kwa Kamati hiyo kuonyesha kuwa wamewaajiri wafanyikazi hao wa mashambani. Kuhusiana na masuala ya wafanyikazi ambao wamefanya kazi hapo kwa muda

mrefu, kampuni hii imewaajiri kama wafanyikazi wa muda mfupi na sheria za nchi haziruhusu kuweka watu hivyo kwa muda mrefu. Kuna wale ambao wamefanya kazi miaka tisa, kumi, kumi na moja, lakini bado hawajapewa mkataba. Ripoti ya Kamati inaonyesha kuwa bado hawajaandikwa mpaka sasa. Wengi wao wamesimamishwa kazi ghafla bila sababu na badala waandikiwe hiyo mikataba, wameachwa na hawajijui wako wapi.

Kuna pendekezo kuhusiana na pesa ambazo wafanyikazi hawa wanadai kampuni. Nilipoleta malalamishi haya, Kamati ya Leba ilizuru eneo hilo na waligundua kuwa wafanyikazi walikuwa wanalipwa chini ya kiwango ambacho Serikali ilikuwa imeweka cha mishahara ya wafanyikazi wao. Walifanya hesabu na ikaonekana kuwa wafanyikazi wanadai kampuni hiyo milioni 3.69 na mpaka leo, fedha hizo hazijalipwa kulingana na Ripoti ya Kamati. Kampuni hiyo inadai kuwa hawajaona hao wafanyikazi lakini ukweli ni kuwa ni watu ambao wanaishi hiyo sehemu na iwapo wangetaka msaada wa kuwapata, wangeomba ofisi kadhaa na wananchi pia wa sehemu hiyo wangewatafuta na bila shaka wangewapata ili wawalipe.

Pendekezo la tatu ni juu ya mavazi ya kuwalinda dhidi ya kupata majeraha kazini. Baadhi wamenunuliwa lakini wengi bado. Kamati ya Utekelezaji ilipoenda kule tarebe 7/3/2019, waliona kuwa baadhi ya wafanyikazi walikuwa hawana mavazi hayo.

Hakuna vyoo na bado wanatumia shambani. Hakuna usafiri pia. Kampuni yenyewe iko mbali na mishahara yao midogo na usipoenda kazini, basi hakuna kazi. Wanalichukua suala la usafiri kama sababu ya kuachishwa kazi. Hivi sasa, wameachisha wazaliwa wa Kaunti ya Kwale kazi na kuajiri wananchi kutoka Magharibi ya nchi. Wameacha sasa wenyeji bila kazi.

Kwa ufupi, sijafurahishwa na Ripoti hii na mapendekezo haya. Ningependa kampuni ilazimishwe zaidi kwa sababu mpaka sasa haijatekeleza lolote na ndio maana wameongezewa siku...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Zuleikha, I will add you a minute to finalise.

Hon. (Ms.) Zuleikha Hassan (Kwale CWR, ODM): Ahsante sana kwa kuniongezea muda. Ningeomba Kamati iwape adhabu kali zaidi kwa sababu hawajaonyesha nia ya kutekeleza lolote. Ni muhimu kwetu sisi kutetea haki za wafanyikazi hawa kwa sababu hawako kwenye muungano wa wafanyikazi wowote. Licha ya kazi iliyofanywa na Kamati, kampuni hii imeonyesha kuwa haina nia ya kutekeleza lolote na ningependa vitengo vya Serikali vichukue hatua na kufuatilia zaidi kuhakikisha kuwa haki ya wafanyikazi wa Kenya inalindwa.

Ahsante sana.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Zuleikha, I have heard that you have been taken to court because of the work that you do as a Member of Parliament. I want to state that Members of Parliament are protected in the work that they do as the representatives of the people. I hope you will have good representation in court to be able to vindicate the work that Members of Parliament do for the people. This is a legal House that represents the views of Kenyans. You cannot be antagonised or prevented from doing this work. We encourage you to continue doing your work.

We shall have contribution from Hon. Ibrahim Sahal.

Mhe. Nasri Ibrahim (Mjumbe Mteule, FORD-K): Ahsante, Mhe. Naibu Spika wa Muda, kwa kunipa hii nafasi ninene machache. Maisha ya wafanyakazi wa Kenya ni bora sana katika Katiba yetu. Wanabiashara wanatoka nchi zingine kuja kunyanyasa watu wetu. Kampuni haiwezi kuweka watu kwa miaka kumi na moja wafanye kazi bila kuwaandika. Lazima tuangalie maisha na maslahi ya wanyakazi wa Kenya. Hata kama kampuni zinaleta pesa kwetu, lazima wachunge

maisha ya binadamu upande wa kazi na vile kutumia choo na kuosha mikono, na maneno mbalimbali.

Kwa hayo machache, naunga mkono. Ahsante.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwambire, Member for Ganze.

Hon. Teddy Mwambire (Ganze, ODM): Thank you very much, Hon. Temporary Deputy Speaker. At the outset, though I support the Report, I feel the Committee was very lenient in their recommendations based on what they observed on the ground and the reality we know as people from the region who have interacted with those employees. After some employees reported to the County Member of Parliament, the company thought it was wise to terminate their service so that they would not give out more information concerning what happens at the company. The company has resorted to employ more people from outside the county because they do not have a direct link with the local leadership.

