

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 13th October, 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

VISITING DELEGATION FROM GARISSA COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, staffers from Garissa County Assembly, who are currently on a study visit at the Senate for one week commencing 12th to 15 October, 2021. I request each staffer to stand when called out so that they may be acknowledged in the Senate tradition.

They are-

- | | | |
|------------------------------|---|---------------------------|
| (1) Mr. Omar Koriyow | - | Principal Clerk Assistant |
| (2) Mr. Abdiaziz Noor | - | Senior Research Officer |
| (3) Mr. Kadija Mohamed Yusuf | - | Senior Research Officer |

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

I thank you.

Sen. Mwaruma, Proceed.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. I would like to join you in welcoming the staffers of Garissa County Assembly to this House. County Assemblies and the Senate play a complementary role in nurturing devolution. Their visit here would go a long way into building their capacity; the Senate being the big brothers in devolution.

We invite them to take time and learn as much as they can. When they go back, they will also capacity build others. Devolution is the best thing that we gave ourselves as Kenyans and it has changed lives. Most of the county assemblies are captured by their executive but we do not blame them because devolution is young, unlike the Parliament

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which has run for over 50 years. By building capacity for staff, our county assemblies will be built and they will catch up with the National Assembly and the Senate.

I wish them well and welcome them. I hope they will enjoy their stay in the Senate. Thank you.

The Speaker (Hon. Lusaka): Next Order.

PETITION

RECRUITMENT AND REMUNERATION OF ECD TEACHERS IN KERICHO COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk of the Senate by residents of Kericho County and members representing the Early Childhood Development (ECD) teachers' Association.

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

“Every Person has a right to Petition Parliament to consider any matter within its authority including enacting, amending or repealing any legislation.”

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

- (1) There are unfair labour practices by the Kericho County against ECD teachers.
- (2) Since 2004 ECD Scheme of Service have not been implemented.
- (3) There is arbitrary stoppage of stipend and emoluments entitled to ECD teachers leading to discriminatory practices or remuneration of teachers, which in turn has led to poor performance and resignation of teachers.
- (4) The County Government has not implemented the ECD stakeholder agreement that requires allocation of 25 per cent of the budget to the education sector.
- (5) ECD teachers face inhuman transfers contrary to Article 41(1) of the Constitution.
- (6) The Petitioners have attempted to have their grievances addressed by the Kericho County Government Executive and Assembly, the County Public Service Board and the Teacher Service Commission with no success.

The petitioners therefore pray that the Senate intervenes in the matter by investigating and inquiring into this matter and making recommendations on-

- (i) Confirmation of employment for ECD teachers.
- (ii) Implementation of the Scheme Service for ECD teachers.
- (iii) Remuneration package and general welfare of ECD teachers.

Hon. Senators, Pursuant to Standing Order 231, I shall now allow comments, observations and clarification in relation to the Petition for not more than 30 minutes. Sen. Mwaruma, you have the Floor.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. I would like to thank the petitioners from Kericho for bringing this issue to the fore. There are problems concerning the definition of who a teacher is. Teachers are defined by the Teacher Service Commission (TSC). It is only the TSC that is supposed to employ and remunerate. What counties did, they defined the ECD teachers as caregivers. Then they

were able to employ them. Otherwise, all the teachers are supposed be employed by TSC. Having said that, we have had difficulties across most of the counties, in that the remuneration of the ECD teachers is not equal across the counties. There is no Scheme of Service for the ECD teachers.

Mr. Speaker, Sir, the other problem is that, there is no forum to negotiate for a scheme of service for ECD teachers, because they are not under one umbrella union unlike the primary school teachers who have an umbrella union called the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post Primary Education Teachers (KUPPET), for secondary school teachers.

The ECD teachers across the country are going through very many problems to do with remuneration. Through the County Public Accounts and Investments Committee (CPAIC), I have seen counties which employ ECD teachers and pay them less than the minimum that is required by law. Some of them are paying them Kshs8,000 or Kshs10,000 which is against the law.

I know that the Committee on Education is going to look at the grievances that have been raised by the petitioners from Kericho so that at the end of the day, our ECD teachers get justice. I know that there has been a struggle by the ECD teachers to get their rights, but until the time they get unions to fight for them, there will be really big problems.

Mr. Speaker, Sir, most of them say that if they speak, they are going to be sacked or victimized. I know that there are instances where our ECD teachers are suffering in silence. Most of the teachers are afraid to speak because they know that they will be victimized. However, it is high time that as Senators who are protectors of devolution, found out ways of protecting not only the ECD teachers, but also workers across the county against county executives who are employing them and paying them wages that are below the minimum that is required by law.

Mr. Speaker, Sir, I support the Petition. I know that the Committee on Education will look at the Early Child Education Act, which we passed last year, to see how we can assist the ECD teachers.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I rise to support this Petition. It is a sad affair that the foundation of education, where children are supposed to be nurtured properly, is where this kind of frustration is as raised by the Kericho ECD teachers.

I wonder whether Kenya will ever stand on its feet with the way the county governments have been formulated. I note that even in the Building Bridges Initiative (BBI), not much was done to streamline some of the issues that we keep on witnessing.

Mr. Speaker, Sir, every county in this country would have been ten times better than it is today. However, resources have been disbursed to the counties and let loose without strict Government regulations. These regulations demand that any officer who is making a decision on public resources should be answerable to the law of the land, and that actions should be taken.

From my point of view, in most counties, 80 per cent of the resources that go into the county get held up serving the basic needs. That is why we have this outcry of ECD teachers, not just in Kericho. Even in Nyeri County, it is the same thing. The underpayment of these teachers and not recognizing them is a perennial problem.

I feel and fear that this is the beginning of deterioration of education. My county, Nyeri, should be at the top in the country. When I was in university, 15 per cent of the population at the University of Nairobi (UoN) actually came from my county. It is nowhere near that case today, and it starts with the frustration of teachers.

A teacher is the most important element in the whole education system of a child. Therefore, I hope that the Committee on Education will look into this matter outside Kericho in a wholesome manner and come up with serious recommendations which this House should act upon. The Executive should also take the necessary action that will be needed.

Thank you.

The Speaker (Hon. Lusaka): The Senate Majority Leader.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, thank you very much for the opportunity to support this Petition. I do not intend to take long in adding my voice to the voice of the many that have already spoken.

I thank the people of Kericho for raising this matter on behalf of the rest of the country. The issues raised in Kericho are the same issues I would have raised here for West Pokot. They are the same issues that anyone can raise anywhere else.

Mr. Speaker, Sir, in this age of an open budget process that is done by the public, there should be no reason why the teachers and workers in early childhood education should suffer. Kericho is governed by a very reasonable university professor. Given that he is an educationist; he should really put a lot of emphasis on this.

I am sure that the County Executive Committee Member (CECM) in charge of early education, which is the only thing they do, should really focus much on this sector. I am glad that the Senator for Kericho is now here. It did not even have to get here. It means that it is so bad, and that is why it has come here.

I want the Committee on Education to have a very serious look at this with the view of sorting out this problem once and for all. We do not have to have each county bringing these issues here if this particular case can be dealt with.

(Loud consultations)

Mr. Speaker, Sir, can I be protected from the Senator of Kericho himself?

The Speaker (Hon. Lusaka): Order, Members! Let us consult in low tones.

(An hon. Member spoke of record)

The Senate Majority Leader (Sen. Poghio): It is not the Senator for Kericho.

Mr. Speaker, Sir, I support. I ask the Senator for Kericho that the results of this should be applied to other counties as well. We would like to see that foundation of education given serious attention.

I support.

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The Speaker (Hon. Lusaka): Sen. Seneta.

Sen. Seneta: Thank you, Mr. Speaker, Sir. This Statement has come at the right time.

The issue of ECD teachers is a concern in the education sector. We cannot have some employed teachers earning Kshs5,000, others earning Kshs10,000 and others earning more than Kshs20,000. We need a proper framework where all teachers are paid according to their grades and educational level.

The foundation of education is ECD, and we need to emphasize on a very strong foundation where our children in ECD are paid a lot of attention. This is not only by just a teacher who is called a caretaker, by a professional who is an expert in that field.

Mr. Speaker, Sir, I think that it is high time that counties came up with terms of reference and a scheme of service for these teachers. The scheme of service should indicate how much they are supposed to be paid according to the grades.

Also, there is the issue of pension. They also need to be considered in terms of pension when they retire. They need to be paid pension just like any other civil servant.

Many of the ECDE teachers have no administration offices to work from. Some even do not have sanitary facilities and most of them do not have houses. Some of the ECDE centres are found in the interior parts of rural areas where there are no houses for them to be accommodated.

Therefore, Mr. Speaker, Sir, the matter of ECDE teachers is an important issue that needs to be given a lot emphasis and the seriousness it deserves, so that we have a strong foundation in our education system.

I thank you.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for this chance. Petitions are increasingly becoming a reliable way for citizens to have their issues addressed by this House. They are increasingly becoming popular as a way for mitigating or ensuring that certain problems in our various counties are quickly addressed.

When these teachers approached me and raised their concerns, on a number of occasion, I had an opportunity to meet their officials and listened and advised them to go the route of petition because on many occasion different committees dispense quickly issues such as these that are handled by committees. They have them addressed by involving stakeholders and ensuring that people get justice in terms of the issues they want addressed.

The ECDE teachers play an important role. The foundation stage of a child is actually informed by the things they learn during the early years in school from pre-primary, nursery up to the lower primary schools. The teachers who do that job deserve our respect and recognition as leaders.

I mentioned this before. It is unfortunate that a few counties, Kericho included, are yet to get to a particular point of ensuring that these teachers are given an important place in terms of the duties they perform. First, is the desire to have their scheme of service properly recognised by the County Public Service Board (CPSB) and have them as county employees with a decent salary.

They shared with me their stories and it is quite sad. Many of them earn less than Kshs10,000. With less than Kshs10,000, how are you supposed to show up every

morning and teach people's children comfortably, enjoy the job that you do and have your whole heart and mind completely dedicated to that job? So, the issue of their pay is something that we also need to address as we think about how to solve this particular issue.

I said this last week when we were speaking to something different but in relation to education. Actually it was on Sen. (Dr.) Ali's Bill on health workers. The ECDE teachers are one such lot that we have not fairly treated as an institution of the Senate. One of the things we must demand is that despite them not being employed by the Teachers Service Commission (TSC), nothing stops the Ministry. Policy formulation is part of the duties of the Ministry of Education.

We must move from the habit where the Ministry of Education or generally Government Ministries--- So long as there is no monetary reward in formulating a certain policy, they move away from that duty. I can assure you if there was a way of making money out of the problem of ECDE teachers, the Ministry of Education would have found a solution.

The problem is that people do not want to formulate policies where there is no material interest for them. That is quite unfortunate. How come more than 10 years since the passage of the new Constitution there has not been a single taskforce to advise each of our counties on the proposed public policy on how to treat ECDE teachers uniformly across all the 47 counties?

Teachers that teach in Nyamira, which is Sen. Omogeni's county, and those that teach in Kericho go through the same training. Why should those in Nyamira be treated differently from those in Kericho, Kisumu, Bungoma or any other county? We must ensure that we treat all public servants serving either in the national or county governments equally across all the borders of our Republic.

It is unfair that we have left many of these issues. The first one is to have a unified human resource policy. Just the same way we discussed about what we need to do with the health workers, we need to do the same for ECDE teachers.

I can see the Chair for the Committee on Education here. I was a bit worried that she is not listening but I can see her noting our concerns. Part of what they must return to this House are proposed solutions in terms of unifying a common practice.

That is how teachers should be treated across the 47 counties, such that we have them uniformly remunerated and promoted and how much public investments can go to them in terms of equipping their skills and all that. That will be a good move in terms of addressing these challenges.

Therefore, I want to request our colleague Sen. (Dr.) Milgo, since she knows Kericho quite well because it is part of her home. Please expedite this for us because those teachers have been calling out for our support and we will appreciate.

Sen. Omogeni: Thank you, Mr. Speaker, Sir, for also giving me an opportunity to make a comment on this important petition that has been brought to the House by the residents of Kericho.

When I served with Sen. (Dr.) Langat in the Committee on Education, there is a team that visited Germany. I was not privileged to be among the Senators who went to Germany. When they came back, they gave us a report.

What we heard from that group of Senators who went to Germany is that more emphasis is given to early childhood education more than even university education because the foundation for any child is laid at the onset when they start attending ECDE classes. You do not need to invest on a child at university level. You need to invest on a child when they go to school in their formative years.

What has been raised is an important matter. It is really sad that county governments have continued to mistreat teachers who take care of our young children who are vulnerable. When you entrust four, five or six year olds to teachers who are working in a frustrated environment, you are also risking the lives of those young children.

I want to tell the Senator for Kericho that it seems this is a problem affecting that region because the problem they are facing in Kericho are the same problems we are facing in Nyamira. I must applaud the governors of Mandera and Kajiado because they are at least paying their ECDE teachers about Kshs25,000 or Kshs30,000. In Nyamira, the highest ECDE teacher earns Kshs14,950. That is house allowance for junior civil servants.

We are not being fair to these cadre of employees because they are facing terrible unfair labour practices. The idea of employing them on contract--- I hope when this matters goes to the committee chaired by Sen. Sakaja, they will approach it holistically. Look at the problems in other counties. I am inviting you to my County of Nyamira.

I have teachers who were employed in phase one numbering 406 who have had their salaries stopped. As we speak, they are not in office or earning but just idle. I hope this idea of recommending a scheme of service should apply to all counties. I request that we ride on this Statement from these Kenyans from Kericho so that this Committee can escalate the inquiry to other counties. I am inviting the Committee to have a very keen interest in the county of Nyamira.

Teachers who have salary arrears from the month of October last year to March, 2021 worked but have never been paid. You will be shocked if you go to the counties that there is no budget for purchase of books and chalk which are simple materials for the children.

In Nyamira, parents have told me that they are told by the ECDE teachers to purchase material. How can that be the case? If you are running an ECDE program in your county you must have adequate budget for material and food for the children. You should not put teachers in a situation where they have to come with milk from their homes to feed the children in ECDE classes.

This is a very important matter that touches on our children who are our future leaders. We appeal to the Committee chaired by the very able Senator of Nairobi who is also the incoming governor – Sen. Sakaja - to look into this matter. We welcome him to our counties to meet with our ECDE teachers and solve the problem not just in Nairobi but all over the country.

Sen. Sakaja, you are still young and very promising. After we have put in our “Biden” and “Mandela”, we will be thinking about you in future. Do good work; make our teachers proud. I want to go to Nyamira and tell my ECDE teachers that their

problems have been solved because of the good work of the Senator of Nairobi, Sen. Sakaja.

I support.

Sen. Sakaja: Mr. Speaker, Sir, is it a coincidence? I completely agree with Sen. Omogeni on the many things he has said including *Inshallah* being governor of Nairobi City County next year.

He is right that this is an issue for the Senate Committee on Labour and Social Welfare; that we can look at it jointly with the Committee on Education. Of course, ECDE is the foundation of education for our children. If we get it wrong at that level, it is very hard to get it right later. That is when they are told about a “bottle” or “botro” and to pronounce certain words. If they do not get it then, they will not get it. They are also taught the discipline of attending school that changes them a lot. I can see it even in my children.

Mr. Speaker, Sir, I say this is an issue for the Committee on Labour and Social Welfare because incidentally this morning I have signed a Bill on the county public service boards (CPAB) which is an amendment to the County Government Act. Initially, it was supposed to be a County Public Service Boards Bill. It now institutionalizes each of the 47 CPSBs so that we do not have a situation where the standards, for instance, of education in Nyamira are different from those of Makueni or Bomet so that we can have intercountry transfers. If you are hired in Makueni, you can go and work in Taita Taveta. If you are hired in Nyamira, you can go and work in Mandera.

If we do not do that, our counties will become ethnic Balkans where if you are Luhya from Bungoma, you cannot work in Kakamega. They will tell you to go back to Bungoma. If your name is Mutua born in Bungoma, you have no hope. There are many things we want to do but we must harmonize the schemes of service to make sure ECDE teachers are given the same and equal treatment and taken seriously.

Counties are not taking the education docket seriously because it is only ECDE that is devolved to them, yet in many counties such as Nairobi City County, we have a lot of these schools which are former local government schools. They are in a deplorable state. None of you would want their children to be in such a school. It is the same for Community’s Health Volunteers (CHVs). These also play such an important role that they need to be given something. They work for free.

