

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 5<sup>th</sup> December 2017

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. Speaker:** Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Lists of nominees to four National Government Constituencies Development Fund Committees from the National Government Constituencies Development Fund Board.

Annual Report of the Kenya Law Reform Commission from 1<sup>st</sup> July 2016 to 30<sup>th</sup> June 2017.

The Preliminary Report on Human Rights Accounts of 2017 General Election by the Kenya National Commission on Human Rights (KNCHR).

The Reports of the Auditor General on the Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2016, and the certificates therein—

- (i) Tigania East Constituency;
- (ii) Central Imenti Constituency;
- (iii) Kaiti Constituency;
- (iv) Mwingi West Constituency;
- (v) Mwingi Central Constituency;
- (vi) Maara Constituency;
- (vii) Igembe South Constituency;
- (viii) Kajiado East Constituency; and,
- (ix) Eldas Constituency.

The Report of the Auditor General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2016, and the certificates therein—

- (i) Kenya Forest Service;
- (ii) State Department for Interior;
- (iii) The Presidency;
- (iv) Moi Teaching and Referral Hospital; and,
- (v) Kenya Seed Company Limited and its subsidiaries.

The Reports of the Auditor General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2017, and the certificates therein—

- (i) Kenya Electricity Generating Company Limited (Ken-Gen); and,
- (ii) Kenya Power and Lighting Company.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

## NOTICES OF MOTIONS

### ALTERATION OF THE CALENDAR OF THE HOUSE

**Hon. A.B Duale:** Hon. Speaker, I beg to give notice of the following Motions:

THAT, pursuant to the provisions of Standing Order 28(4) and notwithstanding the provisions of Standing Order 27(1), this House resolves to alter its Calendar for the First Session of the Assembly (2017) as adopted on 27<sup>th</sup> September, 2017 by extending its regular sittings to Thursday, 14<sup>th</sup> December.

### APPROVAL OF NOMINEES TO VARIOUS CONSTITUENCY COMMITTEES OF NG-CDF

THAT, pursuant to the provisions of the Section 43(4) of the National Government Constituency Development Fund Act, 2015 and paragraph 5 (9 &10) of the National Government Constituency Development Fund Regulations, 2016, this House approves the list of nominees for appointment to the following four constituency committees of the National Government Constituency Development Fund, laid on the Table of the House on Tuesday, 5<sup>th</sup> December 2017 :

- (i) Narok East Constituency;
- (ii) Gatanga Constituency, in respect of which there are additional names;
- (iii) Mvita Constituency; and,
- (iv) Nyando Constituency.

**Hon. Speaker:** Next Order.

## BILL

### *Second Reading*

#### THE PUBLIC TRUSTEE (AMENDMENT) BILL

*(Hon. A.B. Duale on 30.11.2017)*

*(Debate concluded on 30.11.2017)*

**Hon. Speaker:** Hon. Members, debate on this Bill was concluded. What remained was for the Question to be put. However, before I put the Question, I need to notify the House that in keeping with the requirements of Article 119, this Bill has not yet been subjected to public hearings so that views of stakeholders can be incorporated in the Bill as the House passes it. Therefore, even as we put the Question, further progress of this Bill will have to be stayed until such time as the House will have formed the relevant committee to which this Bill will be referred. Consequent to which a notice will be put in the usual way notifying the public about the Bill and inviting their views at such time and venues as the Committee will determine. I, therefore, put the Question.

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

**Hon. (Dr.) Nyikal:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Member for Seme? Please give him the microphone. Just stop fiddling with the gadget.

**Hon. (Dr.) Nyikal:** On a point of order, Hon. Speaker. In reference to the Public Trustee (Amendment) Bill, please give us guidance on how issues that will be raised by the public will be canvassed. The Bill has gone through the Second Reading and Members have gone through it and made their comments. We have not even seen a Committee Report on this Bill and it is at that stage where many comments come from the public. How will this Bill be considered by the plenary of the House before it goes to the next stage? To me, it looks like we should have withheld the Bill and stayed in the Second Reading until information is available. I seek your guidance on this.

**Hon. Speaker:** Good point, Hon. Nyikal. I have given instructions that whomever will be on the Chair during the Committee of the whole House stage, has the latitude to allow for some unusual comments. This will be informed by the views collected from the public contained in the Committees Reports, which we expect will propose some amendments. Therefore, whomever will be the Chair at the time will allow Members to give comments relating to the Bill and any Member desiring to propose amendments will be given some latitude to do so even at that time after hearing the report of the Committee.

