

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 13th July, 2021

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

THE 80TH EXECUTIVE COMMITTEE MEETING OF CPA AFRICA REGION

The Speaker (Hon. Lusaka): Hon. Senators, I have two Communications.

As you are aware, the Commonwealth Parliamentary Association (CPA) is an organization established in 1911 with the overarching objective of bringing Parliamentarians and parliamentary staff together to exchange ideas among themselves and with experts in various fields, to identify benchmarks of good practices and new policy options that can be adopted in the governance of the people.

The CPA Constitution provides for the establishment of branches, in the Parliaments of Member States. Each Branch elects Members to the Executive Committee, which is the apex body that manages the affairs of a branch.

In addition to the 10 Members from the National Assembly, the following Senators form part of the Executive Committee of the CPA Kenya Branch-

- (i) Sen. Kenneth Lusaka, EGH, MP, Speaker of the Senate
- (ii) Sen. Samuel Poghio, EGH, MP, Senate Majority Leader
- (iii) Sen. James Orengo, EGH, SC, MP, Senate Minority Leader
- (iv) Sen. (CPA) Farhiya Ali, MP, Deputy Majority Whip
- (v) Sen. Petronilla Were, MP, CWP Kenya Vice Chairperson
- (vi) (Sen. Mohammed Faki, MP

Each branch elects Members to the regional body which coordinates the activities of the region of the CPA. The CPA Africa Region is one of the nine regional associations of the CPA International that is made up of eighteen branches from the continent.

The activities of the Africa Region are similarly coordinated by the Executive Committee drawn from three representatives from all CPA African branches across the Member States.

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Hon. Senators, the CPA Africa Region aims to promote and protect interests of African Parliaments and countries in the Commonwealth, and to promote the democratic ideals of the CPA including women empowerment, respect for human rights and freedoms, representative government and good governance.

The region undertakes a number of programmes including its annual regional conference geared towards deliberating and arriving at a consensus on pertinent issues.

The CPA Kenya Branch will host the 80th Executive Committee meeting of the CPA Africa Region. The meeting is scheduled to be held from 12th to 18th July, 2021, here in Nairobi. The Parliament of Kenya delegation will be led by the Hon. Justin Muturi, EGH, MP - Speaker of the National Assembly and Chairperson of the CPA Africa EXCO.

Hon. Senators, on behalf of the Senate and on my own behalf as the joint President of the CPA – Kenya branch, I welcome all delegates to Kenya and wish them fruitful deliberations.

I thank you.

I have another Communication.

(Sen. Kihika consulted Sen. Kwamboka)

The Speaker (Hon. Lusaka): Take your seat Sen. Kihika. You are out of order!

(Sen. Kihika took her seat)

WORKSHOP ON PROPOSAL FOR EXPEDITING CONSIDERATION
OF SENATE BILLS PENDING BEFORE THE HOUSE

Hon. Senators, as you are aware, on 29th October, 2020, the High Court delivered a judgment in Constitutional Petition No. 284 of 2019.

In the judgement, the High Court issued a number of declarations and issued orders that affected a number of Senate Bills pending before both Houses.

In compliance with the Orders, the Senate has republished all Bills for which the resolution contemplated pursuant to Article 110(3), could not be demonstrated.

You will also recall that the High Court ordered that “it is mandatory and a condition precedent for any Bill that is published by either House to be subjected to a concurrence process to determine in terms of Article 110 (3) of the Constitution whether the Bill is special or an ordinary Bill”.

As at now, a total of 58 Bills have been published. Out of the 58 Bills, 21 are undergoing concurrence pursuant to Article 110(3), 30 are at the Second Reading stage, and three Bills are at the Committee of the Whole stage. One Bill was referred to the National Assembly while three Bills have been assented to.

Hon. Senators, you will agree with me that we have a heavy workload and therefore, under pressure to finish the pending Bills within a very limited time to the end of the term of the 12th Parliament.

At its meeting held on Tuesday, 6th July, 2021, the Senate Business Committee (SBC) considered a paper on “Proposal for expediting consideration of Senate Bills republished pursuant to High Court Judgment in Constitutional Petition No. 284 of 2019” and resolved that a meeting be convened to apprise Senators on the resultant effects of the

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Judgment and to establish a framework to expedite the legislative business before the Senate.

Hon. Senators, in this regard, the Senate Leadership has prepared a half-day workshop to be held in Nairobi on Thursday, 15th July, 2021 from 8.00 a.m. to 12.30 p.m.

The objective of the event is, *inter -alia*, to deliberate on:-

(a) Implementation of the High Court Judgment in Constitutional Petition No. 284 of 2019; milestones, challenges and opportunities;

(b) Status of Legislative Business: Bills, Motions, Petitions and Statements;

(c) Framework for expediting pending Legislative Business; and

(d) The way forward.

In view of the urgency and importance of this matter, I urge you to attend the workshop. The details regarding the venue shall be communicated through the Office of the Clerk.

I thank you.

We move on to the next Order.

STATEMENTS

STATUS OF TREATMENT EQUIPMENT AND FACILITIES AT MBAGATHI REFERRAL HOSPITAL

Sen. Kwamboka: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 48(1), to seek a Statement from the Standing Committee on Health regarding the issue of the status of treatment equipment and facilities in Mbagathi Referral Hospital in Nairobi City County.

In the Statement, the Committee should-

(1) Outline the number and condition of computerized tomography CT Scan machines available for patients seeking treatment at the Mbagathi Referral Hospital

(2) State the amount of medical oxygen available for patients used in the said hospital.

(3) Elaborate the bed occupancy versus capacity of the hospital's Intensive Care Units (ICUs)

(4) Explain reasons as to why there are only two ventilators yet the hospital requires eight and has the requisite space to accommodate the eight ventilators.

The Speaker (Hon. Lusaka): The next Statement is by Sen. Omanga but she is not here.

ALLEGED ILLEGAL PAYMENT OF LEGAL FEES TO OUTSOURCED LAW FIRM BY NAIROBI CITY COUNTY

(Statement deferred)

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We go to Statements under Standing Order No. 51(1).
Proceed, Chairperson Committee on Agriculture, Livestock and Fisheries.

STATUS OF MUMIAS SUGAR COMPANY LIMITED
AND ITS IMPENDING TAKE OVER

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. Standing Order No. 51(1), provides that a Chairperson of a Committee may make a Statement relating to a matter for which the Committee is responsible.

In fulfillment of this provision, I wish to make a Statement regarding the state of Mumias Sugar Company Limited and its impending take over or resuscitation.

Mr. Speaker, Sir, at a sitting of the Senate held on 2nd June, 2021, pursuant to Standing Order No. 48(1), Sen. Cleophas Malala, MP, requested for a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries on the state of Mumias Sugar Company Limited and its impending take over.

In the Statement, the Senator sought the following information-

(1) The current state of the company's asset and liabilities indicating the value and core and non-core assets and which entity undertook such evaluation, if any.

(2) The fate of the current receiver manager.

(3) Details of when and by whom, the decision to lease out the company was made and any correspondence on the said decision to the Capital Market Authority (CMA) and other regulatory bodies.

Also to provide details of the following-

Procedure to be followed by the Government in selling its stake in the company and the bidding process including who the bidders were, when the bidding took place; when the evaluation of submitted tenders was done; what criteria was used to pick the successful tenderers; what were the relevant legal instruments under which the process of leasing was conducted; whether there was public participation in the process and which other companies submitted their bids for the tender and when they were invited to bid; the companies revival plan and details of the entity deemed to be qualified to take over Mumias Sugar Company Limited and a justification for the same; whether stakeholders were consulted and a report of such consultations, if any, including the creditors and debtors and who shall pay the pending debts owed by the company particularly debts owed to farmers and workers.

The Hon. Deputy Speaker directed the Committee to report within two weeks.

The Committee met with the receiver manager, Mumias Sugar Company Limited, Mr. Ponangipalli Venkata Ramana Rao on Wednesday 9th June, 2021.

He briefed the Committee as follows-

- a) A restraining order was issued by the courts restraining the sale of immovable assets of the Company on 6th November, 2019, which order was thereafter varied on 12th May, 2021 to include movable assets. The Order has limited debt recovery options and available options to restart the Company's operations;
- b) The Receiver Manager restarted distillery operations in February, 2020, however, this faced several challenges e.g. shortage of molasses and high costs

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of transportation of molasses and bagasse from other factories. Further, the Receiver Manager also began development in the Nucleus Estate from marginal revenue derived from the distillery, however, the distillery operations were suspended in March, 2021 following directions from the Ethanol Plant Lenders;

- c) These developments left the Receiver Manager with only one option of leasing the Company's assets to revive its operations and progress recovery efforts for the secured creditors and other stakeholders of the Company;
- d) As per Audited Financial Statements for the FY 2018, the value of the Company's assets was Kshs15.7 billion while its liabilities were Kshs30.1 billion. The net assets position stood at a negative Kshs14.4 billion, implying that the Company would not be able to meet its long term and short term financial obligations from its assets and was therefore insolvent;
- e) The Company's assets may have deteriorated and its liabilities increased from June 2018, owing to additional interest and penalties on loan repayment default, tax arrears etc. The latest book values of assets and liabilities was not able to be availed in the absence of the Statement of Company Affairs from the Company's directors. However, asset valuation undertaken through Centenary Valuers Ltd. in November, 2019 estimated the market value of the Company's assets to be Kshs18.4 billion;
- f) The Receiver Manager would continue to run the affairs of the Company until such a time when the full amount owed to the secured lenders was recovered or until his appointment came to an end for any other reason;
- g) The decision to lease the Company's assets was discussed with KCB and the Governor of Kakamega County. Necessary consents were also obtained from the national and county governments, secured lenders and other stakeholders like the Capital Market Authority (CMA), Nairobi Stock Exchange (NSE), the Agriculture and Food Authority (AFA) and the National Treasury;
- h) The Government could sell its stake by transferring its shares to any other party for payment or any other consideration, however, as per Financial Year 2018 Audited Financial Statements, the shareholder value in the Company stood at Kshs14.4 billion, making it unlikely that any investor would be interested in purchasing a stake in the Company;
- i) The Receiver Manager opted for private treaty as opposed to public tendering as it is less expensive and much faster. The bidding process began in the first quarter of 2020 and was kept open for a year as the Receiver Manager was keen to obtain the best offer. Eight bidders submitted their bids including-
 - i. Catalysis Group, Russia;
 - ii. Sarrai Group, Uganda;
 - iii. Kruman Associates, France;
 - iv. Kibos Sugar;
 - v. Devki Group;
 - vi. Premier JV, India;
 - vii. Third Gate Capital Management; and
 - viii. Godavari Enterprises India.
- j) Evaluation of the bids began on 16th April, 2021 using the following criteria-

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- i. Technical capability;
 - ii. Financial ability to undertake large operations;
 - iii. Lease period;
 - iv. Initial security deposit;
 - v. Initial moratorium period;
 - vi. Lease rent amount;
 - vii. Out of Crop (OOC) period;
 - viii. Liquidated damages on third party interference;
 - ix. Ability to revive the operations; and
 - x. Socio-economic aspects and community welfare.
- k) On the matter of public participation, private treaty was chosen, however, the proposed leasing was carried in the media for several months. The Governor of Kakamega County has been kept apprised on developments, engagements have been made with area MPs, secured lenders, NSE, CMA and the National Treasury.

Mr. Speaker, Sir, following queries were raised by Members and the Receiver Manager made the following clarifications-

- a) That, there was currently no lease agreement in place for the leasing of the Mumias Sugar Company Limited as the bidding process was ongoing and no bidder had been awarded the bid;
- b) That, the Receiver Manager had not advertised for the proposed leasing of the Company and instead preferred private treaties which were cheaper, more convenient and faster than the advertisement process;
- c) That, the Receiver Manager, was not in receipt of any withdrawal of a bidder, despite media reports that Devki Group had withdrawn its bid;
- d) That at the start of the receivership, the Company owed Kshs2.6 billion and currently owes Kshs2.765 billion as a result of accrued interest;
- e) That, a minimum of Kshs3 billion, in the opinion of the Receiver Manager, would be necessary for investment into the Company for its revival. However, no technical evaluation had been carried out; and
- f) That, there was no conflict of interest on the part of the Receiver Manager in dealing with Devki Group.

Following deliberations and noting the need for transparency and public participation, the Committee resolved that the following be undertaken by the Receiver Manager-

- a) Advertisement of the intention to lease Mumias Sugar Company Ltd. within two weeks; and
- b) Submission of a technical evaluation report for Mumias Sugar Company Ltd. to the Committee.

Vide a letter dated 23rd June, 2021, the Receiver Manager sought extension of time to end of July, 2021 to publish the advertisement and submit the technical evaluation report to the Committee. The Committee resolved to invite the Receiver Manager to a meeting to discuss the request and to receive an update on the progress made by his office in implementing the Committee resolutions.

At a meeting held on Friday, 2nd July, 2021, the Committee met with the Receiver Manager, where he gave reasons for his request for extension of time as follows-

- a) To prepare detailed bid documents to maintain uniformity of the bids; and
- b) To discuss the modalities with all stakeholders before the Invitation to International Bidding was advertised in local and international media.

He further informed the meeting that there were two applications before the courts seeking to stop the leasing of the Company, which would possibly interfere with the process.

Following deliberations, the Committee resolved that the Receiver Manager should advertise the intention to lease Mumias Sugar Company Limited and submit the technical evaluation report by 31st July, 2021. The Committee further resolved that a follow up meeting would be held on 6th August, 2021.

Mr. Speaker, Sir, the Committee is taking this matter seriously and shall report to the House periodically.

I thank you.

The Speaker (Hon. Lusaka): Thank you, Sen. Ndwiga.

Although I had deferred a statement by Sen. Omanga, I am told that she asked Sen. Iman to read the statement on her behalf.

Sen. Iman, kindly, proceed.

ALLEGED ILLEGAL PAYMENT OF LEGAL FEES TO
OUTSOURCED LAW FIRMS BY NAIROBI CITY COUNTY

Sen. Iman: Mr. Speaker, Sir, I rise to pursuant to Standing Order 48(1) to seek a statement from the Standing Committee on Devolution and Intergovernmental Relations regarding the alleged illegal payment of legal fees to outsourced law firms by the Nairobi City County Government. In the Statement, the Committee should: -

- (a) Outline reasons for paying only law firms a total of Kshs795.9 million out of the county's allocation of Kshs2.5 billion meant for the clearance of all pending bills in the 2018/2019 Financial Year;
- (b) State whether documentary evidence was availed by the law firms to support the payments made by Nairobi City County Government;
- (c) State the progress made by the Ethics and Anti-Corruption Commission (EACC) on the investigation of the legal fees paid to lawyers for services by the Nairobi City County Government during the 2018/2019 Financial Year.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you, Sen. Iman.

The next Statement is under Standing Order No. 51(1)(b).

ACTIVITIES OF THE COMMITTEE ON
INFORMATION, COMMUNICATION AND TECHNOLOGY

Is the Chairperson of the Committee on Information, Communication and Technology in the Chamber? Does any Member of that Committee have the report?

If none of the Members of that Committee is available to read the report, I defer that statement.