Last week, I was talking to my CHVs from Kariobangi North who are around 110. They are the ones who know who is sick, which house has Tuberculosis (TB) and other issues. If I get a 100 of them in each of my 85 wards, that would be 8500 CHVs. If each of them got an allowance of Kshs500, it would be Kshs127.5 million per month coming to Kshs1.53 billion per year. That in Nairobi City County with a budget of Kshs40 billion is a drop in the ocean. Investing that in those CHVs will in turn reduce the cost of healthcare by more than Kshs3 billion.

There are many things governors need to take seriously and to think differently. Maybe Sen. Omogeni is a prophet and what he is saying may come true. From next year, all the 8500 CHVs in Nairobi City County will have a minimum of Kshs15000.

(Loud Consultations)

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If they are listening they should know what to do. The same case will apply for ECDE teachers.

(Sen. Omanga spoke off record)

The Speaker (Hon. Lusaka): Order, Sen. Omanga.

Sen. Sakaja: I agree with her as well.

The Speaker (Hon. Lusaka): This is not a campaign platform. You will say that out there.

Sen. Sakaja: Mr. Speaker, Sir, they want me to join the United Democratic Alliance (UDA) party. I am glad the Senator of Kericho is here. I have not seen the Senator of Bomet but I have seen Sen. (Dr.) Milgo.

Senator of Nyamira, towards the end of this month, my Committee is coming to your counties. You will be informed early. You had brought some issues on tea. The Senator of Kericho had also brought some issues. We will combine with his because the Chair of Committee on Educator is also a member of the Committee on Labour and Social Welfare.

I want us to look at it jointly so that by the time we are ending this Senate, we will have changed certain things on how we take care of our teachers and CHVs. I am adding that because each is as crucial as the other.

The Speaker (Hon. Lusaka): We only have about four minutes. Let us have Sen. Madzayo.

Sen. Madzayo: Asante, Bw. Spika. Kwanza ninawapa kongole walimu wa Kericho kwa kuleta malalamishi ya uandikishaji kazi na masaibu ya mishahara kwa walimu wa shule za chekechea. Tunaelewa kwamba shule za chekechea ndizo uti wa mgongo wa elimu ya watoto wetu. Kila mtoto anayezaliwa akifikia miaka mitatu au minne ni sharti aende shule ya chekechea ili awe na msingi mwema atakapoanza darasa la kwanza.

Ni jambo la aibu hivi leo katika Kenya yetu. Jambo hilo haliko Kericho peke yake lakini katika kila mahali Kenya hii. Walimu wa shule za chekechea wanapata taabu sana. Wanabaguliwa na kutotiliwa maanani kabisa wakilinganishwa hata na wale wa darasa la kwanza. Mwalimu wa chekechea hatiliwi maanani kabisa katika shughuli zake za utendakazi. Tukiangalia katika serikali zetu za ugatuzi, walimu wanaojiriwa na serikali na kufundisha katika darasa la kwanza hadi la saba wanaangaliwa vizuri na kulipwa mishahara. Wanaambiwa wao ni walimu wa kudumu watakaofanya kazi hadi kustaafu. Walimu wa shule za chekechea wanaweza kuajiriwa leo na baada ya wiki mbili, mwezi mmoja, sita ama kumi wakaachishwa kazi. Wanachukuliwa kuwa ni walimu wa rejareja tu hivi ambao hawana maana.

Malalamishi haya yameletwa wakati mwafaka ambao Bunge la Seneti ni lazima litamke kupitia kwa Kamati yake ambayo itachunguza malalamishi haya.

Tunaelewa kabisa ya kwamba katika utendakazi Wazungu walisema: “A *happy worker is a productive worker.*” Nikitafsiri ni kwamba mfanyakazi ambaye ana raha anaweza kufanya kazi na kuleta mazao ya ule utendakazi wake.

Ikiwa walimu wa shule za chekechea hatutawaheshimiwa; ikiwa mwalimu wa shule ya chekechea atakuwa hajui kama leo anafundisha na kesho kazi yake itakuwa imekwisha, itakuwa hatuungalii siku za usoni.

Bw. Spika, nitamalizia nikisema ni lazima zile ari za walimu wa chekechea zitekelezwe. Kamati ambayo itahusika na malalamishi haya yaliyoletwa na walimu kutoka Kericho, wasiangelie Kericho, bali tuweke mikakati kisawa sawa ambayo itaweza kuangalia walimu wote wa shule wanavyofundisha shule za chekechea katika nchi yetu ya Kenya.

Asante, Bw. Spika.

The Speaker (Hon. Lusaka): Hon. Senators, as I had indicated our time for Petitions is over. Sen. Wako, keep it brief.

Sen. Wako: Thank you, Mr. Speaker, Sir. This is a very important topic on which I think I should speak. I would just like to remind you that I am Senator No. 1 and therefore, when I want to speak, I should speak.

I think we have underestimated the importance of Early Childhood Education (ECD) in this country. We think that because it is at the very basic, therefore, it is county governments to deal with it. It is very true that under our Constitution, it is the county governments which have the responsibility to deal with education; pre-primary education, village polytechnics, comcraft centres and childcare facilities.

So, it is exclusively a county government matter because if you contrast that with the National Government's functions as relates to education, it is education policy standards, curriculum, examinations and the granting of university charters. Then there is 16 universities, primary schools, special education, secondary and so on.

Therefore, the tendency has been to leave everything to county governments. That is why we have this dichotomy that in some county governments they are doing very well while in others they are not doing very well. As far as this Petition is concerned, there are some exemplary examples like Mandera and Kajiado which have done very well as relates to the remuneration of ECD.

I remember during the election in 2013, I met the ECD teachers and they really wanted to be recognized and also to be given terms of service by the county government which should be followed. However, it is obvious that if we leave everything to county governments, we are going to have a dichotomy.

Educationists will tell you that if the foundation of your education is wrong, then whatever happens at the upper levels of education, primary, secondary and so on, will also be wrong. That is why in some countries this early childhood and primary education are regarded as so important that even the teachers who teach there have doctorates. The teachers who teach there are not Form Four failures. They are actually people with doctorates who teach at that level.

The danger we are having is that in as much as the educational policy for primary schools and so on is standardized throughout Kenya, if we are going to have different standards at county level, then when they now go to primary, we are going to have a dichotomy of education in various areas and most counties are going to suffer because of that. Those who have recognized the importance of ECD are going to succeed.

Mr. Speaker, Sir, I believe that the Ministry of Education cannot avoid responsibility in setting standards. It is the responsibility of the Ministry of Education to have educational policy and standards.

In Regulation 15, it does not specify standards in primary school and above. It is just standards in education. They do not say educational policy in primary schools and above. It just stays educational policy.

The time has now come when the Ministry of Education can at least be a regulator in terms of setting the standards of the ECD curriculum, how it should be taught and how it can be synchronized with this CBC programme that has come up. I am not so sure that it has really been tied in properly from primary school. You will start doing your ECD when you are in primary school and maybe what went on before that does not tie in properly.

We are making a mistake there and I believe the Ministry of Education when they were preparing this CBC policy, they should also have looked into the issue of what should be taught in pre-primary institutions like the ECD schools.

I want to appeal to the Ministry of Education not to wash their hands off this matter but to set standards for all the ECD schools both in terms of what should be taught and also standards of an advisory nature on the type of salaries and remuneration that the county governments should give to the ECD teachers.

It is recognized that the county governments are the employers and therefore, they can pay any amount. That is why you are now having these differences in the various counties. However, if there was an advisory body at the Ministerial level which determines the type of salaries that should be paid to ECD teachers, then the county governments can have the discretion to up what has been suggested. I think that would be a solution and a way forward.

I thank the Senator for Kericho for having brought this Petition. It is a very important Petition and it should make us realize that we cannot just leave county governments to fully handle ECD but they should be guided in terms of what should be taught. They should be guided in terms of remuneration of the teachers.

I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, even as I commit this Petition to the relevant Committee, there is an Act. It is now a law on ECD which was passed by this House and assented to by the President. It is Sen. (Dr.) Zani's Bill. So, as the committee looks at this, maybe they can work in liaison with that law so that we see which areas have been left out and what needs to be added or amended.

Pursuant to Standing Order No.232(1), the Petition is committed to the relevant Standing Committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on Labour and Social Welfare. In terms of Standing Order No.232(2), the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

MESSAGE FROM THE NATIONAL ASSEMBLY**PASSAGE OF THE NATIONAL HEALTH INSURANCE FUND
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.21 OF 2021)**

Hon. Senators, I have a Message, the Passage of the National Health Insurance Fund (Amendment) Bill, National Assembly Bill No. 21 of 2021.

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.41(3) and (4), I have received the following message from the Speaker of the National Assembly regarding the passage by the National Assembly of the National Health Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021).

Pursuant to the Standing Order, I now report the Message which I quote: -

Whereas the National Health Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021) was published vide the Kenya Gazette Supplement No.91 of 11th May, 2021, as a Bill proposing to amend the National Hospital Insurance Fund Act, 1998 to establish the National Health Scheme and enhance the mandate and capacity of the National Health Insurance Fund (NHIF) to facilitate and deliver the universal health coverage.

Whereas, the National Assembly considered and passed the said Bill on Wednesday, 29th September, 2021 with amendments in the form attached hereto.

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order Nos.41 (1) and 142 of the National Assembly Standing Orders, I hereby forward the Bill to the Senate for consideration.

Hon. Senators, pursuant to Standing Order No.157, which requires that-

“The Senate shall proceed with a Bill that originates in the National Assembly in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.139.”

I direct that the National Health Insurance Fund Amendment Bill, National Assembly No.21 of 2021 be listed on the Order Paper tomorrow, Thursday, 14th October, 2021 for the First Reading.

I thank you.

Next Order!

PAPER LAID

The Speaker (Hon. Lusaka): Sen. Dullo, please proceed.

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Wednesday, 13th October, 2021.

**THE ANNUAL COUNTY GOVERNMENTS BUDGET IMPLEMENTATION
REVIEW REPORT FOR FY 2020/2021**

The Annual County Government Implementation Review Report for the Financial Year 2020/2021.

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(Sen. Dullo laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order!

STATEMENTS

The Speaker (Hon. Lusaka): Statements under Standing Order 47(1); Senator for Trans Nzoia Sen. (Dr.) Mbito.

COMPREHENSIVE PLANS TO ADDRESS RECURRENT HUNGER IN THE COUNTRY

Sen. (Dr.) Mbito: Mr. Speaker, Sir, I rise pursuant to Standing Order No.47(1) to request a Statement on an issue of general topical concern, namely concrete plans to address recurrent hunger in the country.

As you are, Kenya like other parts of sub-Saharan Africa is suffering from the devastating impact of drought. According the Red Cross report, 2.1 million Kenyans are experiencing hunger and water scarcity as a result. The affected people have their dignity stripped away as they walk for long distances and queue for hours for relief food.

The cyclic phenomenon of drought is exacerbated by the ongoing global climate crisis. The President recently declared the drought a national disaster and instructed the National Treasury to release Kshs2 billion to provide relief food and other emergency support to the affected families.

The Meteorological Department has also forecast that the October to December short-rain season will be characterized by scarce rainfall, which is likely to cause even more food shortage in the coming year. This situation demands a paradigm shift in tackling hunger and drought in this country.

The Government must therefore, shift the focus from emergency interventions to those that build the resilience of communities to adapt to extreme weather events orchestrated by climate variability.

The Ministry of Devolution and the National Drought Management Authority (NDMA) should ensure that strategic measures like repairing and servicing strategic boreholes, wells and water pipes are timely. The Kshs2 billion allocation for relief food and other emergency support should have been more than sufficient for restoring old boreholes and wells long before the drought, thereby averting hunger and the unnecessary deaths and loss of livestock.

Further, to enable smallholder farmers to produce locally relevant food, oppressive laws like the Seed and Plant Varieties Act, 2012, should be relooked and amended to allow them to sell and share their own indigenous seeds. Smallholder farmers who produce 75 per cent of the food consumed in the country should be empowered to embrace traditional seeds, which have crucial genetic compositions, hence resistant to heat, drought, pests and diseases, helping in climate change adaptation.

The climate scientists say human-induced climate change contributed substantially to the 2015-2016 extreme drought over Eastern and Southern Africa by accentuating the natural *El-Nino* impact.

Therefore, the National Treasury ought to shift budgetary allocations from environment-degrading coal projects, like the Kshs1.3 billion allocated to the exploration and mining of coal in the 2021/2022 Budget, to fight hunger. It can be used to drill adequate boreholes and wells for communities in drought susceptible areas.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ali, proceed.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. Sen. (Dr.) Mbito has raised a serious issue, which occurs annually in certain areas. The worst part is that the Government is always talking of emergencies and relief food, which have never been useful. This is the right time the Government thought outside the box to mitigate these issues, which are worsening per year. Communities in the arid and semi-arid areas are suffering, animals dying and drought situation increasing, rainfall is scarce and pasture inadequate.

We still continue to give out food which is not helpful to the people. Of late, human beings feed the animals on the relief food that they are given. People do not feel like eating the food, because the animals are dying en mass. The Government has to think a way out, instead of thinking of relief food. They should give out cash which will help the communities.

I support the Statement.

The Speaker (Hon. Lusaka): Sen. (Eng.) Mahamud, proceed.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, let me also add my voice to this Statement by Sen. (Dr.) Mbito from Trans Nzoia. The current hunger situation is serious. In this country, drought is taken as an emergency but there is drought annually. It is something the Government must be prepared to deal with it in a long-term basis. We should not be waiting until the drought ravages our country then try to intervene by way of emergency. There must be proper plans put in place.

Departments like the NDMA, which is mandated to deal with matters of drought should put in place strategic interventions. Currently the drought has ravaged parts of the country; animals are dying, people have no food and food insecurity is estimated to continue until December this year. The rains are predicted to be scarce. The emergency intervention announced by the President; the Kshs2 billion is a drop in the ocean. More so, it is not moving anything because animals are dying and there is no proper offtake plan. The interventions are normally slow.

It is important that this Government moves from the small interventions and in the long term plan for resilient measures as requested by the Senator. We have to deal with issues of drought, which is a national phenomenon that keeps coming up in an organized and systematic manner.

Mr. Speaker, Sir, having said that, for now food security is an issue, but food security for animals is another bigger issue. Our animals are dying. Even the most resilient animals like camels are dying because of hunger. Where there is some little water, there is no grass. So, there needs to be a lot of intervention from the national Government to put more than the Kshs2 billion, and do it very fast.

As Kenyans, we know ourselves. Things do not move. The President announced this about a month ago, and it has not gone anywhere so far. I think that this is very serious matter. Drought must be dealt with so that Kenyans become food secure. We should not be worried about food security in the country 60 years after independence. It is a shame if a country cannot feed itself.

I support.

The Speaker (Hon. Lusaka): Sen. Cherargei.

Sen. Cherargei: Mr. Speaker, Sir, thank you for this opportunity. I laud Sen. (Dr.) Mbitio for this opportunity. As my brother Sen. (Eng.) Mahamud has said, it is sad that 60 years down the line since independence, we have not been independent in ensuring food security.

It behooves all Kenyans that one of the items on the Big Four agenda by President Uhuru Kenya is food security. Yet, today we are still discussing Kenyans going without food in the northern part of this republic. We even have Kenyans who go without food and with poor living conditions in slum areas, yet the country is not poor.

Mr. Speaker, Sir, it is sad. Where you and I come from, we have a lot of maize but do not have market. Nevertheless, a few kilometres away there are Kenyans who do not have anything to eat. It is so sad. You will remember that maize farmers will have a poor harvest this year because of erratic rains, especially during this season.

It is very unfortunate that we do not have market for our produce. Sen. (Dr.) Mbitio comes from Trans Nzoia County, which is one of the biggest bread baskets, yet in the northern part of Kenya, Kenyans do not have access to food.

This issue of creating interventions and tokenism every time like they are doing favours to the northern part of Kenya should stop. The other day, I heard that the Kenya Meat Commission (KMC) was given to the military, although the courts have declared it unconstitutional and illegal.

We expected them to mop animals and buy them. We expected Kenyans from the northern part of this Republic like Samburu and other areas to be given livestock insurance. We could have modern abattoirs where these animals are bought in large numbers, especially in the northern part of Kenya through KMC. Abattoirs must be built in the northern part of Kenya so that when such drought strikes---

I watched one of the interviews on residents that come from the northern part of Kenya. They believe that they are not poor. It is because they have not been given the opportunity to sell their animals when drought and famine strikes. They get the money then the Government processes it through abattoirs or the KMC. We then package that meat and sell it outside the country.

Mr. Speaker, Sir, I think that it is really unfortunate that we are discussing this at this point in time. They are making interventions that they should have addressed before. Kenya does not lack in its food supply. Where I come from, we have a lot of food. We do not have market only. Why does the Government not come up with innovative ways?