The Committee should have come up with very serious recommendations. Even though we support what they recommended, I hope even after the three months they have recommended, there will be clear follow up after the adoption of this Report. This company has a tendency of playing around with people. The company started its operations in 2015. From then up to now, it has not come up with clear contract letters. It has not employed most of the people who work for them. Some of the employees are just there not knowing their fate. So, apart from the push that the Committee has done, the Ministry of Labour should also be investigated. We should investigate the people at the Labour Office in Kwale County. For how long have they been there and what are they doing? Some have overstayed while others are in cahoots with some investors. That is why we normally have these cases.

When the Committee visited the area, they found that some employees still claim workman's compensation. I believe whenever they have issues, they go to the Labour Office, and when they get there, they are compromised. So, we need to go deeper and get some information from the Labour Office so that we understand what is happening. In case we realise that the labour officers are the ones who try to play around with those investors, some recommendations should be made on whether they should be transferred or interdicted. They stay in-between to ensure that employees do not get their rights. That is a very serious issue that should be looked into. I suspect most of these issues come up because the local labour officers do not take their work seriously.

Because my sister Hon. Zuleikha has been taken to court, Parliament should also play a role in one way or another instead of leaving such issues in the care of the particular Member of Parliament. The Parliamentary Service Commission should come up with proper measures to safeguard the interests of Members of Parliament. I think it is not fair when a Member brings an issue or a petition like the one brought by Hon. Zuleikha and thereafter she is exposed to the extent of using a lot of money. Therefore, the Parliamentary Service Commission should consider taking up such matters so that Members can, at least, feel free. One way or the other, it is like trying to intimidate Members so that they do not take up some issues in their respective areas.

With those few remarks, I support the Report.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Odege, Member for Nyatike.

Hon. Tom Odege (Nyatike, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice to this issue of our good workers at Kwale. Listening to the Report, I want to support it but with a number of issues, especially the issues raised touching on the workers. Those who know me will know that I have been in the trade union movement for

the better part of my working life. When I see a worker being oppressed, I really feel it. This is because we have come across a number of cases in this country where our own people become slaves in our own country. For instance, today we are talking about an investor. This investor we are talking about is a foreigner who has come to invest in our country. At the same time, the person is violating our laws in our own country and yet, no one is taking action on them. By not paying workers after getting a court order on the same, we ask ourselves: 'Do we have a government?' If we have a government, who is supposed to implement those court orders? If we do not implement them, then what do you expect from the workers? Can we allow them to take law into their hands and burn the factory? The answer is no. It means there is someone who is sleeping on the job.

We cannot operate in a country where people think we do not have laws. We have enough laws to protect workers. Labour laws exist in this country. One of our colleagues here said that the trade unions – and he mentioned COTU- should do more. What do you expect a trade union to do on a company when a court order has been violated? When we reach that level, it is now beyond a trade union. It is now squarely with the Government. Therefore, if our railway workers got an award and the Government has not implemented that award using the laws that we currently have... We do not have any vacuum in law. The problem is that someone is sleeping on the job. I do not think it is right for this Parliament to entertain such kind of omissions in our country. Those foreigners will come and overpower us and we are going to be slaves in our own country.

Therefore, I want to ask my colleague, the MP for Kwale that, where this thing has reached... We are discussing a case which is almost over 10 years now. After admitting this Report here today, there is need to look for an avenue to re-open this thing so that we deal with it. This is because if we allow such things to continue in our country, I can assure you foreigners will come into this country and yet the rate of unemployment is very high. Presently, you can be told in your own country: 'If you do not want, you can as well leave. We will get people from outside to come and do the job.' Then, they exploit our people because they are desperately looking for a job. This is an act which is not acceptable in our country, and especially when we are discussing in this House a Report which has been made by our own Committee, and which we are implementing in this House today. We know very well we are implementing a Report which is not reflective of what is happening outside there. I would request that the Member for Kwale should look for an opportunity to reopen this case so that we revisit it.

I sit in the Committee on Labour and Social Welfare today. This case was in the Committee on Labour and Social Welfare in the previous Parliament.

Hon. Temporary Deputy Speaker, we might not have an opportunity to exploit it, but because of time, I thank you and support

The Temporary Deputy Speaker (Hon. Christopher Omulele): There being no further interest in this, I ask Hon. Osotsi to reply.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon Temporary Deputy Speaker. I have listened to the views of Members, particularly Hon. Zuleikha, and I think they are genuine. I agree that some of the issues here are still work-in-progress, including payment of compensation to the workers which has not been paid to date. The management had made an undertaking to us that they were going to pay. Also, the issue of issuance of contracts which they had indicated to us that they were going to issue from March 2020, but they suspended that exercise because of COVID-19, needs to be taken up.

As I said earlier, our role as a Committee as per Standing Order No.209 is to simply indicate whether a resolution has been implemented or not and the extent of implementation. When time

comes for the review of the Standing Orders, that area needs to be looked into so that the Committee is given more powers to act even after giving the report.

In the current situation, I support Hon. Odege that, maybe, the primary committee of Labour and Social Welfare may need to restart that process because of the pending issues which have not been implemented.

Otherwise, I beg to reply.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, for good reasons, I direct that the next necessary steps with regard to this Report be undertaken when the matter will be set down on the Order Paper again.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, that being the last business on the Order Paper and the time being 9.12 p.m. this House stands adjourned until Thursday, 1st July 2021 at 2.30 p.m.

The House rose at 9.12 p.m.