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(Statement deferred)

Next Statement.

ACTIVITIES OF THE COMMITTEE ON NATIONAL
COHESION, EQUAL OPPORTUNITY AND REGIONAL INTEGRATION

Sen. Shiyonga: Mr. Speaker, Sir, I rise pursuant to Standing Order 51 (1) (b) to make a Statement on the activities of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration for the period commencing 26th March, 2021 to 13th July, 2021.

Mr. Speaker, Sir, during the period under review, the Committee held a total of 17 Committee sittings, the Committee considered one Statement sought by Sen. (Dr.) Gertrude Musuruve on the National Government and County Government measures to support PWD's during the Pandemic. Responses were received from the Ministry of Labour and Social Welfare and from the Council of Governors' Technical Committee on Health and Technical Committee on Human Resource, Labour and Social Welfare. The Committee concluded consideration of the Statement having received the necessary responses particularly from the Council of Governors' on the County Government measures. The Report on the Statement is awaiting consideration by the Committee.

Mr. Speaker, Sir, with regard to Bills, the Committee is currently undertaking public participation pursuant to the provisions of Article 118 of the Bills, No.19 of 2021, following the First Reading of the Bill on Tuesday, 6th July, 2021.

During the period under review, the Committee met the Chief Executive Officer (CEO) of the Kenya Ports Authority (KPA) to consider if compliance with the constitutional provision on the representation of ethnic diversity in its staffing.

In addition, the Committee held a meeting with the Judicial Service Commission (JSC) on matters of equal opportunity and inclusivity as well as access to justice for PwDs.

Hon. Speaker, the Committee considered matters of inter-ethnic and political conflicts and recommended collaboration strategies to prevent such conflicts, particularly, during campaign and measures to reduce political tension accelerated through the platforms of churches and the media.

During the Covid-19 Pandemic, the Committee did not undertake scheduled visits to counties adversely affected by conflicts, and, has programmed county visits to those counties which we shall undertake after reduction of the Covid-19 Pandemic infections.

The Committee attended the Assumption of Office ceremony of the Secretary General of the East African Community and continues to pursue matters of regional integration pursuant to its mandate.

Hon. Speaker, the Committee also undertook a report writing and work planning retreat from 13th to 16th June, 2021, to consider a report on ethnic diversity and representation at the Kenya Maritime Authority (KMA) and the KPA, which is ready for tabling.

The Committee also adopted its work plan and programme of activities. It intends to carry out the following activities during the next quarter –

(1) Undertake county visits in regions affected by conflicts, including Marsabit, Mandera, Isiolo and Wajir counties to address issues of cohesion and county public service diversity that were pending due to the Covid-19 Pandemic.

(2) To engage with the various stakeholders, relevant to the Committee's mandate on matters of equal opportunity and inclusivity, among other issues.

(3) The Committee also intends to do capacity building on the Committee on Effective Implementation of its mandate.

(4) We also want to undertake county visits to Busia, Malaba and Isebania on issues of one border post.

(5) Lastly, the Committee has also planned to promote regional integration and undertake visits to the East Africa Community Organs and Institutions in Tanzania, Uganda and Rwanda.

Mr. Speaker, Sir, I thank you for giving me this opportunity.

The Speaker (Hon. Lusaka): Let us have Sen. Moi.

ACTIVITIES OF THE COMMITTEE ON INFORMATION AND TECHNOLOGY

Sen. Moi: Mr. Speaker, Sir, I rise pursuant to Standing Order 51(1)(b) to make a Statement on the activities of the Standing Committee on Information and Technology for the period commencing 9th February, to 19th March, 2021.

During the period under review, our Committee held a total of six sittings. The membership of the Committee changed by resolution of the Senate on 29th January, 2020. The Committee held an induction retreat from 18th to 20th March, 2021 in Mombasa County. The retreat was an opportunity to engage with other stakeholders from Government, private and civil society in the ICT sector, and also served as a working planning retreat for the Fifth Session of the 12th Parliament.

Mr. Speaker, Sir, during the retreat, the Committee took a closer look at the following project of the national Government with the focus on the points of interface with county governments –

(a) provision of broadband to schools, which is being undertaken through the school programme in collaboration with the UNICEF.

(b) The modernization of the Kenyan News Agency.

(c) The studio *mashinani* project, a collaboration between the national broadcast and the Ministry of Information, Communication and Technology. It seeks to develop a local creative industry by enabling young people to tap into their natural creative curiosity and effectiveness by taking recording studios to the grassroots level with the majority of talented youth desisred.

(d) The Presidential Digital Talent Program (PDTP) takes fresh and qualified ICT graduates through an internship program designed to build the ICT capabilities ready for the ICT market.

The interns are placed both in Government ministries for ten months and private sector for two months. During the program, they get a holistic understanding of how ICT works both in the public and private sector.

Ajira Digital Program, the project which is being implemented by KEMSA in partnership with the Government of Kenya through the Ministry of Information Communication and Technology. The project aims at bridging the gap between skills,

demand and lack of jobs and further seeks to gather lessons learnt to inform the project scale-up.

Ajira digital project seeks to position Kenya as a choice of labour destination for multi-national companies as well as encourage local companies and the public sector to create digital work. The overall objective of the project is to make Kenya a freelance hub on the global destination for online work by the year 2022; among other projects seeking to liberate ICT for the economic transformation of the country.

(e) During the retreat, the Committee engaged with semi-autonomous Government agencies and assess the sector's achievements and challenges. They are-

- (a) The ICT Authority.
- (b) Communications Authority of Kenya.
- (c) KONZA-Techno Polis Development Authority.
- (d) Government Advertising Agency.
- (e) National Communication Secretariat.
- (f) Communication and Multi Media Appeals Tribunal.
- (g) Kenya Institute of Mass Communication.
- (h) Kenya Film Classification Board.
- (i) Kenya Film Communication.
- (j) The Media Council of Kenya.

Mr. Speaker, Sir, mobile network connectivity that enables a minimum of second generation 2G internet connectivity across the country has been a primary commitment of the Committee of the Twelfth Parliament. To this end, the Committee held numerous engagements with the Communication Authority of Kenya in 2020 to oversee the role of the mobile network connectivity to unserved paths and the served parts of the country using the Universal Servers Fund (USF).

I am happy to report that Phase II of the connectivity initiative is underway. This phase will provide coverage of 101 sub locations in 18 counties. Moreover, the CAK has set in motion plans to deploy Phase III of the project that brings the country to full coverage with no Kenyan left behind.

Mr. Speaker, Sir, in quarter II of the calendar year 2021, the Committee will be focusing on the following areas –

(a) E-education, the committee is conscious of the need for collaborative effort to build a hybrid educational system in Kenya. It will delve deeper into the various initiatives geared towards e-education, focusing on connectivity to schools throughout consultative meetings in Ministry of Education and the Ministry of ICT.

(b) Data protection continues to take centre stage in emerging discourse. The Committee will review the Draft Data protection regulations that will operationalize the Data Provision Act of 2019.

(c) In respect of statements pursuant to Standing Order No.47(1), at the sitting of the Senate held on 23rd March, 2021, Sen. Samson Cherargei, MP, requested a Statement from the Chairperson of the Standing Committee on Information Communication and Technology on the status of the Access to Information Regulations in the Access of Information Act, 2016.

I thank you.

The Speaker (Hon. Lusaka): Thank you, Sen. Moi. Let us have the Standing Committee on National Security, Defence and Foreign Relations.

ACTIVITIES OF THE COMMITTEE ON NATIONAL SECURITY,
DEFENCE AND FOREIGN RELATIONS

Sen. Outa: Thank you, Mr. Speaker, Sir. This is in relation to the activities of the Standing Committee on National Security, Defence and Foreign Relations, pursuant to Standing Order No. 51(1)(b).

I rise under Standing Order 51(1)(b) to make a Statement on the activities of the Standing Committee on National Security, Defence and Foreign Relations, for the period commencing 1st January to 30th June, 2021.

During the period under review, the Committee held a total of 19 sittings; while two were joint sittings with the Standing Committee on Justice, Legal Affairs and Human Rights on the county boundaries. We had handled three Bills and 11 statements and we had only one retreat.

In respect of the Bills, the Committee considered the following -

(1) A pre-publication stage of the Military Veterans Bill, 2021, on Thursday, 4th March, 2021, and recommended its publication.

(2) The National Flag Emblem and Names (Amendment) Bill, 2020.

(3) The Disaster Risk Management Bill, (Senate Bill No. 14 of 2021).

The Committee, during the period under review, considered and finalised with the following Statement requests –

(1) A statement request by Sen. Beatrice Kwamboka, MP, regarding the status of the security along the Kenyan borders. The Committee considered the response in a meeting attended by the Senator who had requested for the statement who expressed her satisfaction with the response, as had been received from the Ministry of Interior and Coordination of the National Government and the matter was concluded.

(2) The Committee considered and finalised consideration of a Statement request during a meeting held on Wednesday, 24th March, 2021, attended by the Cabinet Secretary of the Ministry of Interior and Coordination of National Government through a virtual meeting as follows-

A Statement requested by Sen. Johnson Sakaja, CBS, MP, regarding the arrest of Governor Mike Mbuvi Sonko.

The second Statement was sought by Sen. Dullo regarding the alleged armed clashes along the Isiolo-Garissa border and the ongoing operation in Ngare Mara, Isiolo County. The third Statement was sought by Sen. (Prof.) Ekal, regarding the attacks of herders from Turkana County in the neighbouring countries. Another Statement was sought by Sen. Loitiptip regarding the harassment of cyber and movie shop owners in Lamu County.

We also have a Statement request by Sen. regarding the rampant police harassment of civilians during enforcement of COVID-19 protocols and guidelines.

There is also a Statement which was sought by Sen. Prengei regarding the ban of planting of maize in Nessuit, Njoro Sub County, Nakuru County, by the Ministry of Interior and Co-ordination of National Government.

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There is another Statement request by Sen. (Rev.) Waqo, regarding the state of security in Marsabit County. We also have a Statement request by Sen. Shiyonga regarding the death of Ms. Jacqueline Mugure from a stray bullet. There is another Statement request by Sen. Madzayo regarding police officers conduct and beating of Ms. Kanze Karisa Kalu in Bamba Police Station in Ganze Constituency. Lastly is the Statement request by Sen. Kang'ata regarding the arrest of Sen. Kihika and others that occurred in Nakuru on 20th February, 2021.

The Committee participated in a training from 4th to 7th February, 2021, in Mombasa on Parliamentary Diplomacy. It was facilitated by the Centre for Parliamentary Studies and Training (CPST). We were taken through well researched topics which included; principles of governance and international relations, foreign policy, diplomacy rules and the procedure of diplomacy, instruments of diplomacy, statecraft and national interests, diplomatic and negotiation skills, diplomatic protocol and etiquette and documents of diplomacy, and skills or tactics in parliamentary diplomacy which resonate with the mandate of the committee. The committee recommends the training to all the committees of the Senate if not Parliament.

The committee intends to carry out the following activities during the next quarter.

(1) Hold meetings with the Cabinet Secretary, Ministry of Interior and Coordination of National Government in an effort to address the ravaging abductions and disappearances of members of the public in various parts of the country, especially in the north-eastern coastal region of Kenya.

(2) Hold a meeting with the Cabinet Secretary to deliberate on the perennial mudslides and landslides which occur in various parts of the country during heavy rains and how they can be mitigated through the national disaster system of Kenya.

The committee has scheduled a retreat in the month of August jointly with the Standing Committee on Justice, Legal Affairs and Human Rights in an effort to address the perennial county boundaries disputes. The meeting will be attended by the Cabinet Secretary for Interior and Coordination of National Government, the Cabinet Secretary for Lands, the Chairperson of the National Land Commission (NLC), the Chairperson of the Independent Electoral and Boundaries Commission (IEBC) and the Chairperson of the National Cohesion and Integration Commission (NCIC).

I thank you.

The Speaker (Hon. Lusaka): Thank you, Sen. Outa. Let us now have the Chairperson of the Standing Committee on Tourism, Trade and Industrialization. The Statement will be delivered by Sen. (Dr.) Musuruve.

ACTIVITIES OF THE COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, on behalf of my Chair who is away, I will read the Statement relating to the activities of the Standing Committee on Tourism, Trade and Industrialization pursuant to Standing Order No.51(1)(b) for the period from February to July 2021.

Mr. Speaker, Sir, I rise pursuant to Standing Order No.51(1)(b) to make a Statement on the activities of the Standing Committee on Tourism, Trade and Industrialization for the

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period commencing February to July 2021. During the period under review, the Committee has held a total of 36 sittings, considered five Bills, three Statements, one Petition and one legislative proposal.

The Committee participated in the Sixth Annual Sacco Leaders Convention that was held from 22nd to 26th February, 2021, in Mombasa and further held a workplan retreat from 16th to 20th March, 2021, in Mombasa.

Concerning Bills, the Committee is currently considering the following republished Bills. We have the Co-operative Societies (Amendment) Bill. The Committee conducted public participation and further held physical sitting with the targeted stakeholders who included the State Department of Co-operatives, the Commissioner of Co-operative Development, the Kenya Union of Savings and Credit Co-operatives (KUSCCO) Limited and the Co-operative Alliance of Kenya (CAK) on 3rd April, 2021. The Committee concluded on the matter and forwarded the amendments for listing in the Order Paper.

Regarding the County Licensing (Uniform Procedures) Bill (Senate Bills No.32 of 2020), the Committee is considering the matrix on stakeholders' submissions following the call for public participation on the Bill.

The third one is the Street Vendors (Protection of Livelihood) Bill (Senate Bills No.7 of 2021). The Bill was advertised for public participation and only one response was received from the National Gender and Equality Commission (NGEC). The Committee has written to the targeted stakeholders to enrich the Bill.

The fourth one is the Investment Promotion (Amendment) Bill (Senate Bills No.2 of 2021). The call for public participation has been made and the Bill is undergoing public participation.

The fifth one is a legislative proposal. The Committee received a legislative proposal from the East Africa Tour Guides & Drivers Association (EATGDA) seeking to amend the Tourism Act. The legislative proposal and amendment Bill are under review by the Directorate of Legal Services and will be sponsored by the Committee.

Moving on, the committee is considering the following Statements. The first one is the status of Pan-African Paper Mills, currently Rai Paper Mills, which was sought by Sen. Were. The committee facilitated a response from the Ministry of Industrialization and Enterprise Development and further invited Sen. Were and Sen. Wetangula to its sitting held on 19th May, 2021, during which further supplementary issues emerged. The committee is following up with the responsible Ministry for a comprehensive response on all emerging supplementary issues.

The second statement on the non-settlement of claims by Trident Insurance Company Limited was sought by Sen. Were on behalf of Sen. (Dr.) Mbito concerning the failure by M/S Trident Insurance Company Limited to settle claims. The committee requested for the responses from the Cabinet Secretary, Ministry of Trade and Industry and the Insurance Regulatory Authority (IRA). However, the IRA requested for additional time to submit their report to the committee.