This progress had been decided upon because the House needed to transact the business in the second stage of the Bill. This is the avenue we shall take for the time being. Indeed, with regard to any other Bill that the House may debate in the Second Reading, maybe, the same approach will be used. Since, we have been in extraordinary circumstances; we are also required to use extraordinary means of ensuring that, at least, the House benefits from the views of the public.

Order, Members! I am reminded that there had been published since Thursday last week an Order Paper, but subsequent to that, there is a Supplementary Order Paper which has come up. I hope that sufficient copies have been distributed for each Member to have. We are dealing with the business appearing on the Supplementary Order Paper. This has happened because the House Business Committee (HBC) met at 12.00 p.m. to make some decision regarding the order of business to be transacted this afternoon.

The Leader of the Majority Party.

## MOTIONS

### APPOINTMENT OF MEMBERS TO THE COMMITTEE ON SELECTION

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 172, this House approves the appointment of the following Members to the Committee on Selection, in addition to those specified under paragraph (1)(a) and (b):

- (i) The Hon. Jimmy Angwenyi, MP
- (ii) The Hon. Benjamin Washiali, MP
- (iii) The Hon. Jude Njomo, MP

- (iv) The Hon. Beatrice Nkatha Nyaga, MP
- (v) The Hon. Khatib Mwashetani, MP
- (vi) The Hon. Faith Wairimu Gitau, MP
- (vii) The Hon. David Pkosing, MP
- (viii) The Hon. David ole Sankok, MP
- (ix) The Hon. William Chepkut, MP
- (x) The Hon. Gladwell Jesire Cheruiyot, MP
- (xi) The Hon. John Kiarie, MP
- (xii) The Hon. William Kipkemo Kisang, MP
- (xiii) The Hon. Junet Sheikh Nuh Mohammed, MP
- (xiv) The Hon. Florence Mwikali Mutua, MP
- (xv) The Hon. Nicholas Tindi Mwale, MP
- (xvi) The Hon. (Dr.) Benson Makali Mulu, MP
- (xvii) The Hon. Owen Baya, MP
- (xviii) The Hon. Ahmed Abdisalan Ibrahim, MP
- (xix) The Hon. Catherine Wambilianga, MP

This is a very important Committee because it is the one that sets the agenda for the House to constitute the various Committees. In the HBC this afternoon which the Speaker chaired, we have given a deadline because Tuesday is a public holiday. If the Motion for the extension of the House is agreeable tomorrow afternoon, then Wednesday or Thursday next week, the House will deal with the matter of approving Members to various Committees of the House. Another key agenda is the election of our membership to the East African Legislative Assembly (EALA) on Thursday, 14<sup>th</sup> December 2017.

Next week will be a busy week for the House because the various Committees will elect their chairs and vice-chairs. I have passed the same message in the HBC that those of us in Jubilee are set and ready to work the whole weekend until Monday to ensure that on Wednesday morning, the Selection Committee sits to approve and adopt the list of Members to various Committees. We expect our colleagues now that they are back in full in the House to also sit the whole weekend until Monday. I am sure Hon. Mbadi and Hon. Junet are up to the task. So, that, at least, we go home when Members are in Committees and we know the chairs of the Departmental Committee on Education, Science and Technology, Public Accounts Committee (PAC), our representatives to the Parliamentary Service Commission (PSC), Pan-African Parliament and many other forums. That way, the business of the leadership of the House is complete by Thursday next week.

We have looked at regional and gender balance and many other issues. The Committee on Selection is chaired by me and it has only one function. Once we select Members into various Committees, we will wait for another five years or in between if a Member misbehaves in their respective coalitions.

The Whips do not need to notify you. They do not even need to tell you that we are sending you away. What they do is they write to the Speaker and say: "We have the following member removed from that Committee." So, you only have the benefit of the approval here. There were so many cases like this in the last Parliament – mainly from our colleagues on the Opposition – and the House realised that you can remove a member, but the due process must be followed. I am sure that was captured in the new Standing Orders. That is unlike before when the Whip could sit at the lobby and tell his secretary: "Can you type a letter to remove Hon. Aden

Duale from that Committee.” The letter would then go to the Speaker and that would be the end of you.