I challenge the county governments from the northern part of this Republic to partner with North Rift counties that produce more food. They can take it to them by a bilateral agreement between counties. They can mop up the maize that we have in excess and use the other animal feeds. They should have been bought in one way or the other.

Fortunately, or unfortunately the Cabinet Secretary (CS) in charge of the National Treasury comes from the northern part of Kenya. I have not seen him being proactive in drought intervention mechanisms. He has been very busy launching the UPYA movement in northern Kenya. I do not know whether it is part of the drought intervention.

All in all, I just wanted to say---

(Sen. Poghiso consulted loudly)

Mr. Speaker, Sir, can you protect me from the Senate Majority Leader. I do not know why he is shouting. I was just saying that---

The Speaker (Hon. Lusaka): Order! I think you have to be careful. You keep sneaking in things that provoke Members.

Sen. Cherargei: Mr. Speaker, Sir, but it is a fact that is there. That is why I said that I wish that the CS in charge of the National Treasury should be as active in drought intervention measures as he is active in launching the UPYA movement.

In conclusion, when you talk about the Big Four Agenda---

Sen. Abdul M. Haji: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is point of intervention from Sen. Abdul M. Haji.

Sen. Abdul M. Haji: Is it in order for the hon. Senator to insinuate certain allegations without proper--- what would be the word?

The Speaker (Hon. Lusaka): Without substantiating?

Sen. Abdul M. Haji: Without substantiating it, whereas we know very well that the hon. CS is trying his level best. It is actually the work of the Ministry on Devolution and Planning, because the CS has already released the funds. So, is it in order for the Senator to mislead the House?

The Speaker (Hon. Lusaka): Sen. Cherargei, let me caution you. Do not sneak in politics when you are making your Statement. You will utter those ones out there. Just try to stick to what is relevant.

Sen. Cherargei: Mr. Speaker, Sir, what I am noting is a statement of fact. In law, we call it a judicial notice. It is in the public domain. I thank Sen. Abdul M. Haji for that, but he should advise him to be more active in drought intervention.

The Speaker (Hon. Lusaka): Sen. Cherargei, proceed with what you were saying.

Sen. Dullo: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is a point of order from Sen. Dullo.

Sen. Dullo: Mr. Speaker, Sir, Sen. Cherargei has done this severally. Everybody has a right to associate themselves with any political party that they feel they should associate with.

Secondly, the work of drought intervention is not the work of the CS of the National Treasury. He is always rubbing this in. Let him not politicize the whole process by misleading Kenyans that it is the responsibility of the CS of National Treasury. It is not. It is actually the responsibility of the CS of Devolution and Planning, nobody else.

The Speaker (Hon. Lusaka): Senator, it has even been moved to the Ministry of Gender.

Sen. Cherargei, stick to relevant issues. Let us not waste time on irrelevancies.

Sen. Cherargei: Mr. Speaker, Sir, when you are giving directions, I would appreciate if my colleagues would keep quite so that I can get your directions. They are also shouting like it is a market place.

I conclusion, one of the items on the Big Four Agenda is food security. For us who come from the region where we pride ourselves as the bread basket of the Republic, we expected to get subsidized fertilizers and seeds so that we can plant more and produce a higher harvest.

Mr. Speaker, Sir, even in Nairobi, there are Kenyans in the slum areas who go without food. It is part of the drought and famine is faced in poor areas. I appeal to President Uhuru Kenyatta, in the future, he could ensure that we get subsidized fertilizer and seeds in the planting seasons so that that farmers can get more food. As a result of the erratic rains, we were not able to get a good harvest.

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

The Speaker (Hon. Lusaka): Let us try to keep it short so that everybody has an opportunity. We are running out of time for Statements.

Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I also rise to support this Statement. In fact, the people who have raised concerns about the Cabinet Secretary for the National Treasury have not seen the Statement. At the tail end of the Statement by Sen. (Dr.) Mbiti, he is requesting the National Treasury to reallocate its budgetary allocation to buy food. So, some of the interventions are not based on what is here.

I am aware that upon a request by ourselves to the National Cereals and Produce Board (NCPB), it came out that the storage facilities at the NCPB have no food. Secondly, there is no budget. This Statement is so accurate because there is no budget, to buy food. The food is currently with the farmers like Sen. Cherargei and others who have big farms but the national Government does not have food to give and has no budget for buying food.

This is the sort of Statement that can make us adjourn business to discuss because people are suffering. Sen. (Dr.) Ali sent us a picture of livestock dying left, right and centre while everybody is busy having rallies and doing funny things on top of whatever it is they are doing but Kenyans are suffering.

Sen. Cherargei: On a point of order!

The Speaker (Hon. Lusaka): Hon. Senator, what is out of order?

Sen. Cherargei: Mr. Speaker, Sir, is it in order for the Sen. Mutula Kilonzo Jnr. to say other people are doing rallies yet we saw him the other day in a political rally?

The Speaker (Hon. Lusaka): Let him respond to that.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, what he does not know is that it was a bi-election. I was campaigning for a bi-election which is tomorrow. I am not campaigning for 2022 like some of you are doing but you have a right to do so.

Mr. Speaker, Sir, what I am simply saying is that when we were discussing the matter of energy and petroleum---

Sen. Dullo: Point of information.

The Speaker (Hon. Lusaka): Do you want to be informed, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Certainly, by Sen. Dullo.

Sen. Dullo: Mr. Speaker, Sir, I want to inform Sen. Mutula Kilonzo Jnr. and the House. Recently we visited the President as the UPYA Movement and the Government allocated Kshs2 billion toward drought in this country. The money is in the process of being disbursed.

Sen. Mutula Kilonzo Jnr.: Sen. Dullo, I sit on the Committee on Finance and Budget. There is no way you can sit in a room and allocate yourself money. That used to happen during the Kenya African National Union (KANU) days.

When I say there is no budget, I mean there is no budget allocation and there is no supplementary budget. Unless you have a supplementary budget of Kshs2 billion for drought, there is no money. You have just been given an empty promise.

Mr. Speaker, Sir, the seriousness of this matter is that we should sit down with the people doing the budgets. That is why this Statement is important that we need to ask the person doing the budgets where the money for contingency liabilities that is supposed to take care of such things is.

Every time we budget, we have a contingency liability that is supposed to take care of budgets. If the Upya Movement has been allocated Kshs2 billion out of the contingency liabilities, is that money allocated specifically to their counties or the whole country? That is the information that should come to the Floor, so that we ask somebody to account for that money if it is not used properly.

The people of Kitui and Makueni are suffering the same way the people of Isiolo are suffering---

Sen. (Dr.) Ali: On a point of information, Mr. Speaker, Sir. The delegation went to State House but not as UPYA Movement. We went to see how the drought can be mitigated. Secondly, Kshs2 billion is from devolution budget. The money is under the National Drought Management Authority (NDMA). So, there is no new money.

Sen. Mutula Kilonzo Jnr.: It appears everybody was listening. That is exactly what I am saying. If the money has been reallocated, we should now ask. The implementation is through a budget. This Statement by Sen. (Dr.) Mbiti is accurate.

Otherwise you will be forced to say that you went to State House and you were given Kshs2 billion. That is false. People are going to wait for food and there is no food. What will Kshs2 billion do? Let us be honest, that is a drop in the ocean.

We must insist that when we have drought, it affects many parts of the country including the North Eastern Frontier. While we sympathize with people who have no food on the table, this matter is not only concerning Sen. Dullo, the Senator for Mandera, the Senator for Wajir and the Senator for Isiolo.

This is a matter affecting the whole country because there are people in Kajiado who are suffering. There are also people suffering in other parts of the country who did not go to State House or Kinango in Kwale to launch a political party. So, unless it is a political party, you will not get that funding.

Mr. Speaker, Sir, I hope that we will deal with the issues raised in this Statement--

Sen. Cherargei: On a point of order, Mr. Speaker, Sir. Sen. Mutula Kilonzo Jnr. was eloquently raising his point. However, is it in order for him to allude that you must go to State House to be given a budget for anything in this country? I thought Parliament is in charge of budget-making.

The Speaker (Hon. Lusaka): Sen. Cherargei, that is not a point of order. I know you want your people to watch you but please be relevant in what you say.

Continue, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: He is informing us about the wrong thing. Sen. Dullo and others, I suggest that we become strategic in this Statement. If you look at the functions of county governments, these are actually our functions.

We need to have the details. How much food do they have in the reserves? Where will that food go to? Who is going to be allocated food? How fast can we get food to places where people are dying of hunger? What are we going to do about livestock that is dying everywhere? We need strategic measures that we can tell our people that they will not die of hunger.

To suggest that there is money somewhere which will not buy food is not useful. The fact that they will not buy food but they have allocated money suggests that the Government is asleep. If we have newspaper reports that people are dying of hunger, what is the Government waiting for?

That is why I suggest that the framework in the National Disaster Management Bill we have proposed should be plug-and-play mechanism that a government will not wait for people to congregate somewhere and beg for food. We cannot have that in 2021.

The Speaker (Hon. Lusaka): I seek your indulgence because of time. I know this is a weighty matter. That is why it is my discretion to refer it to a committee. Due to the weight of the matter, I want to refer this to the Committee on National Security, Defence and Foreign Relations because it deals with disaster reduction and preparedness---

(An hon. Senator spoke off record)

But look at your Standing Orders and the discretion of the Speaker. Why do you want me to refer it to your committees? In any case, I would have decided not to refer it to any committee. However, I have used Standing Order No.1.

The Committee on National Security, Defence and Foreign Relations considers all matters relating to national security and foreign relations, disaster reduction and preparedness, home affairs, defence and immigration. The issues that Sen. Mutula Kilonzo Jnr. has raised are very important.

I am also using my past experience when I worked as a Permanent Secretary (PS) in the State Department of Livestock Development in the Ministry of Agriculture, Livestock and Fisheries.

We need to get data on what this money does. It is possible that a lot of money is being pumped into these areas but not doing what it is supposed to do. We should know how much food has been bought for livestock in North Eastern and other parts and at

what cost. We need to know how much money was allocated for livestock and cereals. We need that report to look at as a House, so that money that has been given is properly accounted for. I am talking from a point of knowledge because I know there are people in this country who use disasters to enrich themselves. We must oversight that as a House.

(Applause)

That is why the Committee on National Security, Defence and Foreign Relations must bring us a report within the next two weeks, even if it a midterm report. This is so that we are able to see exactly what is happening and our people do not die.

Sen. Wambua: Thank you, Mr. Speaker, Sir, on this matter of drought. This is because using your own discretion, again, you have allowed us, the Committee of Agriculture, to travel Wikithuki Irrigation Scheme tomorrow to appraise ourselves on what is happening there and try to deal with the drought situation in that part of this country.

Sen. Mutula Kilonzo Jnr. talked about what is obtaining on the ground in terms of what is available and what is not available. It is very important that you order the Committee on Security, Defence and Foreign Relations to make sure that those details are brought to this House. Especially, on the recent declaration by the President of drought as a national disaster it is important to know the following: How much money has been set aside? How much has been utilized and how much is remaining? What is the strategic plan going forward to ensure we do not sit back and wait for droughts to occur and then we react to them?

I thank Sen. (Dr.) Mbiti for coming up with this Statement.

The Speaker (Hon. Lusaka): I hope the Members of the Committee on National Security, Defence and Foreign Relations are here and will be able to bring us a report. I know that they have been having challenges – and the Vice Chairperson is here.

It is one of the Committees that have a problem with the Chair, but the Vice Chair is there. He should be able to mobilize his Members, so that they bring us a report. It is a matter of national importance.

Next Statement is by Sen. Faki.

CONGRATULATIONS TO PROF. ABDULRAZAK GURNAH ON
HIS AWARD OF THE NOBEL PEACE PRIZE
IN LITERATURE FOR THE YEAR 2021

Sen. Faki: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 47(1) to make a Statement on an issue of general topical concern, namely, to congratulate Prof. Abdulrazak Gurnah on his award of the Nobel Peace Prize in Literature for the year 2021.

The award is a great honour not only to Prof. Gurnah, but the whole of Africa. It reminds me of a similar achievement here at home when the late Prof. Wangari Maathai was awarded the Nobel Peace Prize in 2004 for her achievements in environmental conservation. The award to Prof. Gurnah once again puts Africa in the global limelight of excellence.

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Early this year, Zanzibar celebrated producing the first female President of the United Republic of Tanzania, Her Excellency Samia Suluhu. It was a great honour not only to the women of Tanzania and Africa in general, but also to the Swahili nation for having the first woman President of a country.

The Swahili nation has now given the world its first Nobel Laureate of Swahili origin and whose first language is Kiswahili, which is definitely another reason for celebration. As a member of the Swahili nation, this moment makes me proud.

Mr. Speaker, Sir, Prof. Gurnah was born in Zanzibar before migrating to England after the revolution in 1964 when many Zanzibar intellectuals were either killed or exiled because of their political beliefs.

He began writing as a 21-year-old living in England, publishing his first novel 18 years later. His work, as has been recognized by the Nobel Peace Prize Committee, spans diverse experiences of colonialism and its aftermath from German occupying Tanganyika in the 19th Century to present day England.

Prof. Gurnah has written extensively on the impact of colonization of Africa. Despite many African countries gaining independence, the colonial mentality is still prevalent in our countries. Although we are politically independent, we are still dominated by foreign powers that have taken away our sovereignty. We are dependent on foreign loans for the development of our countries.

Mr. Speaker, Sir, due to that dependence on foreign loans, we have stifled the economies of our countries. For example, Mombasa has been thriving as a port for many years even before Kenya came into being. It was a major commercial and trade centre in the East African Coast, second only to Zanzibar. Even after Independence, Mombasa continued to thrive.

However, in the recent past, we have seen the economy of Mombasa being stifled as a result of the Government policies that prioritise the use of the Standard Gauge Railway (SGR), as opposed to free enterprise in transportation of cargo from the Port of Mombasa to Nairobi and other destinations.

The Government in Nairobi clearly seems not to consider the wellbeing of Mombasa's economy in depriving legitimate business persons their livelihood by its directives on the use of SGR only. The Government is imposing its ideas on the people of Mombasa, the same way the colonial government did.

In the light of this, and as captured in the works of the first Vice-President, the late Jaramogi Oginga Odinga in his book *Not Yet Uhuru*, we, as a country, are yet to free ourselves from the bondage of colonialism and neocolonialism. Not until we do that can we claim to be truly free to chart the future of our country on our terms.

Unless we free Africa from the shackles of colonialism and neocolonialism, as well as the negative implications of globalization, our countries are doomed to struggle for space in the global economy.

In conclusion, I convey my heartfelt congratulations to my brother, Prof. Abulrazak Gurnah. Long live the Swahili nation. Long live Africa.

The Speaker (Hon. Lusaka): Thank you very much.

The next Statement is from Sen. Mwaruma. You can read your two Statements at the same time.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for that guidance.

CONSTRUCTION OF DAWSON MWANYUMBA STADIUM

I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Labour and Social Welfare on the status of construction of Dawson Mwanjumba Stadium in Taita-Taveta County.

In the Statement the Committee should-

- (1) Elaborate the status of the construction, including the date of completion of the stadium and the cost of the project thereof.
- (2) State the reasons for the denial of access to the stadium to the local footballers by the County Government.
- (3) Explain the terms of engagement between the County Government of Taita-Taveta and Sofapaka Football Club regarding the use of the stadium.

DELAYS EXPERIENCED BY USERS IN SERVICE PROVISION BY NTSA IN THE COUNTIES

Mr. Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Roads and Transportation on the delays experienced by the users in service provision by the National Transport Safety Authority (NTSA) in counties

In the Statement the Committee should –

- (1) State the specific locations and number of offices opened and operational in the 47 counties, stating the services offered to users in the offices.
- (2) Cite the reasons behind the delay in service provision, particularly the processing and issuance of smart driving licenses to motorcyclists in Taita-Taveta County, giving valid alternatives that the motorists can use as they wait for issuance of the licenses.
- (3) Investigate the rampant cases of harassment by police officers who allegedly collect bribes from motorists and motorcyclists and harass road users.
- (4) Outline measures, if any, to streamline efficient and prompt service provision to all road users.

Mr. Speaker, Sir, without discussing my Statement, the situation on the ground right now is that when your license expires, you are supposed to renew it to a smart driving license. The only office in the Coast region that is operational is in Mombasa. People have to travel from Lamu, Taita-Taveta and Tana River. Youths have no money to renew their licences to the smart licences. That is the gravity behind this Statement.