The committee initiated a statement on the implementation status of the task force recommendations by the Cabinet Secretary, Ministry of Tourism and Wildlife on the state of the Kenya Utalii College. The committee received an unsatisfactory response from the Cabinet Secretary, Ministry of Tourism and Wildlife and has scheduled a meeting with the

said Cabinet Secretary to provide more clarifications on the issues that were raised by the committee.

Moving to Petitions, pursuant to Article 118 of the Constitution, one petition on the liquidation of Moi University SACCO in Eldoret, Uasin Gishu County, was read by Sen. (Prof.) Kamar.

Upon receipt of the Petition, the committee has undertaken extensive stakeholder engagements and received submissions from a wide range of stakeholders and respondents who included the Ministry of Agriculture, Livestock and Fisheries, the State Department of Co-operatives, the Commissioner of Co-operatives, the Sacco Societies Regulatory Authority (SASRA), the County Executive of Uasin Gishu, the Intergovernmental Relations Technical Committee (IGRTC), the Commissioner of Co-operative Development, the Co-operative Bank of Kenya, petitioners and other persons affected by the liquidation of the Sacco. The Committee has finalised the consideration of the Petition and a report of the committee is being processed for tabling in the Senate.

I now want to move to priority areas for the next quarter. Going forward, the Committee intends to prioritise the following business. The first one is consideration of republished Bills that had previously been considered by the Committee and were affected by the High Court ruling in Case No.284 of 2021.

The second one is stakeholder engagements. The Committee shall prioritise stakeholder engagements with a view to identifying specific legislative interventions with regard to key sectors under its mandate on tourism, trade manufacturing, co-operative and trade agreements and partnerships between the Government of Kenya and her regional and global partners.

The third one is county or fact-finding visits. The committee shall undertake county visits to respond to Statements sought from the committee and evaluate the state of the counties within the purview of the committee's mandate.

The fourth one is capacity building and training. In order to enhance the capacity of Members of the committee to effectively undertake oversight of key mandate areas, the committee shall undertake internal legal capacity building and training during this FY 2021/2022.

Mr. Speaker, Sir, there were challenges faced by the Committee. During the reporting period, the Committee identified the urgency to review the Standing Orders of the Senate in order to align the mandate areas with the interrelated sectors. Specifically, the Committee sought the intervention of the House leadership to assign the tourism together with the wildlife function.

This will facilitate the efficient and effective consideration of all statements sought from the Committee relating to tourism and wildlife noting that the two sectors are interdependent and intertwined. Currently, the two mandate areas are within the purview of two different Committees. Thank you. That is our report.

The Speaker (Hon Lusaka): Thank you, Sen. (Dr.) Musuruve. The next one is Chairperson of the Standing Committee on Roads and Transportation. Sen. (Eng.) Hargura, proceed.

ACTIVITIES OF THE COMMITTEE ON ROADS AND
TRANSPORTATION

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Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 51 (1) (b) to make a Statement on the activities of the Standing Committee on Roads and Transportation for the period commencing 1st January to 30th June, 2021. On the Committee meetings, during the period under review, the Committee had a total of 28 sittings.

On the Statements during the period, the following seven Statements were referred to the Committee pursuant to Standing Order No. 48 (1)-

- (1) Statement regarding upgrading of Oloitoktok-Njukini-Taveta Road to bitumen standard by Sen. Mwaruma;
- (2) Statement on the refusal by the Government of Kenya to approve the application by the Emirates Airlines to increase the passage flights from Dubai-Nairobi route by Sen. Mutula Kilonzo Jnr.;
- (3) Statement on the alleged misuse of Kshs142 billion by the Kenya National Highways Authority (KeNHA), Kenya Rural Roads Authority (KeRRA) and the Kenya Urban Roads Authority (KURA) by Sen. Omanga;
- (4) Statement regarding the upgrading of Mshomoroni-Mwakirunge Road to bitumen standard by Sen. Faki;
- (5) Statement on outstanding pending bills owed to the small contractors of roads and other related infrastructure projects by Sen. Linturi;
- (6) Statement on the tendering and awarding process for the construction of Lamu-Ijara-Garissa Road by Sen. Cherargei; and,
- (7) Statement regarding the seeking of Kshs14 billion by the Kenya Airways as a refund for unused tickets following the cancellation of flights occasioned by the advent of the Coronavirus disease (COVID-19) by Sen. Cherargei.

Mr. Speaker, Sir, the Committee also considered a Statement pursuant to Standing Order 47(1) by Sen. Outa regarding demolition of property and evictions in Kisumu County.

On Petitions, the first is on eviction and demolition of Buxton Estate. A Petition by the residents of Buxton Estate with regard to the eviction from and demolition of Buxton Estate in Mombasa was referred to the Committee and the matter is being addressed. The Committee has engaged the petitioners and the matter is ongoing with a scheduled visit to the site and meeting with the County Government of Mombasa and the developer of the development project.

Mr. Speaker, Sir, the second Petition concerns access to title deeds for properties both at Jamii Bora Estate Kisaju, Kajiado County. The Committee is in the process of engaging petitioners and stakeholders with regards to the Petition concerning access to title deeds for properties bought at Jamii Bora Estate, Kisaju, Kajiado County.

On challenges, the Committee considered the Budget Policy Statement for the Financial Year 2021/2022 and observed that the conditional grant on the Roads Maintenance Levy Fund was appropriated as equitable share to the counties. This policy shift has tremendous risk and challenges on maintenance of roads and associated infrastructure since there is no guarantee that the counties will appropriate similar funds as has been previously allocated to them to repair and maintain the road network.

Mr. Speaker, Sir, lastly on recommendations, the Committee proposes to engage the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works on proposed policy intervention to ensure that the road network in the counties is adequately maintained.

Thank you.

(Consultations)

The Speaker (Hon. Lusaka): Next Order.

BILLS

Second Reading

THE COMMUNITY HEALTH SERVICES BILL

(SENATE BILLS NO. 34 OF 2020)

(Sen. (Dr.) Agnes Zani on 6.7.2021)

(Resumption of Debate interrupted on 6.7.2021)

(Bill deferred)

The Speaker (Hon. Lusaka): Next Order.

Second Reading

THE INVESTMENTS PROMOTION (AMENDMENT) BILL

(SENATE BILLS NO. 2 OF 2021)

(Sen. (Dr.) Alice Milgo on 7.7.2021)

(Resumption of debate interrupted on 8.7.2021)

The Speaker: (Hon. Lusaka): This is open for debate. Honorable Senators, we are at Order No. 9. The Investments Promotion (Amendment) Bill Senate Bills No. 2 of 2021. It was resumption of debate. However, I do not see any interest. So, we proceed.

Since there is no interest, the Bill is set for Division. We defer it as we wait for Division.

(Bill deferred)

Next Order.

Second Reading

THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL (SENATE BILLS NO.33 OF 2020)

(Sen. (Dr.) Zani on 8.7.2021)

(Resumption of Debate interrupted on 8.7.2021)

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., proceed.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to support the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No.33 of 2020) by Sen. (Dr.) Zani. I thank the industry of Sen. (Dr.) Zani in preparing these Bills. She challenges all of us to be hardworking irrespective of the problems we have with these Bills. The amendment proposed by Sen. (Dr.) Zani also attempts to comply in Section VII, with the decision of the Judge Mativo in terms of service of processes in Parliament. The previous Section VII was declared unconstitutional in so far as it protected and sought to give us immunity in terms of service and access to process servers in Parliament. Therefore, for those who violate the law and are subject to court process, the process servers will have access to Parliament to serve any necessary processes.

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

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

Madam Deputy Speaker, the second part interests me a lot in that Sen. (Dr.) Zani seeks to get the decisions and resolutions of this House complied with and a report sent back to Parliament. I remember one of us drafted a Petition seeking to get back the Implementation Committee as one of the Committees of Parliament. Its purpose is to follow up on the resolutions of the Senate in so far as the Executive, the Judiciary and other State organs are concerned.

Madam Deputy Speaker, the solution is to get a report through an Act of Parliament as opposed to a Committee. As I speak, even after making determinations on the Solai Dam tragedy, we have never received responses from the respective Government organs. The Committee on County Public Accounts and Investments (CPAIC) sits every day to make resolutions. We never receive responses from respective Government organs in terms of the resolutions we have made. This is the solution.

Some time back after visiting the Senate of Australia, some of us were of the view that we should include in the Parliamentary Privileges Act, contempt of Parliament. This is where a resolution is made to a respective Cabinet Secretary (CS) and he does not respond or seek to implement the resolutions of the Senate.

This is the answer to what Sen. (Dr.) Zani is trying to resolve through this Bill. Article 124 of the Constitution says Parliament has powers as those of a high court, then we should have powers to jail and declare contempt where it has been found. The former President of South Africa, Jacob Zuma, is now serving a jail term for contempt of court. If we act as a court, we must have the power to have contempt. It is through the resolutions of the Senate that we can find CSs and respective Government organs to have violated our resolutions.

We appreciate the work that the Clerk is doing and the reminders he does to CSs and other arms of Government with respect to our resolutions. However, I am afraid they are not effective or powerful enough to find action points. Part of the reason we were supporting having CSs in Parliament was because some of these problems we are having today would be solved if CSs were sitting as elected leaders and some of them sitting in Parliament. We would then question them on the Floor and they would answer to Kenyans.

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The CSs in the current Government are so busy for Parliament that when we call them, they have something more important than to answer to the people who elected us on respective matters that we have asked.

Madam Deputy Speaker, as I support this Amendment, let me reiterate that this is part of the amendment that was done long time ago and suffered the fate of Civil Appeal No.284, Petition No.284 of 2019, that we filed in court. I hope that now that this matter has concurrence with the Speaker of the National Assembly, it will see the light of day when it goes to our sister House.

This amendment, particularly 23b, 23c, 23d and 23e fall squarely under the things that we have been asking for in terms of making sure our resolutions are not just pieces of paper, but can be acted upon by whoever we have issued a recommendation against.

I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. Wambua, proceed.

Sen. Wambua: Thank you, Madam Deputy Speaker. I take this opportunity to, first, congratulate Sen. (Dr.) Zani for coming up with this wonderful amendment to the Parliament Powers and Privileges Act.

Before I get to the subject matter of the Bill, last week, this House took some time to talk about issues of action or inaction in as far as its resolutions and recommendations are concerned to relevant Government officials in the Executive.

This Bill provides a broad answer to that question. The question of whether a House of Parliament in the Republic of Kenya can legislate or make resolutions in vain. For me, this Bill does two important things. One, it makes it mandatory that once a resolution is made by any House of Parliament, that resolution must be directed to a specific officer within seven days. That is not even open ended. Within seven days, a responsible officer must receive a resolution of either the Senate or the National Assembly.

The second thing this Bill does is that it puts an obligation on the officer to do two things. One, to give a status report to the relevant Committee and the House that has made a resolution on implementation of the said resolution. Secondly, it imposes a fine and jail term for breach of the provisions of the Bill. I think if there is a Bill that we need to fast track, then this is that Bill.

There was a lot of heated debate and contributions from Members seeking to have the Implementation Committee returned to the House to follow up on resolutions.

Madam Deputy Speaker, the matter at hand that time was a resolution of this House that was first passed in the last Parliament on the payment of former councilors. The term of the last Parliament elapsed and the 12th Parliament came in. Through Statements and Motions, one of those Statements was brought by me and a Motion was brought by Sen. Kinyua. This House resolved that the former councilors should be paid a one-off honoraria and a monthly stipend. That resolution is lying somewhere in the shelves of Government offices.

It is my hope that once this Bill goes through, certain things like those ones, like the payment for councilors shall be resolved immediately and maybe even backdated to ensure that people get justice. It is not just about councilors alone. It is about almost everything that we do in this House.

We have passed a lot of resolutions. We have made a lot of decisions through Bills, Motions, Statements, Petitions, but the recommendations have just been left to gather dust in the shelves of Government offices.

Sen. Mutula Kilonzo Jnr. has mentioned the issue of Solai Dam where very strict recommendations were made but, today, it is just another story. Nothing has happened. I hope that by passing this Bill, justice will be served to Kenyans and that the people in Government offices, especially the Executive will begin to take the work of Parliament a lot more seriously.

Madam Deputy Speaker, with those few remarks, I support.

Sen. (Eng.) Hargura: Thank you, Madam Deputy Speaker, for giving me this opportunity. I would like to thank Sen. (Dr.) Zani for coming up with important amendments to the Parliamentary Powers and Privileges Act.

For some time, as committees, we have been making recommendations, especially sitting in CPAIC sometimes we even ask Government organizations like the EACC to take up some issues, DCI to do investigations in our reports which we table in this House but it ends there.

I support this amendment because it gives very clear procedures and very clear timelines. Sometimes we make recommendations here but because there is nothing, even mandating the Clerk to communicate with the officers, it might even be lying within the Senate. It might not even have left here.

Now it is very clear that the Clerks of the two Houses have to write to the relevant officer within seven days of that report being adopted by the House. From there the officer who is required to act within the time stipulated in the Standing Orders. We need to look at the Standing Orders. Do they give that stipulation because the amendment talks of “within the time stipulated in the Standing Orders.” Do we have those timelines in the Standing Orders where the public officer is supposed to reply back to the parliamentary committees? We need to check that.

It is very clear that the officer has to give a progress report within that time. It should be a report on what action has been taken and if there is no action, then the reason for the inaction and what challenges they have so that the relevant committee have to understand. In the event that the officer just refuses to obey the law then it also very clearly states that there are consequences to failure to comply; a fine not exceeding Kshs500,000 or a jail term not exceeding six months. It makes it very clear that the officers will be held responsible as individuals when they do not take parliamentary work seriously.

I support and hope that this Bill goes through and becomes an Act so that we can rely on it to enforce most of these decisions which are supposed to be implemented by Government officers.

Thank you, Madam Deputy Speaker.

Sen. Cheruiyot: Thank you, Madam Deputy Speaker, for giving me this chance to make my contribution to this Bill, the Parliamentary Powers and Privileges Act (Amendment) Bill of 2020, a Bill by Sen. (Dr.) Zani.

This is a very progressive Bill for those of us who are lovers of a progressive Parliament and would wish to see Parliament secure its place in our democracy, especially given the place of pride that Kenyans allocated Parliament in the Constitution of Kenya 2010.

If you read through this Bill and it is a very brief Bill which any one can read through and understand what Sen. (Dr.) Zani wants to achieve. I believe all of us should support her in achieving this.

You realize that longevity has its place in terms of growth as a parliamentarian. It is only somebody who has been in this Parliament for the kind of period that Sen. (Dr.) Zani has been who will begin to ask themselves: What is the place of Parliament in terms of the resolutions, Bills of Parliament?

It is not for lack of good laws that Kenya is where it is. Our weakness and Waterloo as a Republic has been found to be in the space of either implementation or follow-through on what has been agreed upon. This is a proper follow-through of trying to ensure that when a House passes a resolution; that when an Bill of Parliament has been secured into an Act and promulgated into one, that then it achieves the purpose for which it was intended to.

As things stand today you can name so many brilliant reports that we have done as a Senate. Unfortunately, once the House adopts, either as has been proposed or even sometimes as might be the case with amendments, that becomes the end of that particular report. It is often quoted yet a parliamentary report, a resolution of this House is actually a constitutional provision. That is what our Constitution expects of us, that immediately a House resolves, then it is considered to be the law of the land.