The current Standing Orders provide that the leadership should not abuse their offices. There must be some due diligence and grounds for being removed from a Committee, stating the crime you have committed and whether you were given an opportunity to defend yourself. Previously, you would be removed because you were found in my office or you are a Jubilee MP and you are found in Hon. Mbadi’s office. You are then asked what you were doing in Hon. Mbadi’s office when you are in Jubilee Party. You could also have gone for a funeral in South Nyanza, Rift Valley or North-Eastern region because the deceased person happened to be your friend, and you would be told: “We saw you on TV. What were you doing there?” Then the following Tuesday you would have no Committee. That brought about the element that we must do due diligence. I am sure that even the leadership of this House during the 11<sup>th</sup> Parliament had good reasons. We have addressed this issue in the Standing Orders until it reaches a situation where the party or coalition sees that you are not helping them in their agenda in the House. Each one of us is a member of a political party or is affiliated to a political party – and believes in the aspirations of that party. We must, at all times, defend and protect our coalitions or parties. These are men and women who will help us. Those of us who are in the leadership of the House will on Friday, Sunday, Monday and Tuesday be away to craft a list and make sure that we bring it to the House on Wednesday or Thursday next week.

With those remarks, I beg to move and ask my neighbour in my Nairobi residence and my good friend, Leader of the Minority Party, to second the Motion.

**Hon. Speaker:** Leader of the Minority Party.

**Hon. Ng’ongo:** Thank you, Hon. Speaker. I rise to second the Motion, which asks the House to approve the membership of the Committee on Selection. Both sides of the House have proposed their names after consultations. The Minority Party, which is a coalition of parties, after thorough consultations, also agreed to have representation in the Committee on Selection. I just want to mention that this Committee’s sole responsibility, as has been ably demonstrated by the Leader of the Majority Party, is to place members to various Committees of the House and help the leadership of the two sides of the House to place members in various Committees. We have 349 members of the National Assembly. Placing them to various Committees is not an easy task. Therefore, you need people to sit together and balance all the interests. In the case of the minority side, we will be balancing the interests of not just the regions or gender but also the partner parties within the coalition.

On our side, we have Hon. Florence Mwikali Mutua and Hon. Nicholas Tindi Mwale. All the major parties within the coalition, which are four, are represented. We have also taken into consideration the issue of gender. We have two women out of the seven members of that Committee. I know that is short of the one-third principle but if you go to the next Motion, which we will soon go to, you will realise that we have three women out of six, which is 50-50 membership. We will make sure, as the leadership of the minority coalition, that we take into consideration the gender principle because we believe in gender. I do believe in gender, and I know my coalition also believes in gender.

After getting names or suggestions from both sides of the House – the leadership will propose the names of the membership to these committees through our whips – I expect this Committee to sit next week and have the Committees in place. I actually felt that we seriously need Committees of the House to take up their responsibilities. You have just disposed of a Motion here in the Second Reading and, Hon. Speaker, I could see the difficulty you were in.

This is because if you look at our Standing Orders, they require that before a Bill goes to the Second Reading, the relevant Departmental Committee should look at it and do a report to the House even before the Second Reading. In the event they are not ready with the Report, they should report that position. So, I could see the difficulty that the Chair was in, in trying to see the best way to handle a very unique situation that probably the House presented itself to.

Finally, I must also say that a lot of things are going on in the country at the moment, which require our House Committees to be active to deal with. The National Police Service has mishandled what I would call “public demonstrations” in this country. They have mishandled them big time. A lot of Kenyans have unnecessarily lost their lives. Young children have been shot unnecessarily. Therefore, if we had the Committee on Internal Security, by now the Inspector-General of Police would be answering to that Committee telling Kenyans why Baby Pendo could be shot the way she was shot or why that young boy who came home for holidays could lose his life in such circumstances. We need these Committees in place because we have a strong feeling that this country is sliding back in terms of the democratic space. We see the democratic space being narrowed. We see the clawing back on the gains. The Government has started with freedom of assembly. We can see freedom of expression under threat.