We want to know what the NTSA is doing to ensure the poor youths of Kenya are not forced to travel long distances to have their licences renewed.

We would want to know the alternatives that the NTSA is giving to the poor youth, who have to travel long distances and sometimes it takes days before they get the smart licences.

I thank you.

The Speaker (Hon. Lusaka): The next Statement is by Sen. Sakaja.

DEMOLITION OF MARTIN LUTHER PRIMARY SCHOOL

Sen. Sakaja: Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources on the demolition of Martin Luther Primary School in Makadara Constituency, Nairobi City County.

In this Statement, the Committee should address the following: -

- (1) Give a report explaining the circumstances under which demolitions took place at night in the school which has a population of 801 pupils in the night of 6th October, 2021, by unknown persons claiming the school land.
- (2) Provide a report on the status of the title deed for the school land which is approximately 11 acres LR No.209/4401.
- (3) Give a status report on the progress made on the issuance of title deeds to all public schools in Nairobi City County.
- (4) Explain how an entity called Thabiti Enterprise Company Limited got an approval from Survey of Kenya to sub-divide part of the school land measuring 5.3 acres LR.209/10466.
- (5) Give an undertaking from the Nairobi Metropolitan Services and the Nairobi City County Government that the school land will be fenced and protected from grabbers and revert to the students.

I thank you.

The Speaker (Hon. Lusaka): Next Order!

Hon. Senators, having consulted the Whips, we do not have numbers. Therefore, I will defer Orders No.8, No.9, No.10, No.11 and No.12.

BILLS

Second Reading

THE DISASTER RISK MANAGEMENT BILL
(SENATE BILLS NO. 14 OF 2021)

(Sen. Sakaja on 16.9.2021)

(Resumption of Debate interrupted on 29.9.2021)

(Division on the Bill deferred)

Second Reading

THE KENYA CITIZENSHIP AND IMMIGRATION (AMENDMENT)
BILL (SENATE BILLS NO. 33 OF 2021)

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(Sen. Kang'ata on 30.9.2021)

(Resumption of Debate interrupted on 30.9.2021)

(Division on the Bill deferred)

Second Reading

THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO. 15 OF 2021)

(Sen. Halake on 4.8.2021)

(Resumption of Debate interrupted on 5.10.2021)

(Division on the Bill deferred)

Second Reading

THE PUBLIC PRIVATE PARTNERSHIP BILL
(NATIONAL ASSEMBLY BILLS. NO. 6 OF 2021)

(Sen. Poghio on 5.10.2021)

(Resumption of Debate interrupted on 5.10.2021)

(Division on the Bill deferred)

Second Reading

THE HEALTH (AMENDMENT) BILL
(SENATE BILLS NO. 26 OF 2020)

(Sen. (Dr.) Ali on 5.10.2021)

(Resumption of Debate interrupted on 12.10.2021)

(Division on the Bill deferred)

Second Reading

THE HERITAGE AND MUSEUM BILL
(SENATE BILLS NO. 22 OF 2021)

(Sen. (Dr.) Alice Milgo on 12.10.2021)

(Resumption of debate interrupted on 12.10.2021)

The Speaker (Hon. Lusaka): Where is Sen. (Dr.) Milgo? She was moving.

(Bill deferred)

I want to defer Order Nos.14 and 15.

COMMITTEE OF THE WHOLE

THE INVESTMENT PROMOTION (AMENDMENT) BILL
(SENATE BILLS NO. 2 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE NATURAL RESOURCES (BENEFIT SHARING) BILL
(SENATE BILLS NO. 25 OF 2020)

(Committee of the Whole deferred)

Let us go to Order No.16.

BILL

Second Reading

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO. 20 OF 2021)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I feel like it is Christmas already. I have moved this Bill for the fourth time since I was elected. I hope that this time round we will be lucky to have it come into law.

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

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

Madam Temporary Speaker, the principle under this Bill is pretty simple. Article 188 gives the mandate of alteration of boundaries to the National Assembly and Senate. In Article 188(2) and (3) the conditions for alterations of boundaries---

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The Temporary Speaker (Sen. Pareno): Senator, you have not done the usual moving.

Sen. Mutula Kilonzo Jr.: I am sorry, Madam Temporary Speaker. That is the problem of moving too many times.

Madam Temporary Speaker, I beg to move that The County Boundaries Bill (Senate Bills No.20 of 2021) be now read a Second Time.

Under Article 188 of the Constitution, the jurisdiction of altering boundaries lies squarely with Parliament, the National Assembly and Senate. I am not quite sure in the times that we have done this Bill why the National Assembly has found that this is a money Bill. The reason I say so is because Article 188 speaks county boundaries. That is straightforward. What is it that makes it a money Bill?

There has been a notion that the commission that is proposed under Article 188 is what falls under Article 114 as a money Bill, which is not correct at all.

In terms of Article 61, which defines the 47 counties, this Bill seeks to have a method. The principle for this Bill and for those who have disputes on county boundaries, which include Isiolo, Meru, Kakamega, Kisumu, Taita-Taveta, Makueni, Machakos, the idea is, first of all, to anchor your counties in law.

As we speak today, the counties are anchored under the District and Provinces Act of 1992, which defined the boundaries. I was hoping that Sen. Mwaruma would be here. Recently, a court issued an order and told Makueni County that it cannot pick revenue from Mtito Andei. The court issued an injunction. A court in Mombasa stopped a county government from collecting own-source revenue.

What is the basis? The basis is that subsequent amendments to the Districts and Provinces Act possibly moved a ward to another county. I am glad that Sen. Murkomen has arrived, and Sen. Sakaja who is going to second the Bill is here. The compromise for this Constitution was to have the outer limit for boundaries at 1992. Unfortunately, boundaries have been altered. For example, if they did not use the 1992 framework, the amendment by Sen. Wambua to have Mwingi become a county would be a county.

However, the cut-out was 1992 and, therefore--- I forgot to even mention you, Madam Temporary Speaker, we have disputes with Kajiado County where you come from. The Bill is a framework that seeks to find a method of how to resolve boundary disputes before they are altered. It does not seek to change the boundary of any county. It first anchors the framework of the county. Thereafter, any person who is interested will have an opportunity to have a framework.

The taskforce that was formed by the then Cabinet Secretary, Hon. Nkaiserry led to a court case. I was here with Sen. Dullo and we opposed the framework, which did not find any formula, except disputes in Isiolo and Meru counties. Therefore, this Bill seeks to end the disputes once and for good.

I have proposed to have a framework for resolution of county disputes in Clause 3. I have followed a traditional method that we have where I come from; where if you have a boundary dispute with somebody, you plant sisal and use a sisal rope. These are traditional methods of resolving some of the boundary disputes without getting into a quarrel.

I have framed from Clauses 7 to 17 on how a committee will be formed, what it will look at; how a matter will be resolved and how the mediation committee will be dissolved.

Clause 4 of the Bill is on alteration of county boundaries. This is where Article 188 of the Constitution falls. If a person from any county seeks to alter their boundaries, Clause 18 stipulates what should be done. It is important that I highlight this because it is the heart of the Bill. The petition is then launched in the similar fashion as the petition that is under Article 182 on dissolution of counties; the framework on who should petition and the threshold of petition is in this Bill. We have put the framework and a threshold.

For example, in Imaroro Ward in Kajiado County, if you want to secede to Makueni, and you love Makueni, there is a formula here. The formula is such that Imaroro Ward that we border with Makueni County can either secede back to Makueni or leave Makueni if that is the case and the residents of that area are persuaded and have submitted a petition to that extent. Its consideration and report is under Clauses 20, 21, 22 and 23.

The part which the National Assembly and by extension, the Parliamentary Budget Office, has confused everybody about a Money Bill is Clause 5. It is on the Independent County Boundaries Commission. I have said it before that under Article 188, it is not contemplated that you will have a permanent sitting commission. It is not permanent, but on need basis. If the petition that is under the previous clauses is successful, they will ask the President to form a commission. The membership and functions of the commission are provided.

Madam Temporary Speaker, I got this framework from a gentleman who passed on recently and may his soul rest in peace. He worked as a chief. He gave me the framework that was used to determine the boundaries in 1962 and 1963. I found a beautiful commission, whose name I cannot remember. The commission was formed in 1962, which determined the 41 regions that ended up being the 41 districts that we have now nicknamed counties and then the constituencies. There are two commissions.

The person who drafted Article 188 did not just pick this commission from the sky; it existed after Independence. Once this commission sits and picks the views of the people concerned from both sides, if they are satisfied that a boundary ought to be altered, they make an inquiry under Clause 6 and issue a report. This report then comes to Parliament.

People think that you can change the boundary of a county. You cannot do so because the threshold is two-thirds of the Members of Parliament, which is nearly like amending the Constitution. Unless Parliament is persuaded in terms of a super majority, you cannot touch the boundaries of counties. This is why I am insisting that this Bill seeks to anchor the 47 counties into law and not change boundaries.

By the time you change a boundary and you go the process contemplated in this Bill and the Constitution, any person who seeks to do so must convince 45 Senators and 233 Members of the National Assembly, which is not a small threshold. If 45 Senators and 233 Members of the National Assembly agree, the alteration of the boundary is obvious. Those people deserve to be either in their county or in another county.

When Sen. Sakaja raised an issue with the Building Bridges Initiative (BBI) - it was a proposal - somebody thought that you could remove Nairobi as a county. How could he have done so? You cannot do so because the framers of the Constitution never imagined that if you do not like Nairobi, you can remove it.

Sen. Murkomen has been saying that if you do not like the Governor, remove him or her and put another administration. It was never contemplated. Similarly, you cannot shift a county. If you think that a county like Lamu is small, you merge it with Mombasa. However, you cannot do so because you will have to seek the views of Kenyans and meet the threshold. How the report will be considered is also provided in the Bill.

While this matter has been going on, the National Assembly has been approving regulations under the Districts and Provinces Act. When I see the Districts and Provinces Act of 1992 in the *Kenya Gazette*, where the Cabinet Secretary has proposed regulations, I wonder whether these people, when the Constitution was passed, the lights were shut off and on in their houses at some point. How do you do regulations under the District and Provinces Act, Cap 105(a) when it became the 47 counties?

Sen. Sakaja: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Sen. Sakaja, do you have a point of information?

Sen. Sakaja: Thank you, Madam Temporary Speaker. For the sake of record of the House, I would like to inform Sen. Mutula Kilonzo Jnr. that he forgot the name of the commission that dealt with boundaries. It was called the Kenya Regional Boundaries Commission of 1962. It was gazetted on 6th February, 1962 and it did its work throughout that year before Independence. That is the information I wanted to give.

Sen. Mutula Kilonzo Jnr.: That is the commission, but I was trying to remember the name of the chief commissioner, who was in charge of boundaries. I do not know whether I can remember his name now. I think it is Yusuf. He brought all these documents to me. I have them in the office. They are beautiful documents about how we moved from 111 constituencies and how people were moved from one place to the other. This commission was useful. It went to every corner of Kenya. It was the precursor of the 1992 law. The 1992 law is unique.

It is the reason it is important to anchor this law on it. I do not know whether Sen. Wako is here. As Attorney General, he drafted the 1992 law. That is how we ended up with Makueni District in 1992. You literally walk from one corner to north east, where there is a tree, a corner, a bridge and a river. It was a beautiful way of describing boundaries.

This is a good framework. For example, how did we end up having an issue with Machakos County? Mr. Masinde, who works in the Department of Physical Planning, did one simple thing. He just moved the boundary of Malili from the Konza Road to Mombasa Road. That simple act moved the whole of Konza City to Machakos; just the simple act of moving that boundary.

Madam Temporary Speaker, when I met him when I started my work as a Senator, I asked him: 'Now that you put Mombasa Road as the boundary between Machakos and Makueni, when the Government does a new road, as they have done with the expressway, does the boundary shift?'

You will recall that I asked a similar question when we had a problem between Kajiado and Makueni. I said that we have a new Standard Gauge Railway (SGR). People argued that the old boundary was the old railway line or the road. Now that there is a new railway line, has the boundary shifted? No!

It is important that we find names of visual things that we cannot move around in the description of these boundaries. In the case of Kajiado, it describes a hill where you find masts in the valley. They are right inside. If you go and see the hill, the boundary of Kajiado and Makueni is around ten kilometres in from those masts. You cannot move that hill as a physical mark, but you can move a road.

Madam Temporary Speaker, it says that the boundary in Mtito Andei is the Tsavo River. Unless there is an earthquake, you cannot move the river. That is why this is important. There are so many cases that we are doing now. I am glad that Sen. Sakaja is here. Nowadays when you want to check your land, you just look for the Geographic Information System (GIS).

If you want to know your piece of land, we are now doing GIS in Konza. They give you a mark. You go to your computer and can check your piece of land right there as you are sitting in your room. We ought to find a method of doing the same for boundaries. The conditions of Part IV and Part V are supposed to ensure that we have this.

Madam Temporary Speaker, in Part VII, we have the regulations that will guide how Petitions are formulated and the sittings of this commission. The commission must be disbanded upon resolution of that boundary, whether it is accepted. We must contemplate the consolidation of Petitions. There are many.

There is a schedule on boundaries of counties, requirements for Petitions, form of Petitions and conduct of business. However, I have not seen in the recent past a more beautiful law; The District and Provinces Act of 1992. It was beautifully written and very well done. That is the wisdom of having the 47 counties anchored around that 1992 law. It was spot on to do so.

Madam Temporary Speaker, it was initially contemplated that we have 16 counties. There was 8, 16 and then 47. Sen. Sakaja and Sen. Murkomen participated in the making of the Constitution. Allow me to digress. I am actually told that the people who wanted 47 counties thought that if we have 47, the 47 counties would fail.

The people who wanted a smaller number – 16 - wanted to consolidate. It means that Elgeyo-Marakwet would not have been a county itself; it would have been consolidated with another one. Makueni would possibly have been under Kitui and Machakos. That is how they had the 16.

Can you imagine that the 47 counties of Kenya are a default? Somebody said: “Okay, let us give them the counties. If they want a cake, we will give them a cake and see what happens.” Can you go and dissolve Lamu county now? As small as it is, see what Sen. Sakaja will tell you.

For some reason, the population of Lamu balances Nairobi. If Lamu is not on the outlier with Nairobi, whatever formula you use is wrong. That is how important Lamu is in relation to Nairobi, and that is how we got the formula right. Both Lamu and Nairobi ended up being an outlier. That is the beauty of counties.

Madam Temporary Speaker, without belabouring the point, I move that this Bill be read a second time. I hope that we can get this done. Although the Speaker said that this is not a campaign platform, I just hope that if I am elected, I do not have to deal with these issues of boundaries when I go to Makueni.

The physical boundary between us and Kajiado is just a line in the sand. When we buy cattle from the people of Kajiado, where you come from, we do not look at boundaries. We look at your beautiful cows. When you bring your children, use our facilities or we share markets like we do, a money market is a shared function between Kajiado and Makueni. All the onions and vegetables that you find there are not grown in Makueni. They are actually grown in Kajiado.

Madam Temporary Speaker, we are only passing this framework of county boundaries as an administrative way of everybody lying where they belong, the same way you fence your piece of land or your *manyatta*. In Makueni, people do not do fences. There is sisal plant here and there, and those are boundaries. It is just a way of making sure that we have order.

It is actually a tragedy that you can have order of constituencies and wards and no order of counties. It is strange that we lay the boundaries of our wards, but we do not know the boundaries of our counties. Yet, when I was campaigning for your Member of County Assembly (MCA), I knew that I was in Kajiado when I crossed to Kajiado. How can we have confusion about boundaries? This is a very important law, and I hope that we can resolve these issues.

I also hope that this framework will not bring this country into a war between counties. If Konza is in Machakos or Makueni, the Konza facility cannot be used by one exclusive person. The Jomo Kenyatta International Airport (JKIA) can be said to be both in Nairobi and Machakos. It is a shared facility. We can enjoy these facilities without quarrelling.

Madam Temporary Speaker, I beg to move and request my good friend and brother, Sen. Sakaja, to second.

The Temporary Speaker (Sen. Pareno): Sen. Sakaja.

Sen. Sakaja: Thank you, Madam Temporary Speaker, for this opportunity to second this very important piece of legislation. It is actually quite consequential. I congratulate Sen. Mutula Kilonzo Jnr. for moving it in this House for the fourth time since he was elected as a Senator.

He moved it but our noisy neighbours have this habit; that whenever they see anything like money mentioned, they say that it is a money Bill. Sometimes they even just dream about it. This is not a money Bill, but a very clear provision in the Constitution on how we need to set up this commission that will resolve boundary disputes from time to time.