I do not believe that it was the thoughts of the crafters of our Constitution that that force of law is only in Acts of Parliament; that even in resolutions of reports of committees, even when a Member rises to seek a Statement and the Speaker gives direction and the House agrees with the Speaker, then it has the force of law. Unfortunately, due to the loophole that is now being sealed by our colleague, Sen. (Dr.) Zani, many things have not been resolved as Parliament would have wished.

I can quote many reports that we know, when a particular matter came up in any particular sector. I was struggling when I was reading this particular Bill to think of any sector in this country that currently is faced with various challenges for which Parliament has not spent taxpayers money to either investigate and come up with a report, but where are those reports? What is the implementation status?

It is until you set up an office such as the one which is being proposed in this particular Bill that you will have somebody that you can hold responsible and charge them with that particular responsibility and say it is your duty to ensure, for example, that once we have passed a law, a resolution as a House on a particular matter; once a committee report has indicted a particular officer, within seven days as is being proposed in this particular Bill, that person is informed and they know, this is what Parliament expects them to do.

Therefore, I congratulate my colleague, Sen. (Dr.) Zani, for bringing this very good proposal.

I have made this point in many occasions that I debated in this House.

Madam Deputy Speaker, Parliament is the first organ that the people donated power to. As an institution, it is open to interpretation and debate on how much we have exercised that power. The gathering of a House of Parliament such as what we have this afternoon is a gathering of 50 million Kenyans. However, since you cannot secure enough space for the

50 million of us to fit in one place, you send a representative in the form of a Senator representing a county.

They even gave us the power of saying that each county carries the equivalent of one vote. That is how important the place of Parliament is. That tells you that whenever we sit and deliberate on issues that affect the lives of the people that we represent, it is expected that the other arms of Government and the Republic will stand guided.

This comes at a very interesting time. If you read the newspapers today, you will see that the Chief Justice--- I do not know whether that communication was given. I saw in the newspapers today that the newly sworn in Chief Justice has sent a stinging letter to both Houses of Parliament saying that very soon, judicial officers will not come to Parliament over an invitation. I do not know whether that is true or an exaggeration of the media. I would wish to read that letter because I do not want to rely on newspaper articles.

I, however, believe that the Chief Justice understands and knows the place of Parliament in our country. She knows what is expected each time a public officer is summoned. In fact, I dare say that the public officers who serve in the Judiciary should treat whatever discussions that have arisen out of that letter and understand that culpability is individual. I do not think that it is institutional.

For example, if there is an audit query on you as a public officer and you have been invited before a House of Parliament, I do not foresee a situation where an institution can direct a particular individual not to appear before the House of Parliament. This is because if that Committee moves on to write the report and the House adopts it, to change whatever recommendations they would have made, will not be an easy task.

It is a constitutional doctrine that the three arms of Government are supposed to work in consultation and with good cooperation, the way we always have. I believe that we have invited many members of the Executive. Sometimes you will find that in some occasions they are invited to appear before two committees or even before both Houses at the same time.

It suffices when you send an invite, because it shows goodwill, cooperation, that you respect the place of Parliament in a democracy, and you understand that when Parliament has made a resolution on a particular matter, that is the general position of Kenya on a particular issue.

Madam Deputy Speaker, I, therefore, wish to propose that once we are done with this Bill and it has gone through the normal procedures of Parliament, it quickly becomes part of our laws. It will be good to give a test to the many resolutions that this Senate will pass on account of various public officers, such as the directions that have been given on key national issues which nobody has had the time to follow through.

You understand how as Members of Parliament (MPs), we have to balance between the work that we do here in Parliament and what we have to do in the constituency. So many things end up slipping through despite what we have said. It is my sincere hope that once this Bill becomes law, it will become a thing of the past.

I, therefore, support and congratulate Sen. (Dr.) Zani for thinking this through. I give it my 100 per cent support because it will give the proper place of Parliament in our democracy once it is enforced.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wako.

Sen. Wako: Thank you, Madam Deputy Speaker, for giving me this opportunity to speak on this Amendment. Let me first congratulate Sen. (Dr.) Zani for bringing this Amendment. In a sense, it is a pity that we had to come up with this Amendment, because in any democratic and institutional society, public officers are supposed to act on these issues without being forced.

It should be part of fair administration and constitutionalism for a public officer to act in good faith on the resolutions passed by Parliament. There is really no need to go into the details that they will suffer a penalty for committing an offence. That is why as I congratulate Sen. (Dr.) Zani, I am also sad that we have come to this stage. These are matters which ought not to have come to this stage.

We ought not to have come to a stage where the resolutions of Parliament are ignored to an extent where Parliament has to come up with an Implementation Committee to follow up on the various resolutions of the House and see how far they have been implemented. That is sad, and even with that, nothing happens. It takes a stick, like Sen. (Dr.) Zani has come up with, to say if you do not do this, you are committing an offence and will be liable to either a fine or a penalty of imprisonment.

Madam Deputy Speaker, I do support this. As I support it, let me just hope that there will be some clarification. I take what Sen. Cheruiyot said about resolutions of the House, but not all resolutions of the House are there for implementation. They are recommendations for the Executive to consider whether or not to implement, and if to implement, how to implement them. That distinction has not been made here.

There are some resolutions which are mandatory and must be obeyed. For example, if the Constitution says that a particular officer can only be appointed on approval of the House, and by resolution, the House either approves or does not approve them, that must be obeyed. However, even there, we have seen cases where approval has not been given but persons have nevertheless been appointed. That is a clear case where a resolution must be obeyed, but there could be a resolution that is just a recommendation.

Even though it is just a recommendation, a resolution of the House must be taken seriously because according to the Constitution, we are the voice of the people, who are sovereign. Therefore, if we pass a resolution, it shows that it is a serious matter, which must be seriously considered. In most of the cases, they should be implemented, although there is a narrow window that in an appropriate case, a directive is not implemented.

When we are in the Committee of the Whole Stage, I think part of the response of the public officer is not what steps he has taken to implement the action, but that this is a resolution that the Government cannot implement at the moment. What we require is a response. They just keep quiet and nobody knows what is happening.

We are ignored and yet we are a House representing the people. This is the mischief that Sen. (Dr.) Zani want to stop through this Bill. I support it and I hope with that slight nuance in the Committee you will come up with some amendment. That the response can very well be that at this point in time, the Government is not in a position, but can implement the resolution at another time. That is other than just keeping quiet and the Chairpersons of the Committees chasing up accounting officers and nothing is happening and we just waste time. We are like a House which is rudderless, powerless and toothless.

Madam Deputy Speaker, with those few remarks, I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Wako. Sen. Seneta, proceed.

Sen. Seneta: Thank you, Madam Deputy Speaker, for also giving me a chance to add my voice on this important Bill.

From the onset, I congratulate Sen. (Dr.) Zani for this timely Bill. Parliament through Committees do quite a lot of work. Parliament investigates and gets good reports. They also write very nice resolutions, which at the end of the day, are not implemented. This Bill if it goes through will force independent institutions, parastatals and commissions to write reports and report back the implementation of resolutions done through parliamentary committees.

Quite a lot of reports and Petitions are concluded in the House, but a number of them are not implemented. I remember one time when I was serving in the Committee on Energy, we had a report and some resolutions that we wrote about oil spillage in Kiboko, Makueni County. We did very nice resolutions. Up to today, quite a number of those resolutions have not been implemented.

Madam Deputy Speaker, therefore, this amendment Bill will help Parliament to oversight the work that they have done. They will follow up what has been done to the community, different persons and organizations that bring their petitions here. It will also save taxpayers' money that we use in Parliament make resolutions which are not implemented. If this Bill sails through, it will provide a good measure to help Parliament in terms of the implementation.

This Bill also seeks to impose penalty for failure to report to Parliament on the resolutions of different reports. This will help us call to accountability different Government institutions and commissions. It will also be another avenue to help us even take into account what has been done, what has not been done and what needs to be done so that we address those gaps within the implementation of parliamentary resolutions.

Madam Deputy Speaker, I support this Bill. I also want to pray that it will be passed in the National Assembly so that it can help Parliament in its oversight mandate.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Seneta. Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Madam Deputy Speaker, thank you for giving me the chance to support this Bill. I congratulate Sen. (Dr.) Zani for coming up with the Bill that ensures whatever we do here is not in vain.

The people of this country have the right constitutionally when it comes to Article 1. We see that the sovereign power belongs to the people of this country. They can exercise their democratic right either individually or through their representatives. It is in Parliament that they exercise this democratic right. They have elected their Members of Parliament (MPs) who they have faith in and believe will represent them effectively.

When it comes to the Standing Orders, they provide the rules under which we can conduct our business in an orderly manner and so on. However, there is some little bit of *lacuna* because it does not overtly tell what happens to various State organs when they are not able to implement what the same Parliament has come up with. That is the resolutions of Parliament concerning the many issues that come to the Floor of this House.

Madam Deputy Speaker, many people come up with Statements and Petitions here and we deliberate on them. Many times we see Chairpersons giving reports on what we

have agreed on. However, when it comes to implementing the resolutions of Parliament, it becomes an issue. That is the *lacuna* that this Bill is addressing.

I thank Sen. (Dr.) Zani for thinking through this because our work should not be in vain. If a CS of any Ministry is given reports of what we have come up with, he should ensure recommendations are implemented. We are not implementers, but legislators. We make laws and we are able to deliberate on issues that should find favour in the various Government offices, especially the Executive.

Madam Deputy Speaker, when it comes to giving responses, there should be an orderly way and a structure that ensures that the CSs or Ministries are working on the reports from Parliament. People have faith in Parliament to resolve their issues.

I thank Sen. (Dr.) Zani because when this Bill eventually becomes law, it will ensure that whatever Parliament deliberates on, it will be followed by action. Failure to which, State officers will be answerable. According to this Bill, an officer is supposed to be assigned to deal with particular issues. If an officer is assigned and he gets a pay end month, he needs to do a good job. There is need for even the officers who are supposed to handle these issues to be committed to their work.

Madam Deputy Speaker, sometimes some responses that come to the Floor of this House are like desk responses. It is like someone sat in his office and decided I will communicate this and that without giving it much attention as deserves. Sometimes people meet over a cup of coffee and decide which information to give a way of response. When it comes to issues of Parliament, it is serious business for the people of this Republic. They have elected us and they know will defend them and support them effectively because power is in their hands.

Madam Deputy Speaker, I support and thank Sen. (Dr.) Zani for coming up with this relevant Bill. We need to ensure this Bill does not lapse. If it does, then whatever work we do as a Parliament, will be in vain. However, our work should not be in vain.

Bills and other matters that we address as a Parliament, should not be delegated. The office that has been assigned the implementation of resolutions and recommendations of Parliament should seriously ensure their response is satisfactory.

Article 153(b) of the Constitution says CSs are to provide Parliament with full and regular reports concerning matters under their control. How many times do they provide those reports to Parliament? For example, has the CS for the Ministry of Agriculture, Livestock and Fisheries ever given a report to Parliament on what they have been doing in the Ministry?

Madam Deputy Speaker, we have many questions, petitions and statements from Kenyans. This means issues of people are not well addressed by CSs. If they would provide regular reports to Parliament, then the number of petitions and statements would be minimal.

I support this Bill and hope it will see the light of day and becomes an Act of Parliament.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. (Dr.) Musuruve.

Sen. (Eng.) Mohamud: Thank you, Madam Deputy Speaker. I also join my colleagues in congratulating Sen. (Dr.) Zani for introducing this Bill.

This is a very timely Bill because it addresses the issue of action taken on parliamentary resolutions by the Executive. Parliament should not act in vain. The

resolutions and recommendations made from Parliament are addressed to the Executive who Parliament overlooks. If those resolutions and recommendations are not acted upon, it means there is a serious gap.

This Bill tries to bridge that gap to ensure the resolutions and recommendations of Parliament are acted upon. Resolutions and recommendations are mandatory and the Executive should see how to include them in their policies.

I totally agree with this Bill. Introduction of Part 6A is very timely. The amendment of Section 7 of the principal Act to ensure that there is no conflict between the law and whatever the ruling of the High Court.

Having been in Parliament for the third time now, I think a lot of work is being done by Parliament through Committees. Parliament makes resolutions and recommendations, but implementation is the problem. When I was in the House Business Committee (HBC) of this Senate, there was talk of reintroducing the Committee on Implementation.

I know there was such a Committee in the National Assembly at that time, but Executive did not take seriously the work of Parliament. Therefore, implementation of recommendations by Parliament was not taken seriously. When we put it in law, at least, we are taking it a step further so that the resolutions of Parliament are implemented. That way, Parliament will not be acting in vain.

We should pass this Bill and give effect to whatever we do in Parliament. The Executive is overlooked by Parliament. There is no reason why resolutions passed by Parliament are not respected, adhered to and implemented to the letter by the Executive. I think rather than having the Committee on Implementation, this Bill will solve that problem of implementation.

With those few remarks, I beg to support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. (Eng.) Mohamud. Sen. Nyamunga, proceed.

Sen. Nyamunga: Thank you, Madam Deputy Speaker, for this opportunity. I support this amendment to the Parliamentary Powers and Privileges Act by Sen. (Dr.) Zani.

I would like to join my colleagues in the issues they have raised. Parliament is a very important House. We take a lot of time to do research. There is a lot of communication between this House and members of the public. This means any statement, petition, Bill or Motion that we bring to this House, are done for the sake of the people of Kenya. However, we cannot just be talk House, where we talk and go away. We pass very good Bills and nothing happens to them.

I support this amendment that allows Parliament to have a follow up to all the Bills and recommendations made in this House. That now makes us think about the Committee on Implementation that has been touted for long in this House. We may not see this Bill come to a successful end because we are almost at the tail end of the current Parliament. However, that is one thing we should think about seriously and even start the process of having an Implementation Committee.

Madam Deputy Speaker, we do a lot of work and debate very well in this House. Whatever we say in this House is meant for the good of the nation and the people of Kenya. There is no point for me to do these things for the sake of it. There is no point doing a lot

of work in this House, thinking I am helping my people in Kisumu County and yet they do not benefit.

If somebody brings a petition to this House and we just talk, debate and leave it, it does not help anybody. If this petition goes to the Executive or Government department that is supposed to deal with it and we have a mechanism to follow up and take it to the end, then that is when we will have done our work.

I support this timely amendment by Sen. (Dr.) Zani. There is a lot of work going on in this House and the National Assembly as well. It is good to always bring our work to a good conclusion for the benefit of the people of Kenya.

I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Nyamunga.

Sen. Sakaja, proceed.

Sen. Sakaja: Thank you, Madam Deputy Speaker. Whenever you see Sen. (Dr.) Zani has proposed something, you can be sure it is well thought out and necessary. She has distinguished herself for the last two terms in being very thoughtful of the processes of Parliament and, indeed, legislation that is meaningful.