I recently listened to Uhuru Kenyatta talk, and I actually heard him say that the people who are making comments in the media make him not want to watch the media. In fact, if you listened to him clearly that, to me, was like a threat to people who are freely expressing their opinions on current issues. This is something that this House must deal with because Parliament is not an appendage of the Executive. It is an independent arm of the Government. That is why we can still have a Parliament sitting and continuing with business even before we sort out the mess at the Executive, and even before we agree whether this country has a president or not.

Hon. Speaker, I want the Committees of Parliament to take up their responsibilities and execute their functions because it is necessary.

With those remarks, I second the Motion. The rest can contribute when their time comes.

**Hon. A.B. Duale:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, you know you can campaign for a position you have just won through many other ways. Just because you happen to be the Leader of the Minority Party, Uhuru Kenyatta and his Government - legally confirmed by the Independent Electoral and Boundaries Commission (IEBC) and the Chief Justice as per the Supreme Court - should not be a punching bag. You will excuse Hon. Mbadi because there are a lot of undercurrents in the National Super Alliance (NASA) Coalition. He is not sure whether this position will last.

*(Laughter)*

This morning they were supposed to have a parliamentary group (PG) meeting and it was cancelled. It is part of the campaign. I am sure Hon. Junet must also be looking for another opportunity. As a good friend and neighbour, I hope that he will retain the seat in the next five years and be a very good Leader of the Minority Party that can check the legally elected Government and the only leader - Hon. Uhuru Muigai Kenyatta, the President of the Republic of Kenya.

**Hon. Speaker:** Let us restrict ourselves to the Motion. Hon. John Mbadi, are you seconding or making general comments?

**Hon. Ng'ongo:** Hon. Speaker, I was just seconding the Motion. I do not know why my colleague and friend gets agitated. I just want to inform him that my position is not in contention. I am not threatened in any way. The NASA Coalition decided to give me this position because I merit it. If and when time comes that I do not merit it, someone else will. I am not really campaigning. I have just stated the facts as I know them. You may have a different opinion but that is your opinion. I have stated my opinion.

I beg to second.

*(Hon. Bunyasi stood in the gangway)*

**Hon. Speaker:** Tell the Member for Nambale that we are in the House. Please, take your seat.

*(Question proposed)*

Hon. Members, before I go further, I wish to bring to the attention of the Members that the membership referred to in paragraph 1 (a) and (b) is the Leader of the Majority Party - who is the Chair of that Committee - and the Leader of the Minority Party. I confirm that there was an amendment to Standing Order No.176 (1) which clearly states that for a Member to be discharged from a Committee, they must be given the due process of law, be heard and have it explained to them why it is proposed to discharge them from a Committee. This is so that when the party that nominated a member to a Committee makes a decision to discharge the member and the letter comes to me as is required, within three days; I will make the announcement that the member has gone through the due process and is formally discharged from that Committee. That is the essence of that amendment. I am sure Members of the 11<sup>th</sup> Parliament recall the rigours that Members went through.

**Hon. Members:** Put the Question!

**Hon. Speaker:** Is it the desire of the House that I put the Question?

**Hon. Members:** Yes!

**Hon. Speaker:** Hon. Members, as you know – fortunately, and I keep repeating this - Article 122 of the Constitution does not give me even half a vote. So I throw the matter to you.

*(Question put and agreed to)*

Hon. Members, I do not even know who was opposed. I never heard any “nay”.

I wish to reiterate what was said by both Leader of Majority Party and Leader of Minority Party. This Committee should move with speed and assist the leadership in placing Members into various Committees that they may have indicated a desire to serve in, taking into account all those considerations that have been stated both in the Constitution and in the Standing Orders. I urge this Committee and the Leaders of Majority and Minority parties to move with speed and call for the first meeting. Hon. John Mbadi, I am sure you are now fully in the House. The two of you can agree. I heard the Leader of the Majority Party say that you are neighbours. You can agree on when to have the first meeting because as you rightly pointed out, the Committees are the engine of any Parliament. Like the adage says, “Parliament in Committee is Parliament at work and Parliament in plenary is Parliament on exhibition”. Please, let us get to work and minimise the exhibitions.

Let us move on to the next Order.

APPOINTMENT OF MEMBERS TO THE  
PROCEDURE AND HOUSE RULES COMMITTEE

**Hon. A.B. Duale:** Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the Standing Order No.208 and notwithstanding the provisions of Standing Order No. 172 (2), this House approves the appointment of the following Members to the Procedure and House Rules Committee, in addition to those specified under paragraph 2 of the Standing Order No. 208.