Madam Deputy Speaker, since the days of the Kenya Regional Boundaries Commission and all the subsequent entities that have done delimitation, a lot has changed. I remembered this when Sen. Mutula Kilonzo Jnr. was describing the process. Senior Counsel Sen. Orenge will remember this because he was a member of that parliamentary Committee. I was consultant on the issue of the delimitation of constituency boundaries.

The discussion around the counties was such that if today we, as Kenyans, know that there is indeed no formula in coming up with 47 counties --- I remember that there was a proposal that the eight provinces become counties. When that proposal was given, the first brief that was received was from the military intelligence.

They said we were going to court danger and will have one county called North Eastern with an elected governor with all the resources and neighbours.

They also said that we will have another county bordering four countries. We will have Rift Valley that borders Tanzania to the south, Uganda, South Sudan and Ethiopia. Sen. Murkomen is here. On top of all the resources the Rift Valley has, they have a bullets factory, an international airport and one political kingpin and the governor of Rift Valley might cut off Western and Nyanza if they decide to secede.

We will have a county called Eastern with very different communities of interest from North Horr up there, which is 38,653 square kilometres. That is just one constituency but it is bigger than the former Nyanza and Western provinces. It is even bigger than Kitui County. It is like six Nairobi counties.

They said this will be a threat in terms of security because of the possibility of people--- You remember after the elections, our brothers in the National Super Alliance (NASA) led by Hon. Kaluma redrew the map of Kenya, asking the rest to be on side as they remain on the other. That was the first consideration.

Then, there came the proposal of 74 counties from the former districts, which was easily dismissed. They said they will be too small for economic absorption which is the real reason for fiscal decentralization. There could not be any meaningful development with 74 governors running around the country.

The final and more sensible one which was a victim of political considerations was to have 16 counties. Each province that existed, except for Nairobi, would be divided into two, and Rift Valley into three. We would have had upper and lower Nyanza. That is Kisii and Nyamira on one side and the Luo Nyanza on the other side. That would include Kisumu, Migori, Homa Bay and Siaya.

We would have had South Rift, including Kajiado, Bomet and all that. Central Rift was the real contention and then North Rift. The people of Nakuru said there is no way they were going to be part of Eldoret. Let me not mention the communities. As they are, they would automatically become a minority.

I remember having heated discussion with Hon. Mwangi Kiunjuri. Nairobi would remain as a county, but we would have had other 15 counties. Again, that was shot down.

Because of the push and pull, a compromise position was to revert to the 1992 Act that described 47 districts. That is what we have in our Constitution. Some of the districts were also political. You cannot explain how Vihiga, which is almost like a path between Kisumu and Kakamega, was extracted to be a county. There are also many others but that is what we have today.

Where we failed to get it right, which this Bill seeks to do, is that we defined the names. Of course, we used what is in that Act, but we never entrenched that in our Constitution. We are now using technology and a lot has changed.

I like how Sen. Mutula Kilonzo Jr. described. At that time, we would say that the boundary between this and that county was a river. Rivers have changed course. What

happens when a river has changed course? Because of human development, that river is no longer where it used to pass. What happens when you say it was the railway line and now there is a new railway line, or it has been moved? That is a problem we should not be grappling with.

I am glad that once we have this framework, we shall now use the technology that we have today. That is Geographic Information System (GIS). The GIS we have today can tell you specifically--- It does geographic referencing of the physical place on earth to Global Positioning System (GPS).

No matter who draws it, we can know the co-ordinates of each county and we will not have disputes again. Once we know the border between Nairobi and Kiambu and the co-ordinates, no matter what you build or even change a river or a hill, that coordinate remains, so long as Kenya remains on the globe.

I will give examples of a software like ArcGIS. This is a software that is used to create and analyse spatial and geographic information for the sake of planning. There is what we have been trying to do with Nairobi City County in terms of spatial planning. Using that software and the information and the technology we have today, it becomes easy even to do referencing and addressing the value of rates we can collect as a City.

I am very happy that we can have this framework as envisaged in the Constitution, so that we sort out all these disputes. In fact, the first thing they must do is to give us--- There is a difference between an illustration and a map. What we have in the Constitution is an illustration.

When the IEBC gave their first boundaries, I remember at that time we had a lot of back and forth with Hon. Ligale and his Commission. One month to the expiry of their term, it must have been on 27th November, 2012, they did not have the data from the census in soft copy to load on the ArcGIS and move the locations that build up constituencies. Therefore, they just drew the constituencies.

Today, if you go to the Survey of Kenya and ask for a proper cartographical map-- A cartographical map shows you the age, physical features, coordinates and the end of a constituency. If they did that, many of the disputes we have been having would have been resolved in this country.

When you go to some parts of this country, you will find two chiefs. Since two communities did not agree, one community will call it "Makutano," while another one will call "Mkutane". In that same place, you will find two different chiefs who offer the same Government services just for the sake of peace because people have not accepted the boundaries and they have not been told.

We need to change how we think about boundaries. Boundaries are not fences to keep people apart from each other because a Kenyan can live anywhere. A Kenyan should live anywhere in this country, whether the boundary is drawn or not. Boundaries are important for administrative and political planning in terms of electoral boundaries.

People find expression through the place where they exercise their sovereignty in terms of voting. That must be clear. We must know the extent of a constituency or a county such that when Sen. Mutula Kilonzo Jnr. becomes governor next year, inshallah, because I know there is a god that he will, it will be easy for him to plan where he will collect cess and where he will give services.

Today, you will find some governors offering services to the same place. We have seen governors building schools in neighbouring counties saying that it is part of their county.

I remember officers of the IEBC sat here with us when we were discussing the Building Bridges Initiative (BBI) and we exposed them because we brought the Kenya National Bureau of Statistics (KNBS), the Survey of Kenya and the IEBC. However, the three entities are not sharing information.

We were to do delimitation of constituencies but today, there is no one who can tell you the population of any ward because not every ward is a location but the census counted people in administrative units and not political units. So, how do you delimit a constituency? If you need to create a new constituency, then you should merge the wards. So, these agencies should sit together. We should have one single source of truth in terms of population data and cartographical maps for this country.

Madam Temporary Speaker, we are in 2021 and this is the 21st Century. In as much as the old description is there, what happens when, for example, a tree that used to separate Nyamira from Kisii is cut? What happens when a coffee or tea plantation has been changed into something else? Let us use the technology we have.

I am glad that in as much as this Bill relates to the disputes, the first thing that must be done, especially for the counties that have not had disputes with each other--- Nairobi and Kiambu do not have any dispute.

We do not have any dispute between Nairobi City County and Kiambu County. It is just that when Members of Parliament want to go out of town, but not too far, we have our sessions at Windsor Golf Hotel and Country Club. It is only the golf course that is in Kiambu. If you look at the map, the place where we do our meetings and stay, is in Nairobi City County. Even the Hilton Garden Hotel, where people go to on Mombasa Road, is still in Nairobi City County, but at the edge.

Those counties that do not have dispute as of now can be listed. We know that there is no dispute between Kwale and Mombasa counties. Once you cross the ferry and are at the edge of Likoni, then Kwale County begins. Let us get the cartographical maps and illustrations of all of those counties and then we deal with those that have disputes.

There is a process in Clause 18 of how a member of the public petitions Parliament for the alteration of boundaries. Alteration of boundaries does not have to be a dispute. People can agree and say that for better administration and efficiency, they need to alter their country boundaries.

There is a process of petitioning. We have seen many people petitioning this House on this matter. Sadly, any time they come – Sen. Mutula Kilonzo Jnr. you have been there - the Cabinet Secretaries (CSs) have one excuse; that Parliament should have set the legislative framework, but we have not done it.

Anytime there is an issue and we call CS, Dr. Matiang’i or the CS for Lands, they say that their hands are tied. The Independent Electoral and Boundaries Commission (IEBC) says it is not the one to address that issue until we have a legislative framework. This is the legislative framework that this country needs, so that those issues can be a thing of the past. That is why we need to pass it.

The Bill as Sen. Mutula Kilonzo Jnr. has taken us through has all of these provisions. It is extremely thorough and well written. I hope we can pass it unanimously. I do not see where it can be contentious as of now.

It has taken into consideration all the comments that have happened in its three iterations until this stage where it is coming for the fourth time. It includes how the Senate approves a recommendation of the Special Committee for the establishment of an independent county boundaries commission.

I do not know why our friends do not understand that it is not a permanent county boundaries commission being set up. The Constitution is very clear that when there is need to do that, whenever there is a dispute, request or petition to address that issue, a temporary commission is set up to look at it. After that they pack their bags and go. The information and data remains with the IEBC, the Survey of Kenya and the National Bureau of Statistics.

Madam Temporary Speaker, with those many remarks, I congratulate Sen. Mutula Kilonzo Jnr. and second.

(Question proposed)

Sen. Murkomen: Thank you, very much Madam Temporary Speaker. I congratulate Sen. Mutula Kilonzo Jnr. for moving this Bill, I think for the fourth time. For purposes of contextualizing this Bill, it did not just come out of the blues. Sen. Mutula Kilonzo Jnr. was here at the advent of this Senate in 2013. He came in a little bit later in that very unfortunate situation of his father's demise.

He was here when we were struggling with the county boundaries. Many counties were testing the extent of their powers between one county and the other. I think it was the excitement of devolution. Most of it was driven by the desire to collect revenue.

A lot of it was around counties such as Kisumu and Vihiga, which dispute is still existing up to now. The Petition from Vihiga is still pending in the Committee on Devolution and Intergovernmental Relations where I am a Member.

A number of other counties including my county and Uasin Gishu had a lot of disputes as to which corner we should put the barrier for revenue collection from one county to the other.

As a result, Sen. Mutula Kilonzo Jnr. drafted this Bill. One would have imagined that we would have passed this Bill way before 2017 and made sure the National Assembly agreed with it. As it were, this Bill left this House in a hurry because we all thought---

I still remember the contributions of many Senators, including Sen. (Prof.) Anyang-Nyong'o, who are no longer Members of this House. We also had Sen. (Dr.) Khalwale, Sen. (Prof.) Lonyangapuo, who was very passionate about it. There was the then Senator of Meru, now Governor, Hon. Kiraitu, and also Gov. Sang. All those people made passionate contributions on the Floor of this House for purposes of this Boundaries Bill, and we sent it to the National Assembly.

As it were because of wrong considerations by the National Assembly, they ended up calling it a Money Bill. I am glad that, eventually, the courts have helped us to find, if not a lasting solution--- I hope that the Bill by Sen. Mutula Kilonzo Jnr. and Sen. Sakaja

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will be finally adopted to be the framework with which the Bills can move from this House to the other. That is the history of this Bill.

It is not producing anything new, but helping in two ways. One, it is operationalizing Article 188 of the Constitution. For avoidance of doubt, Clause 6 of the Bill recaptures that position on two things. One, unlike the situation where people were saying that we were forming many commissions, this is an *ad hoc* commission, which shall be established only when and if there is a need to resolve disputes between two counties.

Secondly, in this framework of dispute resolution the IEBC was deliberately denied that responsibility by the Constitution. There is a reason to that. If you listened to the moving notes of the owner of this Bill, Sen. Mutula Kilonzo Jnr., you realize that one of the reasons IEBC does not have jurisdiction when it comes to delimitation of county boundaries, is because boundaries were not intended to be moved anyhow.

It is like the state boundaries in the USA. You can change all other internal boundaries within states, but the USA by its Constitution, recognizes the 50 states. In the same way, our Constitutions recognizes the 47 counties, which are our mini states in the context of our constructional order.

There is a history also as to why we have 47 counties. Anybody who was following the constitutional review processes and was close to what was happening across the country, we had reached a stage where almost got 14 regions to become the main arm of devolution. We were then going to have county councils under the 14 regions.

If you read the history of Naivasha and the constitutional review process in the country, Nakuru became the biggest problem. This is because when discussion on divisions of North, South and Central Rift ensued, the question of ethnic composition of Rift Valley became a very thorny issue, to the extent that it was impossible for the parties in the constitutional review negotiation to agree.

They could not agree on whether Bomet and Kericho would be put together with Nakuru and Baringo, and whether some people would be more minority than others and political imbalance within the region would be affected.

As a result, parliamentarians having negotiated for a long period of time, settled on the district boundaries of 1992 that Sen. Mutula Kilonzo Jnr. has ably moved and spoken to in so far as the establishment of districts are concerned.

That became a very good compromise because these were entities that were a bit stable. They were not dished out politically, like the case was later when districts were given out for political considerations. These were a more well considered districts at that point in time by 1992. As you can see, from the boundaries that have been established as part of this Bill the boundaries that are being given here, are the ones that were there in 1992.

Therefore, you ask yourself, that if the boundaries have already been established here in this Bill, why would you have a Mediation Committee or a Commission to deal with the disputes? It is because even though you are talking about this this river versus the other river, you will find that some rivers are seasonal and they have moved.

Kenyans have not travelled to places like Garissa, Wajir and Marsabit. Those are countries within the country because of the size of landmass there. If you go to Baringo, there are two Baringos. There is the Baringo of Tiaty Constituency and there is the rest of the Baringo County. Tiaty Constituency is the size of Elgeyo-Marakwet and a half. Part of the problem that is in Laikipia at the moment is a boundary issue. The Pokots in Tiaty Constituency believe that the boundary must extend to a certain place and they must have grazing rights, even in areas where we have farmers. We have people who are farmers and the pastoralists want to graze to a certain point. The same applies to the other side of Marakwet and Baringo, the Tugen areas and the area where the Pokot are living.

Inside the issue of Laikipia, the violence that is taking place, the cattle rustling, it is not just an issue of stealing livestock; there is also the land issue. It has even been worsened by the discovery of geothermal energy along areas in Baringo, where there is exploration of geothermal energy. There is a lot of it in Tiaty Constituency. In all these places that have large land areas, even though we have land indications attached to this Bill, there are still reasons there is fighting.

This Bill creates that very important framework for us to be able to settle disputes amicably. You need to ask yourself what are the factors that are causing these disputes. Why is it that at the moment there is calm between Elgeyo-Marakwet and West Pokot; between Elgeyo-Marakwet and Uasin Gishu; and, between Elgeyo-Marakwet and Trans Nzoia?

It is okay now because there is no incentive. Wait until tomorrow when they say that gold or oil has been discovered in a particular area and we pass a law in this Senate that says 15 per cent of the resources that come from these minerals will go to the county government and will benefit the people of that county. That is where Armageddon begins.

We need to prepare ourselves for that eventuality. A boundary fight in some areas may not mean anything. For example, it is one community, which is living on the boundary of Uasin Gishu and Elgeyo-Marakwet. The Keiyo live on both sides of the boundaries, so it may not be a big deal. If you are moving from the Keiyo side to go to Ainabkoi it may not be a big issue. If you are moving from Keiyo North to go to Moiben Constituency, you will find the same families and the same properties. There is no issue.

However, wait until you move from Elgeyo-Marakwet to go to West Pokot or move from West Pokot to go to the Turkana side. It leads to a situation where a boundary fight is no longer a fight about counties; it is communities.

If you go to Kitui and Garissa, even though they have fights over grazing rights, a lot of it is between two communities. It becomes nasty when two communities are involved. It is important for us to avert that situation now than to wait for the next 10 years and find ourselves in a place where there is conflict along many boundaries.

We need not forget that when this country had serious challenges in the north, in the same Marsabit County. It was so bad between Tiaty Constituency in Baringo and Turkana. His Excellency the President appointed leaders, among them Senators from this House to go and resolve disputes among communities and dealing with the issues of boundaries.

The fight between the Pokot and the Turkana is whether Kapedo is in Turkana or Pokot. That is a question that has not been resolved up to now. If we have to sort out this problem in the future, this law is very important because it will help us to stop looking at the dispute as a cattle rustling.

What really did make that problem very complicated between 2013 and 2015 was because oil had been discovered in Turkana and there was then the belief that there would be oil wells in Kapedo area. Communities began to think that everybody would have their own oil well.

You should have heard the time we were saying we had discovered oil in Turkana. People were very graphic about it. They were saying now we need to buy our own containers, everyone will have their jerrican of oil. Some people were beginning to call themselves the Sultan of Turkana. People were beginning to have these imaginations about how their lives would change. I wonder what happened now that we are discussing how oil prices have gone up. I wonder what happened to the Tullow Oil exploration.

Now that we cannot get the Cabinet Secretary here and he is from Turkana we do not have the opportunity to ask him that very simple question as to what happened to the oil exploration in Turkana. Those are the things that create these problems that we are dealing with.