There is this institutional tension where everybody is now trying to claim their space. The Judiciary says that oversight has been paused until some agreements are reached. We are in a Parliamentary democracy and it is Parliament which should, in essence, exert itself better. It needs to exert itself in a way that the power or the exercise of sovereignty in Article 1 of the Constitution, is supreme. In fact, the only two ways Kenyans exercise their sovereignty is directly or through their elected representatives. The Judiciary has no elected representatives. Even their appointment has to do with Parliament in one way or another.

Madam Deputy Speaker, all Kenyans cannot meet together to make decisions or resolutions every day. That is the work we do in this House. We need to have that perspective as Members of Parliament (MPs), that what we do is on behalf of the sovereign of this country, the people of Kenya.

It must be clear that the resolutions of the people are not suggestions, just made to be taken lightly that the Government can consider if it feels like or does not consider. Resolutions of Parliament are binding on State officers and public officers to which those resolutions are made.

Our problem - and I am glad that I have seen some of the provisions in this Bill by Sen. (Dr.) Zani - is really the attitude that certain departments in the Executive have towards Parliament. You will find in the Cabinet there are certain Ministries or Cabinet Secretaries that are very receptive and respectful to Parliament and its proceedings.

In the Committees that I have been in and the Committee I chair, I will give you an example of the CS of Labour who is extremely responsive. I must single him out because of all the issues we had to deal with, he goes beyond the normal call to respond. Others are CS Amina, the CAS of the National Treasury Mr. Gaichuhie who has been dealing with this pension issue. As much as we must call out those who are not doing the right thing, we must appreciate also those who are doing their job.

CAS Gaichuhie in the Treasury and CAS Obure have been very useful. In others, we have seen that there is almost contempt, spite and disdain to elected leaders. They forget

that it is in the process of getting those elected leaders that they get into office because they are not from Parliament.

This is why the calls that have been there previously for Ministers to come back from Parliament are very popular, not just among parliamentarians, but among the people. Members of Parliament and elected leaders go through these issues, they understand, they interact with the people and they interact with Members who are representing other areas.

If Sen. Mutula Kilonzo Jnr. was a Minister and today I had an issue in Nairobi, I can ask him even after this sitting, why do we not solve this issue? However, before we send a letter that needs seven days for them to come and respond and they write a letter postponing and then when they come here they take us round in circles, we end up shortchanging and disenfranchising the voter who wants decisions made.

Madam Deputy Speaker, this House has made resolutions. Right now, my Committee is following up the second resolution on the same issue on former councilors. The last Senate resolved and they are saying it is a task force. I think part of what Sen. (Dr.) Zani should have put in was not just that they respond and report. They can give you Government reports. Otherwise, they will take you around in circles that a task force was formed to look into this and, therefore, we shall report or do this when funds allow.

They have reported; they have not gone against the law. However, they have done nothing. So, we need to tighten that that these responses and reports must be effected and they must be specific.

We passed a resolution in this House about evictions when there was that incident in Kariobangi. I remember at that time they were going to do evictions in Lang'ata. I am glad that one was halted and I want to thank the Government for that. However, today we are hearing that there are more planned evictions in Eastlands during the pandemic and yet we resolved that you cannot just execute demolitions and evictions during a pandemic. That just shows the disdain and lack of respect not towards us, but to the people.

Whenever I go to an office I always say it is not me who is coming, but 4.3 million Nairobians who I was elected to represent. So, it is never personal.

We passed resolutions on Solai Dam after more than 42 children died. We went there and we have huge reports. In fact, Sen. Mutula Kilonzo Jnr. is about to become a librarian because he has huge reports in his office, but action is not taken.

Sometimes even when we speak about issues, we understand the frustration of the public because they say all we ever do is talk. It is true, our work is to talk that is why it is Parliament; from the root word of parlance. However, that talk must translate into action by the Executive.

I wish we would put in place an enforcement mechanism. Yes, we have put a fine of Kshs500,000 or imprisonment, but we should be able to execute it as Parliament. When you tell the police to go and arrest the CS, of Interior Coordination, of course, they will not do so. Even if the courts call them out for contempt, they cannot do it. So, the CSs sit pretty. We need to put in place an enforcement mechanism.

I wish it was our Serjeant-at-Arms who were being told to enforce what we call "contempt of Parliament". Contempt of Parliament must be in the Penal Code and it must be punishable because it is contempt of the people. We need to make sure that even as we do our oversight, we do it in a respectful way.

Sometimes I have been sympathetic, when you look at some of the inquiries that happen and you see people coming to play out to the gallery. Once the cameras for the media come in, you will see Members of Parliament or Senate wanting to shoot tough questions in order to shine. This also puts us in bad state. Even as we insist on oversight, let us be professional as parliamentarians. Let us stick to issues. Let us not personalize things when we are dealing with the Executive. I think that respect then will be reciprocated.

When you say it is an issue that we are dealing with, this is the resolution that was passed, where are we? However, when you come and use insulting words, sometimes I am embarrassed even as a Senator.

I am very happy that in the committees I have chaired and the committee I chair people like Sen. (Dr.) Milgo and Sen. Kwamboka are extremely respectful. You will never hear people shouting at guests or witnesses or trying to gain points. *Bonga* points can be found over the weekend in rallies, but not during committee proceedings. Senators, as we ask for respect from the Executive, let us also be respectful and stick to the issues.

I reported last week on that task force and I am glad that CS Chelugui called. We have agreed to bring a resolution to this House next week on the issue of former councilors and the honoraria. I have asked questions here with respect to the City of Nairobi on which I have not gotten responses. I hope that this will be implemented. Sen. (Dr.) Zani, I hope during the Committee Stage, you can tolerate some amendments to make it enforceable.

Yesterday I was talking on television about Access to Government Procurement Opportunities (AGPO). In 2015, I brought amendments on the AGPO where our young people, women and persons with disabilities should be getting 30 per cent of contracts. If there is one law that has been ignored, that has been seen as a mere suggestion, it is the Public Procurement and Asset Disposal Act which provides for 30 per cent.

All these issues you are hearing today people bringing different economic philosophies, others saying we deal with the rural areas first, would not be an issue if that Act was followed. You can imagine if county governments and the national Government put aside 30 per cent of the value of procurement in the hands of women and men and persons with disability, what we would achieve?

Section 157 of that law is very clear. For instance, in Nairobi as a county government when I become governor, God willing, I would be able to give out of a budget of Kshs40 billion--- Sen. Kwamboka will tell you Kshs100 million in every ward, there will be no crime. The crime rate will go down. You will sort out those businesses at the lowest level instead of saying that you want to come and give us a fund where we just give money to hustlers. That is not sustainable.

Not all young people want to put up a car wash business. Others want to do business with the Ministry of Defence. They want to start industries and companies. They want to manufacture those wheelbarrows and other equipment.

I wish Sen. Shiyonga or somebody from the Committee on Equalization was here. Section 157 of the Public Procurement and Asset Disposal Act says that every procuring entity at the national and county level must be given a list of which contracts they have given to youth, women and persons with disability to the Procurement Regulatory Authority which reports to Parliament through the Committee of Equalization.

I had Sen. Shiyonga and her Committee talking about their activities. However, I think they should be tabling here a list saying: Makueni County is not giving contracts to young people. The Ministry of Labour or the Ministry of Defence is not giving young people and women opportunities. However, when we look those as just mere suggestions, we will try and amend things. We will come here with new rules; we will try and change the Constitution.

There will be BBI Two and Three in the next Government because our problem is not just the laws we have, but our attitude when it comes to implementing. The problem is not the Constitution; it is constitutionalism. The problem is the rule of law; how will we look at what we have. We do not need anything new.

I will urge Members to support this Bill by Sen. (Dr.) Zani. I also ask the other arms of Government that in a constitutional democracy like the one that we have, there is no arm of Government that is above the other. No arm of Government looks up for affirmation, but we look sideways to move together. The Executive needs the Judiciary. The Judiciary needs Parliament.

You remember when we used to have fights with the our neighbours in the National Assembly, we used to say it is very defeatist to keep saying which House is the upper, lower, or bigger House. It is like a bird that flies and asks which wing is more important; the left wing or the right wing. You need both wings for you to fly. We need each other.

Madam Deputy Speaker, we must all remember that whether you are a judge in the Judiciary, a CS, Principal Secretary (PS), Member of Parliament (MP), or Member of a County Assembly (MCA), we are serving the same people. When we have concerted effort, we would not even need the law that Sen. (Dr.) Zani has brought. However, because of bad manners; when some people get a seat, it goes into their head, and they think that “*wao ndio wa kusema.*” They are the ones to say and no one will tell them.

I tell my friends that the term of this Government ends in the next 300 and something days. We will go back to the people and have to explain what we have and have not been able to do. Let us have that attitude when it comes to respecting resolutions that have come from the people of Kenya through the elected representatives.

I support this Bill.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you very much, Sen. Sakaja. That brings us to the end of the debate. I would now like to call on the Mover, Sen. (Dr.) Zani, to reply.

Sen. (Dr.) Zani: Thank you, Madam Deputy Speaker. I beg to reply. Let me start by quoting the words of Sen. Sakaja. Laws are not merely suggestions. These are the sentiments from the Senators and legislators worldwide. When laws are made, it is a long process that entails a lot of work, cooperation and research. These laws and the positions we have are on behalf of Kenyans. We are representatives of Kenyans, and those suggestions have come from them.

The legislative proposals that are meant to become Acts are meant to help certain facets that have been clearly indicated. As a House, for the longest time, we had the issue of Money Bills. After the ruling, we now have the issue of coming up with laws. We are coming to the end of our term. We are left with about a year. We need to feel a sense of satisfaction and achievement of moving the wheel to the last stage.

Madam Deputy Speaker, this Bill is very clear. One of the things that is clearly stipulated in the intention of the Bill is to provide a structured mechanism through which Parliament is able to receive reports from public officers. Sen. Wako brought a very important aspect that some recommendations might not necessarily be responded to immediately.

This is covered in Clause 3 where we say-

“A report shall contain information on-

- (a) The action taken to give effect to the resolution or recommendation of a report, or where there is no action---”

We are looking at both sides of the coin. We do not want to get to a point where we are just getting no action because that will set a basis for putting more questions. Where there is no action taken on a recommendation, the reason for that specific inaction must be given.

This Bill creates a mechanism that from the time a Motion, resolution or legal proposal has been agreed to--- As Sen. Sakaja alluded, by the time we are done and voted, we are saying that it has moved from beyond a proposal. It is not yet a legislation because it has to be assented to as an Act, but it is a good feeling that this is the direction we need to take.

When we get to that point, we really want to feel that as Senators, we have been able to do this. The Senators who have spoken to this are, Sen. Mutula Kilonzo Jnr., our ‘new librarian’ - that is what Sen. Sakaja said, that he is the one keeping all these records for posterity - Sen. Wambua, Sen. (Eng.) Hargura, Sen. Cheruiyot, and Sen. Wako.

As we go into the Committee of the Whole Stage, we will look at that and how to word it in such a way that the proposal and the way forward is clear. There is also Sen. Seneta, Sen. (Dr.) Musuruve, Sen. Mahamud, Sen. Nyamunga and Sen. Sakaja who said very boldly that our work should not be in vain.

We are looking at a system for greater coordination that will allow us to address the issues that have been raised. We are looking for a way of having an input and output process. I think that this is going to be very important moving forward. Many Senators have already said that we did not need to get at this point of legislating. The Constitution allows for enactment and processing of the same laws.

Madam Deputy Speaker, we will remember that many of the laws that we have brought to this House are laws entrenched in devolution. Once those laws are entrenched, they will enable us implement the Constitution as envisaged because we had the laws before the 2010 Constitution, and now the enactment of devolution.

When we ended the Session on Thursday, Sen. (Dr.) Milgo’s Investment Promotion (Amendment) Bill was on the Floor of the House. It was on entrenching investment proposals at the county level. This is, therefore, very key, and it is a way of helping counties to get to where we want them to get.

You will remember that many people in Kenya voted for the Constitution in 2010 because of devolution. They looked at devolution as a possibility of expanding the social, economic and political space, which is key to make sure that administration is easier and better. This is what we will need to do.

From what the Senators have said, we need to try to solve the problem of following through. We want to go through the process of input and output. We want to look at all

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these issues and the implementation status. Sometimes it is true that once you implement something, you might find one or two things that do not flow as expected. You can come back and make the several necessary amendments to allow for that follow up.

The clerks are also given the responsibility to convey to the relevant structures the specific issues that have been highlighted within seven days, and to give a report at the several points.

Madam Deputy Speaker, I do not want to go on about this because it is a very straightforward Amendment. We just want to get a report. We can get it as a singular or consolidated report. We can even make sure that an extension of time is given. Sen. Sakaja has spoken, and perhaps the other chairs have experienced this.

I said last time that Committees have gone beyond legislating and waiting for the answers to seek those answers by engaging and making telephone calls repeatedly. I think that is an extra responsibility given to legislators that had not been envisaged as it is happening.

This law will enable us to get beyond that and give us a situation where we will be able to enact from A-Z and make the resolutions, dreams, possibilities and actions that are required for the people to come true.

Madam Deputy Speaker, with that, I beg to reply and request that according to Standing Order No.61 (3), the putting of the question and voting be taken at an appropriate time.

The Deputy Speaker (Sen. (Prof.) Kamar): I would like to defer the putting of the question to a later time as requested for the convenience of the House.

(Putting of the Question deferred)

Next Order.

Second Reading

THE NATIONAL FLAG, EMBLEMS AND NAMES
(AMENDMENT) BILL (SENATE BILLS NO. 36 OF 2020)

(Sen. (Dr.) Zani on 8.7.2021)

(Resumption of debate interrupted on 8.7.2021)

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senators. This is a resumption of debate that was interrupted on Thursday 8th July. The Mover had finished and it had been seconded. Sen. Mutula Kilonzo Jnr., will make the first contribution.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Deputy Speaker. I will not get tired of poring accolades on Sen. (Dr.) Zani for her hard work in terms of these Bills. We are proud of her even if we have to sound like broken telephones every other time we repeat this. There is value in having women leaders like Sen. (Dr.) Zani.

I rise to support the National Flags, Emblems and Names (Amendment) Bill 2020. I must declare my interest on this matter. I have a lot of time for the National Flags,

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Emblems and Names Bill. Should I wait, because I do not know whether to say Madam or Mister. There is nobody on the seat actually. Now it is Mr. Temporary Speaker, Sir.

(The Deputy Speaker (Sen. (Prof.) Kamar) left the Chair)

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

Mr. Temporary Speaker, Sir, I have a lot of time for the flag. Allow me to say this on the onset. Citizen Television recently did a coverage on what would be artefacts or memorable symbols, or historical buildings. They started with a building that most of us do not know that is ideally what a zero mile is. It means that the compass of Kenya, if you go there it is called a zero mile. It is a building next to Nyayo House.

If you have passed by there today, you will just find people walking around and huge overgrown trees. Nobody notices that there is a beautiful building done in 1918 that is actually the centre of Kenya. The zero mile of Kenya is actually somewhere near Uhuru Highway. I hope in the construction of the road they will protect this building.

Mr. Temporary Speaker, Sir, there is a building called Kipande House that is run by Kenya Commercial Bank. In my view, this building should not be occupied by a bank. This is a building which tourist should come and visit similar to that building where the former President Murumbi and his wife donated their gowns they used to wear.