Those specified under Standing Order No.208 (2) are the Speaker of the National Assembly, the Deputy Speaker of the National Assembly and members of the Chairperson's Panel, plus the following other Members that I am going to read:

The Hon. David Kiaraho, MP

The Hon. Abdul Rahim Dawood, MP

The Hon. David Gikaria, MP

The Hon. Ruweida Mohamed Obo, MP.

Using Standing Order No.48, I seek your indulgence in replacing Hon. Pkosing with Hon. Kagongo Bowen. It was a typographical error.

The Hon. Cecily Mbarire, MP

The Hon. Gathoni Wamuchomba, MP

The Hon. Capt. (Rtd) Didmus Wekesa Barasa, MP

The Hon. Janet Jepkemboi Sitienei, MP

The Hon. Ben Momanyi, MP

The Hon. T.K. Kajwang;

The Hon. Beatrice Adagala, MP

The Hon. Olago Aluoch;

The Hon. Zuleikha Hassan, MP

The Hon. Pamela Odhiambo, MP

Standing Order No. 208 (1) says there shall be a select committee to be known as the Procedure and House Rules Committee which shall comprise of the Speaker as the Chairperson, the Deputy Speaker, Members of the Chairperson's panel and not more than 15 other Members. It shall consider and report on all matters relating to these Standing Orders. The business of this Committee is to look at the Standing Orders. Every new Parliament has new revised Standing Orders always but in between the five years, if there will be a need to revise the Standing Orders in one way or the other, then this Committee will look at it, and submit a report to the House for consideration. This Committee may propose amendments to the Standing Orders. Any such amendments shall upon approval by the House take effect at the time appointed by the House. Once the House agrees with that amendment to the Standing Orders, then it becomes part and parcel of our Standing Orders.

The Procedure and House Rules Committee may propose rules for the orderly and effective conduct of the Committee business. I want to make it very clear. Standing Orders are the rules that govern the conduct and the operations of the business of the House. That is why I want to urge new Members to read the Standing Orders. Apart from the Bible and Quran, you must at all times read the Standing Orders. When you are travelling, you should get a copy of the Standing Orders. I saw somebody who was talking about the Appointments Committee in the

media yesterday. That journalist was reading the old Standing Orders which say that the Committee should have 29 Members. I texted him and told him that he is behind. The new Standing Orders are written "Third Edition". You might find first and second editions within Parliament but the current Standing Orders are the third edition. How you behave is all in the Standing Orders. I am sure most of you who are new watched the time when people came with whistles in the Chamber. The new Standing Orders are very important because you can be sent away from the Chamber for a whole year. My good friend, Hon. Wandayi, is a living example. We had to help him. He was sent away for a whole year. Some of us in the leadership realised that our brother cannot be in the cold for one year. So, we had to bring a report with Hon. Jakoyo who is at home. We begged the Speaker, wrote a report and brought back Hon. Wandayi after serving in the cold for four months.

If you misbehave, you will be in that shoe. If you do not know the limits, this is the Committee that will deal with you. It is chaired by the Speaker and it is above reproach. You should not listen to Hon. Duale or Hon. Mbadi as your leader or those leaders who are outside there, and you forget yourself and misbehave here. When you misbehave here, you will carry your cross. Neither Hon. Duale nor your leadership outside the House will carry that cross with you. It is good that we live in a very respectable leadership style. I am sure the Procedure and House Rules Committee deals with that.

Why are we forming this Committee? It is very important and we want to indulge you. If the House approves the Motion, we want you to call the first meeting tomorrow in the morning because there is something we want this Committee to do for us, as the leadership, in terms of the composition of the Members to various committees. We looked at the numbers and realised that we have some gaps. That is why these Members, under your leadership, will receive our concerns through our Whips where we want the Standing Orders to be amended, so that each and every Member of our House can be in two committees, one in a departmental committee and another in a select committee comfortably. That is why we want to form this Committee today. I hope the Speaker will convene the meeting tomorrow in the morning and then we deal with the report of that Committee on Thursday in the afternoon. If the House agrees with this Motion, we ask you, despite your busy commitments, to convene a meeting tomorrow in the morning. This will allow the House to deliberate and approve the amendments to the Standing Orders possibly by Thursday this week. The approval by the House will enable the Committee on Selection to make informed decisions when they meet on Friday to appoint Members to various committees.