Boundaries remain very important. I know for sure we are discussing boundaries within counties. However, you will realize eventually that this exercise will require Kenya to also deal with its international boundaries. When you are talking about the boundaries of Turkana County, it will mean we will have to define our boundary with Sudan. We will have to define our boundary with Uganda. The same applies to West Pokot and Uganda.

When we talk of the boundaries of Tana River, Mandera and all those other parts of the country, we will have to deal with the boundary of Kenya and Somalia. We have a serious debate about the decision of the ICJ and the question of our international maritime boundaries. This is one issue that we must deal with.

I agree with all of us who are saying that we are dissatisfied with the decision of the ICJ, but make no mistake; war is not the solution. It cannot be the solution. This country cannot fight with its neighbours. The only way to solve these disputes is this way that Sen. Mutula Kilonzo Jnr. is proposing between counties. It is also to look for ways of counties to be able to talk together and agree on how to benefit from the resources that they have.

The reason why we have a problem with Somalia at the moment is because of resources. It is because someone wanted to undertake exploration of oil along that area of Lamu, Kismayu all the way to Somalia.

The solution here is not to fight over these resources but to ask ourselves: How can we exploit these resources in a manner that can benefit our two countries? You will find ignorant Kenyans on social media saying that because the ICJ has made a certain decision, we are going to use force. We will fight Somalia. Do people really understand what war means? Those are the same sentiments that some politicians in some areas are saying: "We will fight for this county. We will fight for the boundaries of this county. We will not allow an inch of this boundary to move."

Local politicians in some areas are saying, “we will fight for this county. We will fight the boundaries of this county. We will not allow an inch of its boundaries to move.” What is the solution? The solution is not in fighting, but in mediation, reconciliation, conversation and finding solutions. This is the only way we can keep this country and our region peaceful. We can find solutions that are lasting.

I believe and hope that his Excellency President Uhuru Kenyatta, the next President of the Republic of Kenya, those of us in leadership, shall also find diplomatic means of ensuring that our boundaries and this land called Kenya is well protected in a manner that benefits us.

Also with what the President has always talked about Pan-Africanism that will apply our diplomatic skill to ensure that we live in peace with our communities and neighbours in this region. There is nothing to worry about in so far as the issue of Somalia and ourselves is concerned, as long as we are still able to be diplomatic.

If we are the richest State in this region, how come we do not have a say between us and Tanzania, Uganda, Burundi, Rwanda and South Sudan? As a nation, I do not know whether we should close ourselves at some corner and think about how we can strengthen our diplomatic capacity as a country.

Every time our neighbouring countries have problems, they run to us and we help them gladly, either hosting them or providing expertise to their countries to resolve problems they have. At the end of the day, when we are in a situation where we need their support, we are always an island. There must be something wrong with us that we need to fix. Fix how we are going to run our international relations in a manner that will earn us respect in the region. I hope Amb. Monica Juma will get the job she is looking for at commonwealth. We have lost too many positions in this region because of lack of proper diplomatic process.

I am digressing, but the point I am making is that boundaries are about diplomacy and negotiations. I like the spirit of the Mover of the Motion when he talks about Konza. Any other Senator would have come here and say, “Konza must be in Makueni County. We will not allow otherwise.” The people in Makueni and Machakos counties are the same. You can move from Makueni and come and live in Machakos.

As Sen. Sakaja was saying here, we have the freedom of every citizen to live in any part of this country. Tomorrow we have right to move. When I retire, I might want to go and live in Makueni or Konza which is the beauty of this country. That is how we should develop this nation in such a way that each one of us can feel proud to move from one corner to another.

Some of you, like the Mover of this Motion will be governors. I hope that you make our country shine. You must make sure that counties are places we can run to, a safe haven and set a good example. I do not know what to say about the six – sorry one was impeached, five Senators who became governors. Some have done well and others not so well. I hope the next lot of Senators who are going to be governors will make us proud.

Congratulations, Sen. Mutula Kilonzo Jnr. and I beg to support.

The Temporary Speaker (Sen. Pareno): Sen. Omogeni, proceed.

Sen. Omogeni: Thank you, Madam Temporary Speaker, for giving me an opportunity to contribute to this fantastic and wonderful Bill from the Senator for Makueni.

Mr. Speaker, I had the privilege of working closely with the father of Sen. Mutula Kilonzo Jnr., the late Senior Counsel, and former Senator for Makueni County, Sen. Mutula Kilonzo Snr. I would like to say this very objectively and professionally; that the people of Makueni County have blessed the Senate with this brilliant young man called Sen. Mutula Kilonzo Jnr. When you read this Bill, it is going to give a mechanism and framework for resolving dispute that run across so many counties.

The Temporary Speaker (Sen. Pareno): You keep referring to your classmate as ‘Mr. Speaker’.

Sen. Omogeni: I am sorry, Madam Temporary Speaker. Let me amend. I am saying, ‘Madam Speaker’. I do not want the Class of 1993 to raise issues with me that I am not able to recognise, Madam Temporary Speaker, who was my classmate. Those who doubt that we went to school together, I confirm that we went to The University of Nairobi.

I thank Sen. Mutula Kilonzo Jnr., one of the most brilliant Senators. We wish you well in your ambitions of becoming the Governor for Makueni County. This House will sorely miss your brilliant debate. We wish you well because that will be a promotion.

Madam Temporary Speaker, I hope that this time our brothers and sisters who come from the counties that we represent in the Senate will look at this Bill objectively. Look at the good intentions behind the Bill and the framework put in place to assist counties in solving a number of disputes facing them. It will be a sad day if, this time around, the National Assembly becomes an impediment to the passage of this Bill.

I will make an effort to speak to the Members of Parliament from my county. We are also victims. We have a boundary dispute between the county of Kisii and Nyamira at a town called Keroka. I have crafted a Statement that is coming to the House, where I want the Cabinet Secretary of Interior and Coordination of National Government to point out to us where the boundaries of Keroka Township is between Kisii and Nyamira counties.

This is causing problems. About five weeks ago, I was at home and had a huge delegation of business people from Keroka who are facing double taxation so to speak. They paid license fee to the County Government of Nyamira and a few weeks down the line, enforcement officers from the County Government of Kisii were at Keroka demanding for rates to be paid to the County Government of Kisii. When they resisted, their goods were carted away. These are innocent traders. People are suffering during this difficult and hard COVID-19 period.

It is good that we have a framework that can deal with some of this vagueness in terms of boundaries between many counties. I have tried to read the description that sets the boundaries between Nyamira and Kisii counties. If you ask anybody from North Mugirango, when you say it commences at Nyaututu and Sondu rivers, they will tell you that should not be the case. They know that they have a township called Chabera. Maybe at that time, the small centre had not been recognised. So, we used Nyaututu and Sondu rivers.

I know where Sondu river is. It is far away from that market called Chabera. When you look at the road that was done from Chebilat through Ikonge terminating at Chabera, that should be the correct boundary between the County of Homa Bay and Nyamira County. If an issue arose, what you have here is fairly vague.

If you go to the description between Kisii and Nyamira counties at Keroka, what is described as the boundary is Nyaribari Masaba. If you say that the boundary is at Nyaribari Masaba and it is a constituency, that is very vague.

Madam Temporary Speaker, we really need a framework that can address some of these issues that were not defined with clarity. In 1992, the intention was just to bring administrative unity closer to the people who were brothers and sisters. Kisii in Nyamira and Kisii counties are all one people. We are all homogeneous

In 1992, nobody knew that at one time there will be a county boundary between Kisii and Nyamira. It was just declared that there would be Nyamira and Kisii districts, but now there is a bigger problem. This is because when you talk about counties, people are now looking at revenue. When you talk about money, disputes are meant to arise.

In my Committee, we are dealing with more than seven disputes among counties. We have tried. We called the Independent Electoral and Boundaries Commission (IEBC). They came to our Committee and told us that all they know are elective units. They do not know about county boundaries. They just know about elective units where the polling centres and the boundaries of electoral units are. When we called the Cabinet Secretary (CS) of Interior and National Coordination, he also had some limitations.

Baringo, West Pokot and Turkana counties have a serious dispute at Kapedo. This has been going on for many years. What Sen. Mutula Kilonzo Jnr. has brought to the House is trying to create a framework that will find a lasting solution. This is something that all elected leaders, not just Senators, even our brothers and sisters across at the National Assembly should embrace.

Madam Temporary Speaker, look at the Orange Democratic Movement (ODM) zone. There is a serious dispute at Maseno between Kisumu, Vihiga and Siaya counties. A Statement was brought to this House and referred to our Committee, but we are unable to find a solution. It has been pending for a long time.

There is a dispute between our brothers from Masaku. There is a dispute between Makueni and Machakos counties at Konza City. If I were a governor, even I would love to have Konza City in my county because of the potential of that place.

As I speak, nobody really has a proper framework on how we can find a solution to the dispute. Even your County of Kajiado has a dispute with Makueni County at Marushe. I have not even pronounced that word correctly.

The Temporary Speaker (Sen. Pareno): It is called Merueshi.

Sen. Omogeni: Yes, Merueshi. There is a dispute there. If you talk to the Governor of Taita Taveta, he will tell you that there is a serious problem between the people of Taita Taveta and the people of Machakos counties at the famed Mtito Andei. Personally, I thought that Mtito Andei should naturally be in Machakos County. This is because when you drive through Mtito Andei, the people that you meet there are from Masaku.

Very emotionally, the Senator for Taita Taveta told you that there is a problem on the boundary between those two counties. There are very many others that I may not mention here, including Isiolo County where our Deputy Senate Majority Leader come from. They have problem---

The Temporary Speaker (Sen. Pareno): For your information, I think that there was a settlement of a boundary dispute between Kajiado and Taita Taveta counties. The two governors were able to agree. I hope that it will be lasting.

Sen. Omogeni: Mr. Temporary Speaker, Sir, if they were able to agree, that is very good. We have the one between Garissa and Isiolo. Many of these have remained unresolved. In fact, instead of leaving these to our courts and judicial systems, let us take advantage of the provisions of Article 159. What Sen. Mutula Kilonzo Jnr. is doing is actually invoking the provisions of Article 159 and promoting alternative forms of dispute resolution.

This Bill is very progressive. It is a good one. I wish that we had enacted it into law earlier, but it is never too late. Members should lobby and reach out to our brothers in the National Assembly so that we process it. We do not mind amendments being proposed, but let it not stall.

Madam Temporary Speaker, I know that there have been issues that have been raised on the viability of some counties. I think the smallest should be Lamu. These are problems that are all over the world where you have a devolved system of government.

If I remember correctly, if you go to the United States of America (USA), Rhode Island is a State with two Senators in the Senate. It has only two congressmen in the House of Representatives. It is the smallest. A bigger State like California, where the Speaker Nancy Pelosi comes from, has 53.

We are able to accommodate our brothers. I think that we need to retain our counties the way they were conceived. Some are big and some are small. In the USA, as Sen. Murkomen correctly put it, it is only boundaries of congressional districts that keep changing depending on the population demographics. However, the boundaries of states have remained the same for over 200 years.

Madam Temporary Speaker, I think that we should also retain the same spirit in Kenya. When we revisit the issue of boundaries for our constituencies, it is good to have this system that prevails in the USA. Every ten years, boundaries keep shifting. The number of seats allocated to states keeps shifting depending on the population of a particular state.

Many years back, the largest used to be New York, but it has now been overtaken by California. New York has only 27 Congressmen in the House of Representatives and California has about 53. This should be a challenge to our governors. If you put in place an attractive economic environment, you are able to attract more investors and people to settle in your state. The counties can then grow.

I am looking forward to a time when we will all be looking north. There is a lot of land in northern Kenya in Isiolo, Mandera, and Marsabit. Why should we be staying in Kisii where the largest piece of land I can ever dream of owning is maybe half-an-acre? I can move to the North Eastern Region and own a big piece of land, maybe ten acres.

We should really challenge our governors, including the incoming Governor of Makueni, Sen. Mutula Kilonzo Jnr., to create an economic environment that is friendly to investors and business people. This is so that counties can grow.

Madam Temporary Speaker, I like the composition of the Mediation Committee that is captured in Part III. The chairperson must be an advocate of the High Court of Kenya with not less than 15 years' experience because these are serious matters that one is going to arbitrate on. It is good that we pick an advocate that has good experience. This is a qualification of being a judge of the Court of Appeal.

Members of the Law Society of Kenya (LSK) should do a self-re-examination. If you read through this Bill, there has not been a proposal for the LSK to pick a nominee to sit in this Committee because of the wrangles that we are seeing. It is really a shame. Some of us have tried to reach to the President of LSK, Mr. Havi. I have tried to reach out to the members of the council and they are not seeing the bigger picture.

It is really a shame. I thought that we should have found space for the LSK to be given an opportunity to nominate a representative. However, because of the way they have conducted their business, it is not attractive anymore to recommend that LSK should nominate a representative.

I like the fact that we have given an opportunity to a registered voter. This is not just about a Senator or a governor seeking help from Parliament. Any other member of the public from a county who is registered as a voter can petition Parliament to be assisted.

Kenyans should listen to this. To show the seriousness of the IEBC, in Clause 5, the chairperson must hold qualifications of being appointed a judge of the Supreme Court. That is serious business. This is a Bill that our colleagues in the other House need to embrace and support because of the seriousness it has been accorded.

(The amber light was switched on)

Madam Temporary Speaker, I can see that my time is up. The other issue is the fact that disputes should be addressed in the shortest time possible. That is within a period of 30 days which is good. Timely resolution of disputes is a good thing in a system that embraces the rule of law.

With those many remarks, Madam Temporary Speaker, I support and sincerely thank Sen. Mutula Kilonzo Jnr. for this wonderful piece of legislation.

I thank you.

Sen. Cherargei: Madam Temporary Speaker, before I make a few remarks, allow me to say that we had deliberated on this Bill before it was brought here.

Madam Temporary Speaker, allow me to convey my heartfelt condolences. This morning we lost a track maestro by the name Ms. Agnes Tirop who was allegedly murdered in Iten. Apparently she comes from my neighbourhood. She won bronze medal in the 2020 Tokyo Olympics.

It is a sad day for the country to lose such a young girl. She was turning 26 in the next few days. I hope the Directorate of Criminal Investigations (DCI) and the police will arrest the perpetrators who murdered such a young girl.

For the athletics fraternity, I wish them well and pray that God gives them the fortitude. To the family and parents, we really feel for them that they had to lose her through murder. Ms. Agnes Tirop was going to be one of the best long distance runners in this Republic.

Madam Temporary Speaker, having said that, allow me to congratulate Sen. Mutula Kilonzo Jnr., the future of Makueni County, for sponsoring this Bill. This is a Bill that we worked hard to salvage.

It cannot go without saying that yours truly was one of the people who worked hard. At that time, I used to chair one of the powerful Committees in this House. My predecessor has just spoken.

We did pleadings courtesy of our office. I thank colleagues who were on the frontline. This is among the 24 legislations that we went to court to protect. This Bill is anchored on Article 188 of the Constitution. Sen. Omogeni has given us details of various county boundary disputes.

I am really impressed by this Bill. As I thank Sen. Mutula Kilonzo Jnr., I hope that our siblings in the 'lower' House will find it wise to process it. I agree that we need to lobby. Personally, I have six Members of the National Assembly plus a women representative.

I hope the Mover of the Motion is listening carefully. We need to use another strategy to talk to them. Some people normally forget because maybe they do not know the value of this Bill. I think it is upon us to lobby, teach, educate and reason with them. Even the Bible says; come and let us reason together. Let us have *azimio*. Let us think about it. We need to talk to them.

Madam Temporary Speaker, I know Sen. Mutula Kilonzo Jnr. would like to reply. However, allow me to make a few comments. The first one is on mediation. I agree that we need to have a mediation committee.

If you can remember, there was an issue between Kisumu and Vihiga counties. My brother has talked about Nyamira and Kisii counties. I am happy your county resolved the issue between Kiambu and Kajiado counties.

We also have an issue in Nandi County which is before the National Land Commission (NLC). That is about the boundary between Nandi and Kisumu counties. Through other organs, the NLC has tried to resolve the problem of the boundary between Nandi and Kisumu counties which has been a contested issue.

When you go to Chemase, there is always contestation. Some people say it should not be in Nandi while others say it should not be in Kisumu. I think this law will solve those challenges. The establishment of a mediation committee is key. Before alteration of boundaries, it is important to have mediation.

Madam Temporary Speaker, you are my senior and you know that the legal practice focusses on the future. Most of these issues can be resolved amicably through mediation, negotiation or any other form of Alternative Dispute Resolution (ADR).