You will find them there. That is the same to the Kenya National Archives near Tom Mboya Street. If you went there today, you will find somebody selling groundnuts, miraa or something. That building is hardly recognized. It is the same thing when it comes to the national anthem

Mr. Temporary Speaker, Sir, recently and I do not know how far this went through Safaricom, somebody attempted to translate the national anthem into various mother tongues. By the way, it offended me. I believe the national anthem in the words that it was drafted originally both in English and Kiswahili must remain.

I do not know what language you speak, but when this national anthem is translated to your mother tongue, it ends up having possibly more syllables and longer. It is not the same and it does not sound the same. It does not make sense. That is not what we want to teach our young people. There is value in having a national anthem in the languages that are recognized nationally. I still wonder who came up with that.

These amendments speak to those things; that we must protect our national anthem. In protecting this national anthem, you must copyright it so that the person who attempted to do that can be punished. That is not what the concept was when it was originally crafted and drafted.

I have argued this before and even the symbols. There was a Petition by a gentleman. I cannot remember his name now. This gentleman wanted the cockerel in the Coat of Arms to be removed. According to them, that cockerel is a symbol of Kenya African National Union (KANU). Therefore, in his mind, it represents KANU in our national symbols. However, he cannot be correct. A cockerel cannot be the symbol of KANU even if the symbol of KANU is a cockerel. These symbols are important to our nation.

Mr. Temporary Speaker, Sir, when we were growing up and I am sure you will recall, we used to recite the loyalty pledge. Come multiparty politics, the "I pledge my loyalty to the President" was then "I pledge my loyalty to Moi" and it was scrapped.

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However, it is a loyalty pledge. I think these are some of the civics lessons that our children are missing. It is the value of this flag.

I have proposed and I say this because I did some research that this flag must be flown by every Kenyan. It cannot be a status symbol for CSs to break traffic laws on Uhuru Highway because they woke up late. Since they have a flag, they can drive on the wrong side. It cannot be a status symbol. It must be used by every Kenyan for our pride. When you watch at the end of the marathon when we are number one, two and three, and the flag of Kenya is going up and the reciting of our national anthem, you get some sense of pride. These symbols including our flags and emblems have been abused.

Mr. Temporary Speaker, Sir, I proposed that Kenyans must be allowed to fly flags like they do in the United States. If you go to the US and you go to South Carolina, it is beautiful. The American flag is in every home and the pride. I have often argued because we seem as a country not to be able to agree on Presidency, that the Presidency is not a symbol of national unity as far as I am concerned. Now there are people who view the President as ours. They view the President of the opposition.

He is not common to all of us like it was envisioned in this Constitution. However, there is one thing that does not distinguish where you came from, your tribe, the person you voted for, the person who lost election, the person who won the election and the person who is in State House. It is this flag. This is a symbol of our unity and our national anthem.

Mr. Temporary Speaker, Sir, I was digging because that was my proposal that either Jamhuri Day or when we are happy and somebody has won something, I just go to my office and raise a flag. In November 1963 and to be precise on 25th November, 1963, the late Tom Mboya was Minister for Justice as young as he was at the time, moved an amendment to ban the flying of flags by every Kenyan. There was a reason at the time. The HANSARD records that the colonialists, those Europeans who we threw out of Kenya were using the flag in the toilet. It was all over the place and it was being abused. At that time, it was in the process of being approved as the flag of the nation.

However, is that the position today? It is not. So, the mischief of banning the use of our flag in my view and I can say so, again and again, we have done away with it and the mischief no longer exists. These flags and symbols are important for our nation. These small little things and bands that we wear. Every time I travel outside the country, people admire them and I have to give them out. Somebody says; what is this? Is this the flag of Kenya? Could I, please, have it? I give it with pride.

Mr. Temporary Speaker, Sir, this symbol is the symbol of our nation. That is the reason I support this because it is protecting the national anthem. When I was studying abroad and I was on my way back, the colour of Kenya Airways used to settle our minds. When you got in, they were either playing an African song or the national anthem.

By the time you got into the plane on your way to Nairobi City, you would feel like you are already in Kenya. It was a beautiful thing.

Mr. Temporary Speaker, Sir, I think we should play and protect our national anthem a little more often. I want Sen. (Dr.) Zani if you go to my office here, you will find a framed Kiswahili version of the National Anthem. In my office on Ngong' Road, I have framed both the English and Kiswahili versions. They are framed and hanging on the wall. As you

walk in, you see the National Anthem of Kenya. That is the pride I have in the symbols of this country.

It is an emotive issue and we must continue speaking about it. In divided country like this one, going into a divisive election and the sort of things that we say in public platforms, you want to look around and find something that will remind us whether we come from Samburu, Kwale, Machakos, Kisii and so on, we are all Kenyans.

Allow me to congratulate Sen. (Dr.) Zani for this very noble cause of making sure this is copyrighted. Can you imagine somebody patented the words 'hakuna matata'? I was in shock. Since these young children were speaking about Pumbaa and Simba in the Lion King and saying 'hakuna matata.' Somebody patented those Swahili words. Nobody in this country has ever thought that we can patent anything that is Kenyan. They never requested us.

Japan and China are making and have patented *kiondos* and yet they are originally ours. The idea of patenting, proposed by Sen. (Dr.) Zani---

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Mutula Kilonzo Jnr., do you want to be informed?

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. Yes, I want to be informed.

Sen. Pareno: Mr. Temporary Speaker, Sir, the other day we had some training in Dubai and I think you were part of that delegation. In every taxi we took, they would ask us where we came from and we would say Kenya. They would then say 'hakuna matata.' You can imagine the words "hakuna matata" is synonymous with Kenya. However, we have not even taken a step to ensure that it is patented and identified as Kenyan. That is how "hakuna matata" has spread in the world.

Sen. Mutula Kilonzo Jnr.: Thank you. That is exactly what I was saying. In fact, for somebody to go to Disney World and patent "hakuna matata" is a mockery. It makes me feel very bad about some of the things we do. Some ingenious person will patent something else. They will just walk around and find something else that is typically Kenyan and patent it because we do not think we should patent.

That means by the time a person out there even does a car with the Kenyan flag, they will have to consult and pay royalties. That is the idea of patenting. The minute you wear a symbol of a country like the one you are wearing, you pay for it. It is because other countries are paying money for those lapel pins. It is part of commerce. So, if somebody produces a cup or any gadget that has a Kenyan flag, they pay for it.

The other day when we traveled to Dubai, unbelievably, the United Arab Emirates (UAE) Government last year, put our flag on the tallest building in the world on Jamhuri Day. The tallest building in the world had our flag for five minutes. That is how important this flag is and that is how important we should treat it. If a person out there can recognize this flag, we should recognize it. Give it to children and make sure they fly it. I went to a school and found a tattered flag, I bought one for them. I thought it was a crime. How can a school have a tattered flag and yet they are sold here?

I still think and have suggested - I do not know why this has not been implemented - that the flags that we see out here on our corridors, should be in our offices. The flag of

Kenya and that of Makueni County should be in and outside my office like they do it in the United States of America (USA).

We should treat this very important garment that carries the spirit of this nation with a little more respect and insist that it must be carried with decorum. That is why I say you cannot use a flag to violate the law. That is abuse. You cannot put a flag on your car and drive on the wrong side of traffic. That is wrong. It is abuse of a national symbol.

Mr. Temporary Speaker, Sir, as I support this framework, I hope this will see the light of day. I also hope that my proposal on Kenyans flying flags in their homes during national and selected days will see the light of day because it will create hope.

Finally, even the fight against terrorism requires us as Kenyans to be patriotic. Somebody was teaching a patriotic class and they told me that they were trying to teach patriotism. Sen. (Dr.) Zani is a teacher. Explain to me how do you teach patriotism as a lesson? Where do you start and what do you say? That you shall love your country? Why? We must, first of all, teach our children and ourselves to love our country, love and protect our symbols and things that matter to us.

In the middle of any crisis, everybody should remember that when you allow or harbour a terrorist in the country, you are harming another Kenyan. That is not called patriotism. When you take money so that a terrorist can get into the country, that is called negated patriotism. That is how you teach, but you begin with small, little and not big things. Things that people ignore and appear like they do not matter but do.

When people watch football out there, you will see their flags on their faces. I watched a match recently and people nearly removed their clothes just to show how proud they are of their country. It is because the only thing that reminds them that they are either for Italy or England, is their flag. That is why this is important.

I hope one day, history will record the work of Sen. (Dr.) Zani in trying to improve our work. Some of the work we do here makes me very tired. We work so hard and speak well because you give us a lot of time only for it to end up nowhere. How can some of these laws be implemented? In the middle of hopelessness, I must speak of hope because that is the only way.

I support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Omogeni, proceed.

Sen. Omogeni: Thank you, Mr. Temporary Speaker, for giving me this opportunity to support this Bill that has been sponsored by Sen. (Dr.) Zani.

I do not want Kenyans to think that any time I speak I only want to give many praises to Sen. (Dr.) Zani, but it is because of the good work that she is doing in this House. Who would have thought that we need to propose an amendment to this Act to protect our national anthem? People would be thinking about other things and forgetting about such a very critical aspect that has been brought to the attention of the House.

I think Sen. (Dr.) Zani has restored our faith in education. It is not for nothing that she is called Doctor. If there is anybody who doubts that she went to school properly, they should look through the HANSARD reports of this House to know the quality of the person that we have in Sen. (Dr.) Zani.

That is why some of us who belong to this Party called ODM; we respect it so much; look at the quality of the nominees that we have brought to this House. Many of the Bills that have been proposed by Sen. (Dr.) Zani are important. They unify all of us. When

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we make contributions, often times, we want to acknowledge the good work that is being done by Sen. (Dr.) Zani. We compliment you Senator and we hope that you will continue doing this good work.

Going back to the Bill that is before this House, for those of us who are practitioners, any time you place a limit on a legislation, you will find that some people can be very mischievous. A good example are people who said that our leases should have a time limit of 99 years.

Exactly about 10 years ago when these leases were expiring, there was chaos all over because some people took advantage of the ignorance of people who had inherited land and did not know the exact time when those leases were expiring. People lost property. So, a mischievous person can do something that this country can feel very embarrassed about if they stepped in at the expiry of 50 years and did something that would make us lose this national anthem that has been with us for many years.

I was walking down memory lane. Incidentally, the person who assisted in composing this national anthem is somebody who had also gone to school properly, Prof. Washington Omondi. He was among the four Kenyans who helped in composing our national anthem. He was helped by other Kenyans; there was George, Peter and one White person called Graham.

Sen. (Dr.) Zani, so you can see that what you are doing was started by scholars. You are just building on what other great scholars did. Anybody who has gone through school we are taught to sing our national anthem right from Class One. When you go to Class One in our schools, you sing the national anthem at least once every week. We used to sing it on Mondays. It is a unifying factor. When you say: "God bless our land and nation. Let us dwell in unity" it is something that should unify all of us and make us feel that we are proud, patriotic Kenyans. So, it is something that we need to protect.

For the many years that Kenya has been Independent, we have never made any changes to our national anthem. I think if we did a competition in Africa, we would find that the people who composed ours, did a fantastic job. It is one of the best.

I have watched people even when we are doing international competitions, when their national anthem is being played, I think Kenya has one of the best lyrics. When you listen to it, you can see that even the people in the stadium are enjoying.

What Sen. (Dr.) Zani is proposing is a good thing. As Sen. Mutula Kilonzo Jnr. has said, we should echo what happens in other countries. If you travel to countries like Australia or even the USA, you will find that people have put flags outside their homes as a sense of pride that you belong to that country; that you are a citizen and a national of that country. That is what should happen.

If you watch international matches, when maybe England is playing against Spain, you will see people come to the stadium carrying the flags of their countries. You will also see vehicles as they come to the stadium, they have the flags of their country.

Our flag is something that should make all of us to be proud, to have a sense of pride that we are Kenyans. It should be accessible to all of us. That is why in the last Senate I really did not agree with the Bill that was passed by the previous Parliament which denied our governors the right to fly flags.

If you read Article 6 of our Constitution, it says that we have two levels of government. We have the national Government and the county governments. So, if you

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can fly the national flag at the national Government why are we denying this privilege to the people who are heading county governments? It is a law that I did not agree with.

It is not that if you fly the national flag it should make you to feel that you are more important than other Kenyans, but it is that identity that it gives you as a Kenyan that you are there to serve Kenyans. Sen. Mutula Kilonzo Jnr. has said that the fact that you fly our national, the fact that it is pinned to your car does not make you to be more Kenyan than others. It should not make you have a sense of self-importance. It should just make you have a sense of pride in your country; that you are proud to be Kenyan and that you are serving your country in a patriotic way. That is how it should be.

In this country at times one feels that if you are flying the national flag and you are a CS, then you are a very extraordinary Kenyan. You are just the first among equals.

If you look in this House, Sen. Poghio here is a former Cabinet Secretary. When I was serving as a member of the Media Council of Kenya, we used to pay courtesy calls to him as the Minister of Information. He is now here serving this country as a Senator and the Majority Leader.

These things are there for a season then you move to another level again where you are serving your country. So, it should not be something that should make people have a sense of self-importance.

I really support what Sen. (Dr.) Zani is proposing. It is a fairly straightforward Bill, but the mischief that is being cured is what should make all of us feel proud of the good work that is being done by Sen. (Dr.) Zani.

Some of us are lawyers, but not many of us would have dug deep into this Bill and come out with the mischief that you want to cure through this amendment. We really salute you. I support this Bill and continue to compliment and thank you for the good work you are doing.

I will finish with the words in our national anthem which say: "May God bless this our land and nation" and the work of Sen. (Dr.) Zani.

Thank you, Mr. Temporary Speaker, Sir.

The Senate Majority Leader (Sen. Poghio): Thank you for the opportunity Mr. Temporary Speaker, Sir. I would like to start by congratulating Sen. (Dr.) Zani for not only being a patriot, but also being alive and awake to limitations in time because some of our laws and Acts of Parliament do expire. This is one of them. It expires after 50 years. It is not easy for us to catch that. Sometimes it takes people who are cautious and awake to catch and help us renew our laws and Acts of Parliament.

There are three reasons why I would like speak to this. One, there are many of our laws that require special attention, but this one is about patriotism. This is a situation where, in my view, all Senators should be present to discuss.

Sometimes I fail to understand when a Motion like this is being discussed and you find that it is not catching the interest of everybody in this country, including all Senators. I think they should all be here to discuss something about our flag and emblems. This is a very important part of our law. I congratulate Sen. (Dr.) Zani for being that cautious and conscious to make us think about our national anthem, emblems and names.

Mr. Temporary Speaker, Sir, I will mostly focus on the national anthem because that is the unifying factor for us. It is one of the elements that make us a nation. When you become a nation, you must have a Constitution and a national anthem. Let me begin with

the national anthems of East African countries, but if you look at the national anthems of the world, we all believe in God as the higher authority.

In Kenya, we begin the anthem with “Oh God.” In Tanzania, they start with God. They say, “God bless Africa and God bless Tanzania”. the Ugandan national anthem begins with “Oh Uganda,” but they still bring in God because the African nature is that we know that God is sovereign, and then we have leadership under God.