I am happy that Sen. Mutula Kilonzo Jnr. learned a lot when I took him to the African Union (AU) Conference in Addis Ababa when I was the Chair of that powerful Committee. There was a discussion about ADR and the mediation process. Apart from

civil cases, the country is facing criminal issues which can be resolved through ADR, so long as they are not repugnant to moral justice and the Constitution.

Regarding petitions, I agree with the timelines because it is important. There is provision of a commission which will have specific timelines. The commission will be involved in alteration of county boundaries. I like what Sen. Mutula Kilonzo Jnr. said. If the National Assembly decides not to act, it will be deemed to have been passed or resolved.

That is important because sometimes Hon. Members of the National Assembly are not comfortable with Bills originating from the Senate. In fact, they plagiarize our Bills. So, it is important to have Clause 23(3) which provides that if the National Assembly fails to consider the resolution of the Senate within the specified time, the National Assembly will be deemed to have approved the resolution of the Senate.

There will be a process for mediation. The commissioners will be appointed by the President to ensure the process is rigorous. By the time we have alteration of a boundary, it will have undergone a rigorous process. People will be given an opportunity to be listened to.

One of the key provisions in the Constitution is public participation. Alteration of boundaries shall not be done at the stroke of a pen. The process must be rigorous and people must be listened to and engaged. There must be public participation. I like it because the Senate will have an exclusive domain because a petition will have to be introduced and forwarded by the Speaker of the Senate. I think that is specific because population now determines resource allocation.

We were fighting here over the Third Generation Formula for revenue sharing because people wanted population to follow resources. You can give somebody more resources, yet the boundary is not there. Boundaries are very important. That is we fight over them.

There is an issue of public administration and meeting the provisions of Chapter 6 on integrity of the Constitution. By and large, the fight that determines the future of this country is resources, boundaries and allocation. That is why when Kenya National Population Census of 2019 was announced, there was perception that the KNBS was manipulated, not only for political reasons, but resource allocation.

People such as Sen. Mutula Kilonzo Jnr. were in “Team Kenya,” while others were in “One-shilling-one-man-one-vote”. Sometimes census skewed to favour a certain political issues and resource allocation.

Madam Temporary Speaker, we must get the boundaries right. The hot potato in this Republic is delimitation of constituencies. That is what will form the cornerstone in the previous conversation we were having. I had spoken to this issue before it received its untimely demise at the National Assembly. The High Court of Kenya decided to revive it, like the way Jesus resurrected. Since it has resurrected, I want to see this law going to fruition.

Madam Temporary Speaker, I congratulate Sen. Mutula Kilonzo Jnr. I hope these are among the laws he will implement when he becomes the Governor of Makueni County and ensure this legal framework is followed to the fullest.

When he becomes the Governor of Makueni County, I do not want him to meet the Governor of Kitui County over *chai* and *mandazi* without a legal framework or policy. What follows after taking *chai* and *mandazi*? This law gives them Terms of Reference (TORs). You only live once.

There should be certain policy and legal framework that when, for example, the Governor of Kajiado County and the Governor of Narok County have a small dispute over collection of revenue at a particular town, they can have particular TORs that are recognized by law. People can meet and decide, but when somebody rushes to court, the court rules that those decisions are illegal.

We hope this Bill will receive a fair hearing in the National Assembly. We need to see its fruition. When it comes to the Committee of the Whole, we will just spruce it up, without doing major amendments.

With those very many remarks, I rest my case.

The Temporary Speaker (Sen. Pareno): There being no more requests, I call upon the Mover, Sen. Mutula Kilonzo Jnr., to reply.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. I thank the Senators who have contributed, including Sen. Murkomen, Sen. Sakaja, Sen. Cherargei and Sen. Omogeni for their valued contribution to this very important cause.

Other than reiterating what they had said before, the history we have heard from Sen. Sakaja and Sen. Murkomen is important for the record. The record will reflect that the people to protect counties in reality is us. This is because the counties were left hanging. The people who wanted 47 counties just made a compromise. Who knows? One day, we might find somebody who is not interested in these counties.

To anchor this properly in law is the security we require. That Article in the Constitution that talks about protection of counties now relates squarely to this law. This Bill, in its entirety, is trying to protect counties. For avoidance of doubt - and I have said this before - let us not also forget that we are not demarcating the country. We are just finding a place for everybody to live peacefully and find reason to work properly.

Once counties are properly defined, there is no reason for portions of those counties to be left behind. I have seen the history of boundaries. Every place where either a constituency, ward or county ends, more often than not, are ignored and neglected.

This is a reminder for our governors, ward representatives and everybody else, that every part of the county matters. Every part mentioned in this Bill belongs to your county and should not be left behind.

I was in a campaign recently where the Governor of my county said, "elect person 'x,' so that I can bring development." What sort of thinking is that? Members of County Assembly (MCAs) are not elected so that they can bring development through the governor.

The framework of working, wards and boundaries must be clear because it is key. It occurred to me when I was dealing with this Bill that we do not have a framework for our international boundaries. Since we are in a quarrel with Somalia about our boundaries, part of the solution is what Sen. Murkomen has said; that the minute we resolve the boundaries of our counties, we will have gone most likely 75 per cent into resolution of our international boundaries.

I beg to reply and request for the deferral of putting of the question to a later date under Standing Order No.61(3).

The Temporary Speaker (Sen. Pareno): The putting of the question is deferred to another date.

(Putting of the question on the Bill deferred)

Next Order.

Second Reading

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL
(SENATE BILLS NO. 17 OF 2021)

The Temporary Speaker (Sen. Pareno): The Bill is deferred because Sen. Olekina is not in.

(Bill deferred)

Next Order.

Second Reading

THE LIFESTYLE AUDIT BILL
(SENATE BILLS NO. 36 OF 2021)

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me the opportunity to move this Bill.

I beg to move that The Lifestyle Audit Bill (Senate Bill No. 36 of 2021) be now read a Second Time.

I thank the Chairperson of the Committee on Justice, Legal Affairs and Human Rights for processing this Bill twice. The former Chair had 'sat' on this Bill for many months without bringing it to the fore. I finalized it by October, 2018, and I thank to Sen. Omogeni because when he took over at the helm of that Committee, things started moving. I recognise his efforts in ensuring that this Bill moves forward.

The main object of this Bill is to put a legal framework for undertaking lifestyle audit for public officers. In creating the framework, the Bill seeks to incorporate the values and principles of governance under Article 10 and Chapter 6 of the Constitution into the public service.

The background of the Bill is that corruption is endemic in Kenya and efforts to address it have time and again failed to bear fruit.

To bear fruits this is the situation despite empirical evidence showing that public officers are living beyond their means.

Madam Temporary Speaker, people do not do corruption and then go telling everybody: "Hey, I am taking money. Come and see me." This is normally done in underhand deals under very unclear circumstances. Therefore, it is very difficult to nail these people to address in terms of ordinary Bills that prohibit corruption. In terms of

somebody who is living beyond their means, the evidence is seen in the kind of property somebody has and the kind of lifestyle somebody lives, the kind of schools that his children go to, the kind of house that he lives in and the kind of cars that he drives. It is evidence that you can see.

In this Bill that framework is being established to ensure that it becomes obvious to many people that this person is living beyond his means. This issue needs to be addressed so that we tackle corruption comprehensively.

The other issue that motivated me to sponsor this Bill was that in June, 2018, our President, His Excellency Uhuru Kenyatta, had said that all public officers must go through a lifestyle audit. At that time, there were so many people who went to public forums to claim that there is no legal framework to undertake that. That is what made me to start doing my research and I discovered that there are two countries that have very clear legal frameworks on how to carry out a lifestyle audit, that is the United Kingdom and South Africa. So, I started collecting data.

I do not think there are any people who can beat our legal team in the Senate plus all the other people who support them. After working with them for a few months, we were able to generate this Bill. I wish to thank everyone who was involved; the Director of Legal Services, Senate, the staff and the secretariat who made this dream a reality in this country.

The following statutes have been enacted before to address corruption: The Anti-Corruption and Economic Crimes Act, the Public Officers Ethics Act, the Leadership and Integrity Act, the Public Service Values and Principles Act, the Bribery Act, the Proceeds of Crime and Anti Money Laundering Act, the Public Finance Management Act and the Public Procurement and Disposal Act.

This shows, therefore, that there is plenty of laws to make provisions for leadership and integrity and criminalize corruption and other economic crimes. However, corruption is still prevalent and tackling it continues to be a challenge. The investigative agencies still face an uphill task in investigating and establishing corruption and corrupt practices.

Noting that the public officers seem to be living large, one of the ways of identifying and rooting out corruption may be to undertake a lifestyle audit of public officers suspected to be beyond their means. This just shows that once the Senate passes this Bill, there will be a legal framework covering that lacuna that we need to cure in order to carry out that task effectively.

The Bill cures that lacuna by the following provisions: The lifestyle audit process, the standard of professional conduct when carrying out a lifestyle audit, bodies to be involved in carrying out the lifestyle audit, reporting and investigation of unexplained wealth, the declaration of income, assets and liabilities, referral of matters to the Director of Public Prosecution (DPP) after conclusion of the lifestyle audit, the procedure for carrying out lifestyle audit on public officers.

This Bill also covers the following provisions: An overview of the Bill where there is reason to believe that, that officer is living beyond his or her means, unlawfully obtained and reported income, the officer is unable to account for sources of income, the officer has misappropriated funds under the officer's care and trust.

The Bill also stipulates that in carrying out the audit the commission that is tasked to carry out the lifestyle audit is the EACC. They are required to inform the officers of the requirement to carry out the audit, submit to the officer information regarding the intended audit, reasons for the audit, accord the officer the right to be heard on the audit.

Where there is reasonable ground to suspect that the public officer has unlawfully obtained income would be insufficient to allow for the officers to obtain property held by such officer, the Bill empowers the EACC to apply to the High Court for such warrants to be issued against the officer to explain the nature and the interest of a particular property and the manner in which the property was acquired.

Madam Temporary Speaker, the Bill allows the commission to carry a search warrant in exceptional cases where it is believed that if we wait for a court ruling, the evidence is likely to disappear. In that case, the Bill allows the commission to carry out the search without a warrant.

The Bill also makes it an offence for a person during the conduct of a lifestyle audit to knowingly--- People say that probably this is inhibitive sometimes. A couple of people have talked to me and said that that section is counterproductive in terms of reporting such criminals. The other thing is that it says “knowingly”. So, somebody has to prove that you knew this did not exist, but you went ahead and reported. It is the onus of the person who is accusing you to prove that. The onus is also on you to prove the reason why you felt this was beyond their means.

The Bill also empowers the High Court to vary or discharge interim freezing orders. The Bill also allows once the EACC applies to the High Court for the High Court to issue interim freezing orders. It will require to specify the period for which the freezing order will be valid and it should not be more than three months.

This is just to ensure that when people’s property are frozen and they cannot have economic gains, it fast-tracks that process so that if you are not culpable of the crime you are being accused of, you can still continue having gainful economic activities using either the money in your account, or the property that is being frozen.

The Bill also empowers the High Court to vary or discharge freezing orders on the application by the commission or by the person affected by the order. After such discharge, the Bill allows the owner of the property subject to the order to apply to the High Court the compensation within three months from the date of discharge. The High Court may make an order for the compensation only if it is satisfied that the applicant has suffered a loss as a result of making the interim freezing orders. There has been a serious default on the part of the commission and that the loss would not have been made had the default not occurred.

The Bill further provides that where an officer of the commissioner without reasonable cause applies or knowingly relies on false information to obtain an interim freezing orders, the order is subsequently discharged and compensation awarded. The officer shall be personally liable to pay the compensation and disciplinary action will be taken against him.

Madam Temporary Speaker, the Bill also allows the Ethics and Anti-Corruption Commission (EACC) to apply to the High Court for freezing of an account order with respect to account that is subject to lifestyle audit. The Bill allows that such an

application to be *ex parte* if such cases at the notice of application would prejudice the effect of the order sought. Where the High Court issues an account freezing order, it would be required to specify the period for which the order shall be valid. Such a period shall not exceed three months.

Similarly, the provision on interim freezing orders, the Bill allows the High Court to vary aside or set aside an account freezing order and determine compensation for a person affected by the order. The Bill allows the commission with due notice and after considering any objections, issues an account for future notice to the holder of the frozen account for the purpose of forfeiting money.

For example, if it is proven that there is money you have acquired illegally and that this money belongs to the State, then the court can decide that you forfeit that money. That means the money goes back now to the Government so that at least also Government can do what it ought to have done with that money had not been stolen.

The Bill also allows the commission to apply for *ex parte* it to the High Court for an order requiring an associate of public officer subject to lifestyle audit to provide within reasonable time specified in the order written statements stating whether the property was acquired by purchase, gift, inheritance or any other manner. Also what consideration if any, was given for the property?

Madam Temporary Speaker, the Bill defines the term “associate” to mean a person who the commission reasonably believe has had dealings with the public officer who is the subject of lifestyle audit in relation to a property reasonably believed to have been acquired by use of unlawfully obtained income.

The Bill makes it an offence for a person to fail to comply with the above orders. Such failure attracts penalty of a fine not exceeding one million shillings or imprisonment of a term not exceeding three years or both.

Madam Temporary Speaker, the Bill provides that a lifestyle audit may be carried out on an immediate family member of a public officer if it is established that the property which is the subject of a lifestyle audit is owned by an immediate family member, including joint ownership.

The Bill mandates the commission to defer the matter to the Office of the Director of Public Prosecution (ODPP), where as a result of lifestyle audit, the commission is of the view that criminal proceedings should be instituted against a public officer. The Bill further allows the person who is the subject of the lifestyle audit to enter into a deferred prosecution agreement with the ODPP.

Madam Temporary Speaker, the Bill also allows the High Court to defer publication of the information under the Bill once enacted for such a time as the court considers necessary if the postponement is necessary to avoid substantial risk of prejudice to the administration of justice.

The Bill allows the EACC to make regulations for compensation of its provisions once enacted. It also allows the ODPP in consultation with the commission to issue guidelines on cooperation and collaboration in the investigation of crimes once enacted.

Madam Temporary Speaker, the Bill finally amends the Public Officers Ethics Act to allow the information obtained in declaration or clarification made under it to be accessible to the public. This includes wealth declaration periodically made by state

officers and public officers. That is important because once the wealth declaration is made, it is filed to somewhere and nobody has an access to anything. So, it is only the institution that is employed that gets access to that information.

However, once this Bill is enacted, any public officer is accountable to the public. The public are the people who pay the taxes. Therefore, if the people do not have access to that information, they will never know whether somebody has been living beyond their or within their means.

Madam Temporary Speaker, the consequences of the Bill is that it creates a mechanism for undertaking lifestyle audit on public officers. This will go a long way in tackling and arresting corruption in the country. It will also deter corrupt practices by public officers who will be reluctant to steal public resources and flaunt them in public.

Pursuant to Standing Order No.140 (1) and (5) of the Senate Standing Orders, the Bill now stands committed to the Standing Committee on Justice, Legal Affairs and Human Rights which will facilitate public participation and account for the views of the recommendations of the public.

Madam Temporary Speaker, I wish to move this Bill and request Sen. Omogeni of Nyamira County to second.

Sen. (Prof.) Kindiki: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Sen. (Prof.) Kindiki, what is your point of order?

Sen. (Prof.) Kindiki: Madam Temporary Speaker, is Sen. Farhiya in order to commit a Bill to a Committee? Sen. Farhiya has to choose whether she is the Mover of the Bill or the Speaker.

The Temporary Speaker (Sen. Pareno): I noted that. I actually was trying to listen as to whether she was asking that she prays that it be committed, but not for her to look like she was ordering that it be committed. She is out of order on that aspect. I was going to ask her to withdraw that remark and ask that the Bill be seconded before it can be committed.

Sen. Farhiya: Madam Temporary Speaker, I wish to withdraw.

I beg to move the Bill and ask Sen. Omogeni to second. This life is continuous learning. Some of us are not lawyers, but we are learning along the way. I wish to thank Sen. (Prof.) Kindiki for correcting me.

The Temporary Speaker (Sen. Pareno): Sen. Omogeni, proceed.

Sen. Omogeni: Madam Temporary Speaker, thank you for giving me this opportunity to second the Lifestyle Audit Bill 2021. I first begin by thanking Sen. Farhiya for coming up with this Bill that is geared towards putting in place a mechanism that will assist this country in combating and fighting corruption.

A lot of effort has gone into place before from Government in trying to put in place a framework that can increase accountability of people who have the privilege of handling public money and who may end up embezzling it. I want to disclose that previously before I moved into this life of politics, I served as the Chairperson of EACC. I left in 2011 having stayed in that organisation for five years.

Madam Temporary Speaker, in 2010 in the run up to the passage of the 2010 Constitution, we had a Bill similar to this one. I remember appearing several times before

the National Assembly then, but that Bill was rejected and it never saw the light of the day.

So, this is a very good effort by Sen. Farhiya and I hope that this time round, Parliament will see the wisdom of passing this Bill.

It is said that this country loses a whopping Kshs608 billion annually to corruption. When you translate that, it is about 7.8 per cent of our Gross Domestic Product (GDP) or a third of our budget. That is staring at a crisis.

This country will never attain development, be transformed and will never catch up with other developed countries, if we continue allowing corruption to remain a cancer within our public sector. If we convert that rate down to the money that we send to counties, what that means is that every financial year when we pass money that should go down to counties, 7.8 per cent of that money is lost to corruption.

What that means also is that in each financial year, when you give money to our constituencies through National Government Constituencies Development Fund (NG-CDF), every time you give NG-CDF Kshs137 million, it means that 7.8 per cent roughly Kshs30 million is lost to corruption. If you have traversed this country, we all know the poverty levels. The effect of this kind of money that is lost, is there for people to see.

Madam Temporary Speaker, in terms of even CDF alone, there is a lot of disparity. Constituencies that are managed well you will hear cases of children going to school being given bursaries of up to Kshs35,000. In the worst managed constituencies, children to school are paid as little as Kshs3,000. That is mocking Kenyans.

I am happy that “Mama Miradi” is here. I have seen her being a champion of uplifting the lives of the poor. Now, if you pick a poor Kenyan trying to eke a living earning maybe less than US\$2 as profit from our business, it will not be easy for him to pay school fees. If I pick one school in my county called Tombe Girls Secondary School, its annual fee is Kshs43,000 and then you are giving that Kenyan Kshs3,000 annually as bursary. That is mockery.

Madam Temporary Speaker, if I pick one of my constituents, traversing one point to the office of the headquarters of the constituency where you will make an application for NG-CDF and coming back again to confirm whether have successful, you will end up spending 50 per cent of this money. You will spend Kshs1,500 and the bursary you are getting will be Kshs1,500.

We want to put in place a mechanism of fighting corruption so that these benefits can trickle down to the poorest of the poor in this country. We want everybody to account for the sources of their income. If you are, for example, working as a chair of NG-CDF, we need to know how much you earn and the source of money that has enabled you to start driving a 4x4 vehicle within the constituency.

Madam Temporary Speaker, if you are a Member of National Assembly or you are a Senator, we need to know your financial background. How much money have you been making to allow you lead the kind of lifestyle you are leading? Otherwise, how do you explain a case, for example, what we handled when I was chair of EACC? I am happy that the Judiciary has since resolved matter.

A junior officer who was working as an accountant in the National Water Corporation (NWC) had cash deposit in his personal account of more than Kshs130

million and the salary of that officer was Kshs45,000. That is a distortion. There is no way you can be earning Kshs45,000, you have no returns to Kenya Revenue Authority (KRA) showing that you own rental incomes where you have earned that money from. You have just received kickbacks.

Madam Temporary Speaker, that is why I agree with the proposals in this Bill that we should give powers to the EACC to go and get court orders to block such accounts. If you are not able to explain to the satisfaction of the court the source of your income, then you should lose that money. That is the only way we can effectively fight corruption in this country. The data is there.

The countries that are ranked that have populations that are the happiest in the world, they are the ones which are also ranked as being least corrupt. Like Finland, in the last 10 years, if you look at the data from Finland, the residents of that country have been ranked as one of the happiest in the world. If you go to the corruption index, they are also ranked as the least corrupt. Same to New Zealand.

Madam Temporary Speaker, that is why we have so many youthful Kenyans who are, day in, day out, dying to relocate to New Zealand. We can make a New Zealand in Kenya. All that we need to do is to put in place a framework that can effectively tackle corruption. This Bill is such an attempt. We have done so many things.

Nowadays, if you go to school, you would even find that the EACC is running integrity and anti-corruption clubs in schools so that we can bring up future leaders who have known the values of integrity. That is how desperate this country has gotten so that we are trying to put in place every mechanism that can inculcate good virtues on our future leaders.

Madam Temporary Speaker, when we look at sectors, some of the sectors that are most corrupt are the ones that are in the interface of Kenyans day in, day out. For example, the National Police Service (NPS), everybody doing business interacts with the Kenyan police. You are a transporter from Mombasa to Uganda, you will always interact with them.

If you are a Kenyan who is trying to eke a living through *boda boda* because there are no jobs, you will interact with them. If you are a Kenyan running business, you will interact with them. Virtually every Kenyan that is in business will interact with a policeman one way or the other. Yet police force is ranked as the most bribery prone institution in this country.

Madam Temporary Speaker, if you speak to *boda boda* riders because I have had an opportunity to interact with some of them, they will tell you that at times when they are in trouble, the police take the entire income of the day. Their profit is maybe Kshs800. If they find themselves in the wrong hands with the police, the police take everything. These are poor Kenyans. They are riding motorcycles on roads that are poorly maintained. When they go back to their homes in the evening, it is even a struggle to smile with their spouses because they are so tired.

That we are so merciless and inhuman as our country that we again take from these poor young Kenyans and it is not their fault that they are not able to find jobs. It is because as a Government and as a country, we have not been able to put in place mechanisms to find jobs for these people.

Madam Temporary Speaker, if you go to counties, we passed procurement laws, where we said 30 per cent of business should be reserved for women and the youth, but it is a struggle. For them to enter the procurement system and do business, they are told to give bribes yet they have no money.

We have even passed legislations where procurement should be open and each public entity should put names and directors of companies on their websites, but they do not. Even at constituency level, I have tried to register young people in *boda boda* and women groups and encourage them to get business. However, people in counties and at the constituency prefer giving business to their friends, so that they receive kickbacks.

Madam Temporary Speaker, this is what this law is trying to address. It discouraged people who are making their income through unexplained means and soliciting for bribes. We give opportunity to these young people and our women, so that they can take advantage of the resources that have been devolved to the constituencies and counties.

If you allow women and the youth to do business in constituencies, you are making available Kshs137 million at the constituency level for these women to build toilets and classes in schools. They are able to do bush clearing on our roads. Who tells you that those young people and women cannot do it? They can do it. However, we who are at the constituency and county level, do not want these young people and women to do this business because we want to look for people who can give us kickbacks. That is why this Bill is good.

Madam Temporary Speaker, I like what is in Part I. There is an introduction of due care and professionalism, even as you want to move to court to conduct a lifestyle audit. This is important because we do not want this law to become witch-hunt or use it to fight our political opponents. That is why the Bill says that there must be due care and professionalism. There must be objectivity and confidentiality. That is very important.

We were with Sen. Mutula Kilonzo Jnr. attending the Commonwealth Lawyers' Conference in the City of Bahamas. There are people in this world who make money. Those are the ones we do not want EACC to harass. We were with a friend from Australia and were told that there is a barrister there called Robert Richter. He is the one who defended Cardinal Pell, who was accused of sexual offences. To get the services of that barrister, you pay him between 12,000 to 15,000 Australian Dollars per day.

Madam Temporary Speaker, we have no problem with such a Kenyan because you know the source of their income. Those are professionals. If you go to them, they will tell you: "Look, this is what I charged Cardinal Pell and this is the money that went into my account." That is important.

That is why we are saying there should be objectivity, due care and professionalism. When you know that such a Kenyan is a professional, who has made that kind of income, you do not need to go and harass them wanting to search their accounts. That can be explained.

There is the idea of confidentiality. It is not fair that merely because you want to go and do a lifestyle audit on a person, you call them to EACC, then tip the media, then tomorrow, we see a headline, saying, for example--- I know that Sen. Mutula Kilonzo Jnr. is a good man. We do not want to see a headline saying, "Sen. Mutula Kilonzo Jnr. is

now under lifestyle audit.” There should be confidentiality. Therefore, these provisions are good.

What I do not like, maybe which we should consider going forward is trying to give the EACC the leeway of making searches in people's homes without obtaining search warrants from court. It is always good to know that when you give power to somebody, there is always a likelihood of those people abusing their powers.

Madam Temporary Speaker, let us ensure that the only way you can go to do a search warrant in somebody's house is after you have approached the High Court. I like the elevation of the importance of this - not a Magistrate's Court - you approach the High Court. It is a Judge of the High Court that will listen to this application for a search warrant.

The only thing we need to add is that you should name what you are going to search from somebody's house. You do not need to go to somebody's house to ask for bank statements. I mean, those ones, you go to the bank and get them. You do not need to go to somebody's house to search for title deeds. You can go to the Lands Registry and can get the title deeds.

Madam Temporary Speaker, we also do not want a situation where you scare everybody in Kenya and we start seeing raids in people's homes. A raid in a person's home should be done very sparingly; when it is absolutely necessary that a person's home be raided to get evidence that should be named in that search warrant. Otherwise, if you do not do that, there is likelihood of this also being abused. We know how Kenya is.

The other good thing is that anybody who is aggrieved can go back to court or seek to set aside a lifestyle audit order. That is very good because if the EACC has gotten it wrong, then the person against whom an audit is being done, can go to court, put evidence forth, and then that is set aside. That is good because we want this to be done where there is due process. We do not want to scare Kenyans and send chills down them that this is meant to be used for witch-hunt.

Madam Temporary Speaker, another thing is that any evidence that is obtained should be returned to court. This business of searching people's homes, obtaining evidence, and you store it at EACC for several days or months is not good. Once you get evidence from a home where you have carried out a search, that evidence should be taken to court.

It is good that you have put in place the idea of deferred prosecution and give an opportunity to the Kenyan who has stolen from us to voluntarily surrender that money back to the state in return for freedom. What we want is to ensure that, that money does not benefit the persons who are corrupt.

Madam Temporary Speaker, because my time is up, I beg to second this Bill.

(Question proposed)

Sen. (Prof.) Kindiki: Thank you, Madam Temporary Speaker. When we were young, we fancied becoming successful and wealthy professionals in the future. We used to be asked by teachers what we would like to be when we grow up. We would cite all manner of professions, from being pilots to teachers, lawyers to doctors, *et cetera*.

Today, I am not sure that our children across this country are looking forward to becoming successful professionals. This is because being a doctor, a lawyer and a teacher is no longer associated with succeeding in life and being wealthy. The sad story of our country is that the richest people today are in the public sector, mainly in politics and civil service or those whose parents or grandparents were in politics and civil service.

Madam Temporary Speaker, this is against the norm internationally, where the wealthiest people are in the private sector. From Jeff Bezos to Jack Ma and very rich professionals that I know; doctors and lawyers. In fact, among the 20 richest people in the world, I think there is a doctor of South African origin, who runs a successful practice in the USA. I think he is in the top 10 rich people.

However, in our country, the richest people are politicians, civil servants, and the families of people who have been in the public service and politics. We are all guilty. As much as I support this Bill, I see serious headwinds and turbulence hitting it.

This is because our society is not very receptive of lifestyle audit and people asked to account for their wealth.

We are all guilty and even the media is not spared. You will see from the media references to a Cabinet Secretary (CS) being moved to a lucrative Ministry while the position of the CS is a position which remuneration is constant. It is a rank that is paid or a Principal Secretary (PS). You will see the media saying a certain CS has been moved from a lucrative Ministry to a less lucrative Ministry or vice versa.

We also hear media referring to Members of National Assembly, including Senators, serving in lucrative Committees. You wonder which this Committee that is lucrative and yet the allowance is standard. It is Kshs5,000 for attending a Committee meeting as far as I know. However, you will see references to lucrative Committees.

Madam Temporary Speaker, this disease of corruption and the greed for money and unexplained wealth has affected our country in all sectors without exception. I dare submit that the problem we have is not lack of laws and I am not trying to demean or underrate the efforts of my sister Sen. Farhiya. I am not trying to underestimate what this Bill can do if it sees the light of day.

Nevertheless, we have very good laws. We have one of the best Constitutions in the world which includes a very robust chapter on integrity and leadership. I have not seen this kind of law in any Constitution. I have looked at nearly all the Constitutions of the world and studied them at length. We have a few similar Constitutions, but Kenyan Constitution ranks highly in terms of profiling and elevating matters integrity and leadership and the need for a clean public service. However, it is the implementation where it matters. I really hope that this Bill will add value to the fight against corruption and the need for people to be transparent as they serve the nation.

I dare submit that the experience this country is going through and you can see that when a very junior civil servant is accused of holding property which is in billions which cannot be explained. These are junior clerks in National Hospital Insurance Fund (NHIF) and other parastatals and policemen. I am not saying policemen cannot be rich. We are not also saying that junior clerks in Ministries and parastatals cannot be rich. However, the explanation is not there.

Madam Temporary Speaker, I think this Bill is timely. I wish it all the best. I doubt that it will survive. Nevertheless, it has my support and best wishes. I support.

The Temporary Speaker (Sen. Pareno): Sen. Mutula Kilonzo Jnr., proceed. I was just wondering whether we will turn out as a prophet of doom, but we hope that it will survive.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, thank you. You have got to trust Sen. (Prof.) Kindiki. He knows his way around here having been the Senate Majority Leader. In fact, I was surprised when he talked about lucrative Committees. When he was assigning Committees, he knew where to place people.

(Laughter)

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

Sen. (Prof.) Kindiki: Madam Temporary Speaker, is Sen. Mutula Kilonzo Jnr. in order to insinuate that I partook in any way whatsoever to the nomenclature of Committees where some Committees are regarded as lucrative? I was one of, if not the fairest and most objective person, when it came to Committees. Can he withdraw and apologise?

The Temporary Speaker (Sen. Pareno): Sen. Mutula Kilonzo Jnr., proceed.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, when he is sitting at the backbench, it is very easy for him to make that statement. I was just saying he was at some point sitting where Sen. Farhiya sits and he knows what was going on around here.

I rise to support in a short time to say this. I came across this principle called having assets un-proportionate to your known source of income when I was in university. This law is old. Countries have done this before. If you read a book by Mahathir "From Third World to First", he has a topic called clean government.

Madam Temporary Speaker, there is no difference between clean government and lifestyle. In fact, he did not want to get to a place where you have to check why is it that CS have cars or hotels that cannot be accounted for. The minute there is wind of corruption in Mahathir's Government, you are out. He passed that law in the 1960s. That is why Singapore is where it is.

I sat in a forum in London. It is an incorporation of what would be our EACC combined of various countries. This Finance Minister of Nigeria was jailed for a long time for corruption. In an effort to trace where he had placed his money, his wife was not as clever as him. She was going to Harrolds and spending EUR20,000 *et cetera*. They thought, wait a minute. The husband of this lady is in jail and this lady is not working. Where does she get this money? In that framework, that gentleman was jailed in England for fraud.

Madam Temporary Speaker, we have companies here. Forget about even lifestyle audit. We have companies that are actively bribing public officials. This lifestyle audit and Sen. (Prof.) Kindiki is right, it is not about the person who runs Equity Bank. If he runs a bank and you find him with a Kshs17 million car, why would you ask him? That is possibly his interest. However, when you have a public servant driving a range rover costing Kshs25 million or Kshs30 million, where did that person get the money from?

Governors are known for building hotels. I am not sure maybe Sen. Farhiya you can tell me. You are the auditor. The obsession with hotels, what is it? There must be something that is happening about hotels. Every governor who has stolen has a hotel somewhere. Those hotels are in counties other than theirs. It is a very clever way of hiding assets.

Madam Temporary Speaker, while Sen. (Prof.) Kindiki professes that your Bill is going to end up nowhere, it is because the people who have stolen are going to fight you left, right, centre, north, and south. They do not want to account. There is a process of accounting. However, I think we are doing this the other way round.

Sen. (Prof.) Kindiki, I hope the current Government will consider you for an executive position. They have been promising you many things. I hope you can set a framework at the beginning. When you start in government and the day you take oath as President and if you are chosen as Deputy President. That day you take oath when you go to a luncheon in State House, you start then. You do not start later when they have stolen and you do not know what to do.

Madam Temporary Speaker, eventually these people are your friends and allies. Even this Government has found itself in awkward positions. By the time the Government want to fight corruption, it realises its relatives are involved. This is good although it is coming at the tail end. It should have come at the beginning.

The true fight against corruption is to have this law in place to ensure that people can account for their wealth in public service. Public service is not the place to become billionaires. If you want to be a billionaire, open a shop. Sen. (Prof.) Kindiki knows what to do when you open a law firm. You bill your clients as you please. Those who cannot pay, you tell them the next door has another lawyer. I support.

Madam Temporary Speaker, thank you.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow Thursday, 14th October, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.