I think very few people like Sen. (Prof.) Ongeru and myself have sung the anthem of the colonial masters we had; the British national anthem. That national anthem begins with God. It says, “God bless the Queen.” The American national anthem is a war anthem. It begins with, “Say can you see,” and talks about all sorts of things.

I will give an example of a constituency called Kacheliba Constituency in my own county, which I represented for many years. The reason I am bringing up all these things is in 1969, something like this came to the Parliament of Kenya. It reminded us that some things do expire. If you do not catch it, you will not be able to change it in good time.

In 1969, a new Member of Parliament (MP), Hon. Francis Polosi Loile Lotodo was elected. He brought to the attention of this country that Kacheliba, which was called Karasuk at that time, was being administered by Uganda and the term of administration was ending. He brought up the issue that we had to start preparing to receive that part of the country back to Kenya. That is where I was born and it is where I represented for many years.

Mr. Temporary Speaker, Sir, in 1970, Kacheliba was reverted back to Kenya and it was known as *Kenya Mpya*. I am a beneficiary of that kind of foresight and consciousness that Sen. (Dr.) Zani brings us today. The story was interesting. I can say a bit of it.

In 1929, the British thought that they could sort out the issue of the Pokot-Karamojong’ conflict by bringing all the Pokot from that region to be administered from Uganda so that they might be assimilated into the Karamojong or that the Ugandan Government could control the two communicates together.

From 1929 to 1931, it was an experimental period. In the two years that they watched and observed, they said that it looked like it could work. Therefore, in 1931, they signed full agreement in which my constituency was given away to Uganda for administration for 40 years. The 40 years expired in 1970, and that that is when Hon. Lotodo raised the issue and we were brought back to Kenya.

Mr. Temporary Speaker, Sir, can I tell you something? Idi Amin took over Uganda in January 1971. You can imagine that if we had not come back to Kenya in July of 1970, we would still be administered by Uganda, because Idi Amin would not have allowed us to come out of there. That is the status of such Bills, and I thought that this is a patriotic way to think about them. My congratulations go to Sen. (Dr.) Zani because our national anthems and our emblems---

In this contribution, I propose that having dealt with the national flag, the national anthem, national names and places, we should cascade this to our counties. The flags of the counties need to become part and parcel of our national flag. It should be important enough for us to have the two flags since we have already adopted a two-system government.

I agree with Sen. Mutula Kilonzo Jnr. who proposes that we should fly two flags outside the offices of Senators. There should be the national flag on one side and your

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county flag on the other, so that anybody coming to visit knows that this is the flag of West Pokot.

Mr. Temporary Speaker, Sir, citizens can also raise the national flags outside their homes. The only difference should be that we should define what size of flags should fly on Government buildings, in cars, and in people's homes. Those things can be done, so that you do not find a humongous flag covering the whole car. That is why we should do that. In other countries, you can tell a government building by the size of the flag. You can also tell the size of the flag you should fly in your home.

In my view, we have been very mean with the size of flags we fly in this country. I do not know who told us that we must have small flags that fly in schools. We must definitely begin to be patriotic. The patriotic nature of Kenya has not been expressed in flags, but this is the time we should do so.

Mr. Temporary Speaker, Sir, after 50 years, we have to think whether we go on with the same national anthem or whether we should revise, add or remove anything from it. I like our national anthem. Our national anthem is fantastic in its lyrics as well as its music.

I think we are slowly losing the excitement of singing the national anthem because we should sing that national anthem at various places. We should do it at weddings and wherever. We should do it because this is the way that our country has been held together. It is the national anthem and the flag that brings us together.

The other day some people wanted to remove, for example, the cockerel from our flag. I do not know. This House refused to support that. I want to congratulate this House because it is the original element and document that gave us our Independence. You cannot just think when you grow up, then you begin to say my mother or my father was this and that. These are the people who gave birth to us.

Mr. Temporary Speaker, Sir, I believe that when this House refused that Bill, they were being patriotic. This is because our National Anthem has to remind us of our Independence, which was not an easy thing to get. It came through sweat and blood. I want to support this Bill. I encourage our Members to pass it. I repeat that I congratulate Sen. (Dr.) Zani for this Bill.

You can our National Anthem and flag from a far. The people who have held our flag very high are our athletes from 1960s and those days during and after Independence. The flag of Kenya has been raised and the National Anthem has been played during our local and international sporting activities. We have ruled the world in terms of athletics.

My senior, Sen. (Prof.) Ongeru, was part of that when he was controlling our sports. He was one of the people that raised the level of our sports especially athletics in this country.

Mr. Temporary Speaker, Sir, we need to maximize, take advantage and leverage some of the things that we already have, including sports. Kenyans go out there and do a 5,000 kilometers or 10,000 kilometers marathon and every time they go there, sometimes they are number one or two. These days they are being challenged quite a bit, but they are still there and they raise our flag and our National Anthem is played. The world knows about Kenya because of our flag and National Anthem.

I want us to support this and encourage Sen. (Dr.) Zani and every one of us to support this Bill. This is a Bill that originates from the Senate. It is important that it is the

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Senate that has originated it. I know that this is not a controversial Bill and, therefore, it should go through the other House. It will come back here and make it law. It will be very easy for it to be signed into law.

Mr. Temporary Speaker, Sir, I thank Sen. (Dr.) Zani and Members who have contributed. We need more people in the House to participate and contribute. This is the reason that makes us patriots.

I thank you and support.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Orenge, proceed.

The Senate Minority Leader (Sen. Orenge): Mr. Temporary Speaker, Sir, thank you. My apologies to Sen. (Prof.) Ongeru. He was here earlier, but I think we have enough time.

First, let me thank Sen. (Dr.) Zani for always doing the right things in many ways, in Bills, Motions, and in division of resources. You have a track record in always remembering the details that matter. Sometimes it looks very small but they really matter. This Bill should be supported with absolute unanimity as I have heard from the Senate Leader of Majority.

The first 12 Articles of the Constitution are very important, if I leave out the provisions that talk about citizenship. Those provisions are about who we are as Kenyans and as a country. They set up our foundational values; what type of governance Kenya is and what kind of societies we want to build. You do not have to read the entire Constitution to know what Kenyans aspire to be. If you read the Preamble of the Constitution and those first 10 to 15 Articles, you would broadly speaking, know what type of country we want to create.

Mr. Temporary Speaker, Sir, it is of particular significance that Article 9 of the Constitution deals with the question of the national symbols and national days. According to the Constitution, we have other symbols. The order of priority probably is the national flag.

The pride with which some of our sister countries look upon their national flags is sometimes something to be emulated. You find there are some countries where the national flag is displayed from people's windows when there is a national event and so on. I see some Kenyans do that these days particularly on vehicles although it is restricted, but as an expression of patriotism and the spirit of nationalism in the positive sense. The display of the national flag sometimes gives us a sense of pride.

Just as the Senate Leader of Majority was saying as I was coming in, probably it is only the President when he is out of the country that gets an occasion when the national flag and anthem are played together - there is a display of our national flag or whenever he visits other countries on State visits and so on.

The other display of the national flag and anthem is when our athletes do so well in international competitions like the Olympics and other competitions. It is always a sense of pride that our national flag is displayed time and again in athletic events and the National Anthem is played.

Mr. Temporary Speaker, Sir, so, the national flag is an object of honor, dignity and patriotism. In expression in terms of words and music, the National Anthem is not to be left out. My leader in the Orange Democratic Movement (ODM) Party, hon. Raila Amollo Odinga, often sometimes in public meetings would draw people's attention to the exact

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wordings of the National Anthem and what it says and means both in Kiswahili and English.

Therefore, this Bill is talking about who we are. You see a national flag outside the country, you feel a sense of belonging to this place called Kenya. We hear the National Anthem being played whether in Kenya or outside the country, you feel a sense of pride and patriotism.

Mr. Temporary Speaker, Sir, people are now going all over exploring the space, the Moon and Mars. One would imagine the first thing they normally do is to plant their flags. When the North and South poles were almost inaccessible, the people who went there did so with their flags and a sense of pride. Maybe one of these days Kenya will also be in the space race.

As people go to Mars, the moon and other planets, we would want to hear the National Anthem being played from Mars and not just another country where our patriots in form of athletes are taking part.

Sen. (Dr.) Zani, there are little things that matter, but we do not think about them most of the time. For example, the significance, the words and the people who composed the National Anthem. I think there is a bit of controversy on whether the words came from Mr. Hyslop who was a director of Music. Sometimes he is given the accolades as the composer. When one hears the music and the words, I think it is a truly Kenyan composition in terms of words and composition in whichever language; English or Swahili.

I would hope that as we encourage every legislation and even now that magistrates are writing their judgements in Swahili, we hope there should be a popular version of the National Anthem, for example, in the Pokot language. Let us have people sing it with their drums or whatever music they have.

When the Senate Majority Leader goes to Siaya County, he would then listen to the Luo version of the National Anthem. The instrument there, would be *nyatiti* as opposed to other music instruments. When I go to see Sen. (Dr.) Zani in Kwale County, I hope to hear the *kayamba*. When one dances to the *kayamba* in coastal music, the dance steps are also different. I have seen Sen. (Dr.) Zani respond to music. However, when the *kayamba* is being played, she is even more enthusiastic than when she hears the *nyatiti*.

There is not so much one can say about this Bill in terms of its necessity. If we can protect everything, including our Coat of Arms and flag, the National Anthem also deserves to be in a place of honour. That honour must be written in our Statute books.

I hope all of us know the National Anthem from the first to the last stanza in Swahili and English. Sometimes when one hears it being played, people are comfortable with the first stanza. When it gets to the second, one will see lips moving. If you know how to read lips, they are not speaking the exact words that are in the National Anthem.

Since the National Anthem is constitutionalized, its protection and provisions relating to it must also be elevated into the appropriate Statute, not just the Copyright Act. I think the choice of elevating it to this Statute known as the National Flag, Emblems and Names is the place where it belongs.

I hope this contribution on the part of Senate in coming up with this Bill as propagated by our gracious lady, Sen. (Dr.) Zani, will find itself in the Statute books as soon as possible and certainly before we go for the elections next year. This is in terms of the Act that is being amended. That way, we can judge our patriotism by passing this Bill.

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Mr. Temporary Speaker, Sir, in conclusion, since we are talking about the National Anthem and what it says, we should begin to have a reawakening again about the needs of our people so that the National Anthem is just not empty words. If you go through the National Anthem which is in the Schedules to our Constitution, there are words which are very powerful. They invoke the name of the Almighty and how we want to live in “peace and liberty”, “*amani na uhuru*” in the first stanza.

These are essential to having a stable nation. Even in a constitutional democracy as ours, without peace and liberty--- In fact, these two fundamental rights and principles, one cannot go without the other. We cannot have peace without liberty. The foundation of peace is liberty.

Lastly, it says “plenty be found within our borders”. I am just talking about the first stanza, not even going to the second and third. Now, it is plenty just to a few of us. It is plenty within our borders, to every Kenyan. I think this is one of the things that we must begin to focus our minds on. It is never too late to do so.

Elections are coming next year and everybody will be talking about them and the promises being made. However, some of these things are never dependent on an election cycle. They must be delivered to the people of this country now.

I hope in talking about plenty being found within our borders, it means not being given but found. We can create that plenty so that it can be found within our borders. It is not tokenism, which cannot help. A country that has plenty does not come from a benevolent leader. That is not good enough. It comes out of creating a nation that makes it possible for plenty to be found within our borders.

Mr. Temporary Speaker, Sir, I am little bit agitated as we are now on this cycle that we must think about the changes that may come in the next 12 months. This is by way of elections and having a new Government in place. Of course, Kenyans will determine who will constitute that Government. At the centre of it, we must empower the people of Kenya, not through tokenism, but through plenty being found within our borders.

Right now not so many Kenyans feel that plenty is being found within our borders. People’s pockets are empty, the pandemic has been here for two years now. A very small percentage of our people in Kenya have been vaccinated. For most, getting access to that simple jab has been difficult. The economic situation is depressed because of these factors that are worldwide and some of it is internally created.

The bottom line is for us to make Kenya a country where plenty can be found. When you talk about where plenty can be found, whether it is the Asian Tigers or in the countries in the north they get it right by having the right institutions and policies to enable people to come up and raise their standards of living.

How that wealth is used by the country and republic will depend upon governments. For their being plenty within our land should not depend upon who is the leader. I think this is the principle that we must grapple with.

This is why we must protect this anthem because it is the National Anthem and also because of what it says about what we should be and what Kenyans should enjoy; liberty peace and the plenty that is to be found within our borders.

I want to encourage our people as Kenyans that we are brothers and sisters. Recently when I went to the United States of America, during the last four days of the trip - I was with the Senate Leader of Majority - you could just feel the sense of recognition for

what Kenya is and the direction that it is going. There are people wanting to do business with Kenya. People want to see more Kenyans than any other nationality in terms of countries from Africa. At least I got that impression from the people I was talking to across the board.

When you go to a meeting where you were invited by non-Kenyans and in the program you see the flag of Kenya, and somebody out there who knows how to sing the National Anthem of Kenya, you feel proud that Kenya is not just an idea; Kenya is not just a project. Kenya is not just a commodity that leaders aspire to own and do whatever they want to do with it in terms of promises.

I want to conclude by saying that I feel a lot of pain sometimes when the essentials of Government, of creating institutions, creating political parties, the fact that our democracy is based on political parties, multi-party democracy, it speaks to functioning political parties. When you belong to a political party you should be true to that political party. If you are true to that political party you are being true to the National Anthem.

When you look at Article 3(2) of the Constitution it states:

“The Republic of Kenya shall be a multi-party democratic State.”

The party is a necessary institution of governance.

I want to say in conclusion, there was one time I said before this House that when parties become dysfunctional, they also have an impact on how we operate as a nation.

I hope that in the fullness of time, before we go for the BBI and the elections, we will have functional parties where like, in my ODM party where Sen. (Dr.) Zani is my deputy secretary-general, I recognize her position during the day and during the night. She is my leader in the party. If you want the National Anthem to mean anything, if you belong to a political party, you may have your differences but at least, obey the structures of leadership of that party.

Since we are a democracy, you can quit the political party so that in the end I continue reminding myself that we want to create a country of peace and liberty with plenty being found within our borders.

If my visit with Sen. Poghiso to Miami has any effect it was towards creating plenty within our borders.

I thank you and congratulate Sen. (Dr.) Zani for bringing this Bill.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support Sen. (Dr.) Zani’s Bill.

I would start by saying that when we are talking of the national flag of Kenya and the National anthem, these are national symbols. When you look at Article 9 of our Constitution it states clearly that the national symbols of the Republic are: the National Flag, the National Anthem, the Coat of Arms and the Public Seal.

I would like to state clearly that when we are talking about these national symbols of Kenya it is not something that has just started. It is an issue that started in 1963. The wheel had already been invented in 1963. It was invented when we got our Independence.

In 1963 our history states very clearly that when Tom Mboya was in office and we already had Independence, he actually visited the office of President Jomo Kenyatta and rightfully advised in his docket that there is need to be cautious about the national flag. This is because there was a proposition that KADU wanted its flag to be the national flag. Kenya was going to become a republic in six months and that is why Tom Mboya walked

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to the late President Jomo Kenyatta's office to advice on his thoughts that there is need to have a symbol that will be neutral.

KADU dismissed him and thought it was a laughable issue; that Kenya would not be independent. Then the journey for the national flag started. A team of five people were assigned to come up with a national anthem and the national flag.

Kibukosya was among the team of five and they decided on the colours. The colours are symbolic. When you look at the flag we see black. It represents the people of Kenya. When we look at white it represents peace. When we look at red it represents the blood that we shed.

That time was thorny for Kenya. We did not have our independence. That is why the team decided to come up with these colours that were symbolic. These colours are symbolic because they always remind us that as a country, we must be one.

Mr. Temporary Speaker, Sir, these colours and the National Anthem should be there for posterity. When you look at countries all over the world, you will find their national anthem and flags represent something. When we talk of the national anthem, the flag, and all these symbols, it started with Britain in 1895. It was the first country to originate this and it came up with the words "God save the Queen." It was sung during national and royal functions, and so on, and so forth.

Our flag is raised in institutions of learning every Monday and Friday. If you go to primary schools, secondary schools and other institutions, you will find that our flag is being raised. This is just to remind Kenyans that we are one thing. We fought for Independence, and we must move forward as a nation. The flag has been symbolic from 1963.

Mr. Temporary Speaker, Sir, I support Sen. (Dr.) Zani that there is need to ensure that we protect our heritage for posterity and to ensure that the flags are not tampered with. The national flag has meaning, both for the national and county governments. The county government flags may change, but the national one has meaning from 1963 when Kenya got its Independence. It reminds us that we are now free and are not in the hands of our colonizers. We are free as a country. If we do not protect this, it means that someone can just decide that they are coming up with a flag, but will it have meaning like the original flag that we have?

Mr. Temporary Speaker, Sir, there is need for us to remind ourselves the symbol that the colours of our flag portray. It reminds us of the history of Kenya. We shed blood, and because of that blood we got freedom. We are black people, and because we wanted our Independence, we fought for it from the Europeans, and we were eventually able to get our freedom. The white symbolizes that as a nation, we should always remember our history and be at peace.

That is why I say that when we hear of violence, as Kenyans, we should look at our flag and say that enough is enough. The violence that we had during the Post-Election Violence (PEV) cannot be compared to the blood that was shed before 1963 when we were under the colonial masters. It was terrible. So many people lost their lives and were jailed. They suffered, and then we became free.

Mr. Temporary Speaker, Sir, there is need for us to ensure that we salvage our national flag and the anthem. We should ensure that even children who are born now and

are yet to be born get to know about our history. We must ensure that we protect our heritage.

We must ensure that we protect where we came from and let Kenyan children know that we come from somewhere. I am alive to the fact that many times people pick different cultures from abroad like the Western culture and they end up abandoning their own culture.

If this Bill by Sen. (Dr.) Zani passes and becomes law, it will ensure that we protect our history. Even the young people will get to know our history. I remember when I was in Form Six, we would read about the history of different people like Napoleon Bonaparte, Catherine the Great and all that, but was it relevant? I am not sure how it helped me. Even if though I am a scholar, I am not certain that it really helped me.

However, when we teach our children about the origin of our flag--- Even by just asking the question, “How did our flag originate?” This constitutes a question that you can ask graduates. They will fumble, do research and say where it originated from. There was a team of five people that came up with it. Tom Mboya made a deliberate effort to walk to President Jomo Kenyatta and explain to him that we have to be cautious so that we are one nation.

Mr. Temporary Speaker, Sir, it is a heritage that we must safeguard and pass on verbally and in written form to our children so that they get to know their heritage. Sometimes our children lose on their culture. We have seen the traditional food that was prepared our parents, and grandparents. If you give it the modern Kenyan child, they will not eat it. Some of them will not even care.

They want to eat pizza and sausages, but if you give them something like *tsiswsa* - white ants, which I was introduced to by my grandparents. I ate them. If you give them something like *mrenda*, they might not eat it. They want food that comes from the West. We must ensure that we protect our heritage. We must ensure that our children get to know what we value.

If I may add something else, right now our children are missing out, especially those in urban areas. They will speak English from school and continue speaking English. I am sorry to say, but some Kenyan parents should know that they are harming their children. They feel good when children come back speaking English. They really encourage them and pay a lot of money for children to speak English.

However, they miss out when it comes to their vernacular language. You will find that children are very fluent in English, but they have completely lost their mother tongues. Sometimes after Form Four, some of them are not able to speak in their mother tongue. If you speak to them in their mother tongue, they will reply in Kiswahili or English.

Mr. Temporary Speaker, Sir, we have something that we have to pass on for the sake or posterity. Our national flag and anthem need to be preserved. It is our mandate as parents. We should not take everything that comes from the West. We have what belongs to us and we must protect it by all means.

All countries of the world have a national anthem and a national flag. There are only two countries that have two official national anthems, New Zealand and Denmark. We can protect our anthem, our heritage and ensure that our children get to know that the colours are symbolic from the colonial times.

If it were not for fighting for Independence, we and our children would not be where we are. There would be slaves all over. We would be slaves of our masters, but because of the blood that we shed which is shown as red in the national flag we were able to get our freedom without blinking.

Since we are black, we saw the discrimination. The people who fought for Independence, like Dedan Kimathi and the likes went through thick and thin because they were black. However, because of what they went through, we eventually got our freedom. There is need to protect the colours of the flag, the shield and everything that belongs to us.

There is need to also protect the shield and everything that belongs to us. We cannot take everything that comes from the West. Sometimes the West laughs at us. They come up with something and we just take it gladly. When we take it, they laugh at us because now they have disseminated their culture to ours and this sometimes erodes our culture.

Mr. Temporary Speaker, Sir, I support this Bill by Sen. (Dr.) Zani and hope that it will become law. This is so that no one or no other government coming today or after ten years should tamper with the National Anthem and flag.

I support this Bill. Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Prof.) Onger, proceed.

Sen. (Prof.) Onger: Thank you, Mr. Temporary Speaker, Sir. Let me, first say that I lived through this Constitution and the making of the National Anthem. This National Anthem must be protected at all times. I acknowledge my colleague, Sen. (Dr.) Zani, for being able to look at the provisions of this Article. Realizing that there is a limitation and unless we take a preemptive action, our National Anthem is likely to be marooned in one way or the other.

It is a source of pride when you have a National Anthem that has both the deepest convictions and highest aspirations. When you look and read through our National Anthem, you cannot help but be amazed at the level of emotions that you go through when you read or sing that National Anthem.

Mr. Temporary Speaker, Sir, I say so because before 1963, I was a victim of the colonial mischiefs. One of my colleagues who was to get in Bugema Missionary College in Uganda was killed by a *Mau Mau* during that time. We came here to try and condole with the family and on our way back, what I saw in that train made me a very bitter man at that stage. One day I said, we shall be independent.

Indeed, in 1963 when I was a medical student in Bombay, I had the singular honor and privilege to hoist the Kenyan Flag celebrations on behalf of the Kenyan Government in Bombay. I invited the top officials of the Indian Government to be present. When that song was being sang here and we were also celebrating in Bombay, tears came through my eyes, for the joy and the feeling of the freedom that was associated with the national flag.

Mr. Temporary Speaker, Sir, therefore, if we cannot protect this national flag because of own carelessness, it will be a big mistake for the future generations. They will never forgive us. I thank Sen. (Dr.) Zani for realizing that there is a limitation on the Acts of Parliament that had been created to preserve this National Anthem so that it is not adulterated by any other factions. It is not made fun of because that is the sense of pride that we have.

The second point why I want to support this move is that I became the Chairman of Kenya Athletics Association (KAA) from 1976 when we went to Montreal Games. We came back because we could not participate. The product of Nyayo Stadium is because of the performance of our athletes when we requested President Moi to give us the resources to build that stadium. Why was it so? It was because our athletes when you look at the Olympics, the quartet of Charles Asati, Nyamau, Ouko and Julius Sang'. When they came with that gold, it was a cry.

Mr. Temporary Speaker, Sir, my own uncle, Naphtali Temu, won 10,000 metres in the Olympics of 1968 and Kenya's flag was hoisted. That was the pride you got. Whether it was the Commonwealth Games in Christchurch in New Zealand; All Africa Games in Nairobi City in 1987 or Summer Olympic Games in Los Angeles, every time we won particularly the Steeple Chase, the flag of Kenya was raised, the National Anthem was sung and you could see tremendous respect from the rest of the nations.

We become conquerors through our flag and the obedience to that flag. Kenyans run with a spirit and sense of belonging and being there for their nation. They felt very good to redeem their nation and pride. Today, you can agree with me that even when I took Kipchoge Keino to Edinburgh Games in 1970 and our flag was being raised, although they had threatened him at that time, there was a lot of pride in Kenyans. We terrorized the whole of Edinburgh before I went back. We felt very proud.

If there is one element that has contributed to the foreign exchange flow, it is the hoisting of the Kenyan flag at games, whether at the local or international level. When you see the security forces handling our flag, they are committed to it because that is what gives them the level of patriotism and belonging to defend this nation. That is why they have gone in all ways to be able to defend this nation.

The words of our National Anthem have a collective prayer. In fact, the first stanza recognizes God as the creator of all things. Every time I sing that National Anthem, I remember Genesis 1. That in the beginning, God created the heavens and the earth and everything in it. In the first six days, you can get the generation of what He did. I am so proud that Kenya recognizes the deity, the Almighty God, as the only provider and defender of our existence and sustenance in this world.

Mr. Temporary Speaker, Sir, I am happy that that in itself, this is a full recognition of God as the supreme King, the Lord of Lords and the King of kings. No wonder then, why Kenya is doing so well. Once you put God ahead of everything else, you are bound to do very well.

The other thing the National Anthem does is to motivate us to work very hard. If you remember, this nation has grown from a population of a mere seven million in 1963. Today, we are talking of about almost 50 million Kenyans, within a short period. We are able to feed and educate these people. We have health facilities for them although we need more, but we are able to sustain their livelihoods. We are able to produce some of the items that are top notch in the world.

The National Anthem expresses the need to work together in peace and unity. It does not allow carelessness of violence to be part of our societal values. No wonder the values enshrined in Article 10 of our Constitution – the Bill of Rights – are embodied because they are all directly derived from our national anthem. That has given us the

impetus and ability to move forward. We are able to be motivated to work hard to achieve the highest standards required in our society.

This National Anthem is a tool of reconciliation. We are going through many problems. We have fought one another, but at the end of it, when we sing this National Anthem, it brings us together. Anything that binds us together is something that we must accept.

Mr. Temporary Speaker, Sir, I acknowledge Mzee Galami from the Pokomo Community. I saw him during the Moi era when he was brought to State House to lunch with the President. I would have liked to see that family rewarded a little more. They were never rewarded. They bequeathed to us, what was a lullaby song for the Pokomo tribe, to become a national anthem. It became a unifying factor and embodied both the cultural and divine elements of our lives and society.

Therefore, when our children sing the national anthem they see real life in it. They see their potential and their growth through that National Anthem.

I would also like to acknowledge Hyslop who was the director of music at that time and translated it. Then of course, Senoga Zake whom I saw when I was the Minister of Technical Training and Applied Technology and the later Minister of Local Government, Minister for Health, Minister for Education and Minister for Foreign Affairs. We interacted with Kaluma and Peter Kibukosya from Kakamega and Washington Omondi.

These are the people who contributed towards refining this National Anthem. So, what is this Bill seeking to do? It is important to understand that if we do not take preemptive action after 50 years, anybody can carelessly use this material for personal benefit for commercial gain of the National Anthem, National Flag or national emblems without giving it that dignity that it deserves to have.

We must protect that emblem and those colours. These are the ones that give impetus to our national defence forces to fight and keep our borders safe from invasion, interference or interruption.

These are the colours that motivate them to work hard even at the expense of losing their lives. That is why some of them are in these peace-keeping missions to be able to preserve life in other places. Therefore, if we do not protect this, we will have left it open for any Tom, Dick and Harry to come and use the national emblem, national flag for their own personal use, for commercial use.

It is important to look at this Bill and amend it accordingly at the expiry of 50 years so that we are able to restore it back to its original form so that we do not lose any connection between the present and the past.

It is critical. It is captured in the Copyright Act, which is conferred by Section 25, No. 12 of 2002. If Sub-section 2 is not amended, it will be a disaster for this nation.

I thank Sen. (Dr.) Zani for being able to be forward-looking so that now we can be able to put in place a law that can protect these vital instruments. These are the instruments of power. That is the power we are talking about. When the President assumes power and becomes the Commander-in-Chief, when the national anthem is being sang that is the embodiment of national unity of this nation. We cannot just wish it away for any Tom, Dick and Harry to come and make a joke of it and start using it any howly. It is not acceptable.

I fully support these sentiments because what we are doing here today is being able to protect our heritage. If we do not protect that heritage, it will become disastrous for us. We will become a banana nation because you must have something that people rally to, that they support, that they feel part and parcel of. Even when we differ, reconciliation is part and parcel of our society.

The church functions we have here are a recognition that God is keeping this nation safe and, therefore, we cannot be able to do it on our own.

I fully support this Bill and I hope that when it comes to voting, we will give it all the support it requires to go through.

I support this Bill.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, I now call upon the mover to reply.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I beg to reply.

You have heard the passion with which Senators have spoken this afternoon regarding this very important symbol of national unity. If you look at Article 10 of the Constitution on the national values and principles, everything about how we feel towards the National Anthem is captured.

It includes patriotism, national unity, sharing, democracy, participation of the people, human dignity, equity, social justice, inclusivity, equality, non-discrimination, integrity, transparency, accountability and development. All these are in our prayer; that justice be our shield and defender so that we can prosper as a country Kenya, which we are very proud of.

I just want to thank Senators who spoke to this Bill; Sen. Mutula Kilonzo Jnr, Sen. Omogeni, Sen. Poghisi, Sen. Orenge, Sen. (Dr.) Musuruve and Sen. (Prof.) Onger. I think it is very clear what we have to do because we have seen the danger that is there. Section 25 of the Copyright Act provides the copyright in works of Government, including literacy, music and dramatic issues that we come up with.

This can however, subsist, until expiry. That is at the end of 50 years from the end of the year in which it was first published. That is according to Section 25 of the Copyright Act (2021), yet under the National Flag, Emblems and Names (Cap 99), the Laws of Kenya ensure that the National Anthem is safeguarded. It is only that we have that window.

Without amending, so that we do not have this copyright after 50 years not being adequately protected then we might find ourselves in a situation where we lose a very important component in this country.

Mr. Temporary Speaker, Sir with those words, I beg to reply and request that the putting of the question to vote for this Bill be deferred to an appropriate time according to Standing Order No.61 (3).

Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): I, therefore, defer putting the question until tomorrow.

(Putting of the Question on the Bill was deferred)

ADJOURNMENT

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The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, for the convenience of the House, it is now one minute to 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Wednesday 14th July 2021 at 2.30 p.m.

The Senate rose at 6.29 p.m.