This is a very important Committee. In my life as a Member of Parliament serving the third term, this is the Committee that I cherish that I will never appear before because it deals with conduct and integrity of Members. If there is a Committee you should avoid as a Member of Parliament, it should be this one. How you behave within the precincts of Parliament--- People think that the precincts of Parliament is the Chamber. It is not. That is the first question you should ask the Serjeant-at-Arms. What are the boundaries and precincts of Parliament? It also includes our offices and the car park. I am sure a number of us are also licensed gun holders. How you use your gun and how you behave when you have two or three bottles of beer in the bar matters. This is for those of you who stay late in the bar in Parliament. How do your visitors behave when they are at the precincts of Parliament? How is your relationship between you and the staff of Parliament? There must be serious personal space. This Committee which is chaired by the Speaker should be the last one you should cherish to appear. We brought these men and women so that they can help us amend the Standing orders and work on it. I am sure they are up

to the task. Everyone of us can be a Member but because of the limited time, we felt these are the numbers.

I beg to move and ask the Leader of the Minority Party to second.

**Hon. Wakhungu:** On a point of order, Hon. Speaker.

**Hon. Speaker:** What is out of order, Hon. Chris Wamalwa?

**Hon. Wakhungu:** Is the Leader of the Majority Party in order to mislead the House? We know that, and I expected him to know this very well because he is a leader. This Committee on Procedure and House Rules sets ground rules. He is misleading first-time Members of Parliament that it will be unfortunate for them to appear before it. It is the Committee on Privileges that is involved in disciplinary matters. Is he in order as a leader to mislead? Or is it ignorance? What is this?

**Hon. Speaker:** Leader of the Minority Party.

**Hon. Ng'ongo:** Thank you, Hon. Speaker. I have not risen to answer to that. I am sure it has been well taken care of.

I rise to second the Motion which asks this House to approve Members to the Procedure and House Rules Committee.

This is a very important Committee. The leadership of the House has realised that there are amendments that we need to make very quickly on our Standing Orders. Therefore, this Committee needs to be in place. We actually want to increase membership to committees. The numbers we have are restrictive while the house has 349 Members. This is a large number. If we leave membership of various committees as they are, we might end up with each Member sitting only in one Committee. It will be desirable for a Member to serve at least in two or more committees, if possible. Therefore, this Committee needs to be in place to bring quick amendments to our Standing Orders so that by next week we are able to form our committees.

We have tried to mix MPs with experience in the House and those of us who are new but need to learn to gain the experience. One gets experience through learning. So, we cannot block new Members from sitting in such important committees just because they are new. Those of us who are now experienced had a time to learn. We came in for the first time and were given an opportunity to learn.

Let me give an example from my Coalition. From the Minority side, we have the longest serving Member whom we are proposing to serve in this Committee, Hon. Olago Aluoch, Member for the great constituency of Kisumu West. He is serving his third term in Parliament. I came with him the same day. I thank the people of Kisumu West for allowing a brain like him to sit in this House. He is not only qualified in his service .....

**Hon. A.B. Duale:** He is from FORD-Kenya.

**Hon. Ng'ongo:** Of course, he is from FORD-Kenya. That demonstrates the faith the people of Kisumu West have in him. We all know that, that region is an Orange Democratic Movement (ODM) territory almost 100 per cent. But still Hon. Olago has managed twice to win his seat on a FORD-Kenya ticket. Hon. Olago is an experienced lawyer in this country. He brings a wealth of experience and also professional background to help us work on house rules and procedures.

We also have Hon. T.J. Kajwang' who has served in the Chairpersons' Panel, what we used to call the Speaker's Panel. Members will agree that T.J. Kajwang' is a diligent Member. He is someone who is committed to his duty. When he served in the Chairpersons' Panel, we know what he was able to do. He is serving his second term.

Hon. Ben Momanyi is another lawyer nominated to the Committee who comes from the Wiper Democratic Movement. He is also another experienced Member serving his second term. We also have Zuleikha Hassan who is serving a second term. We also have two Members who are serving for the first time in this Parliament. We have Hon. Beatrice Adagala who comes from the great county of Vihiga and a Member of Parliament from Amani National Congress. Hon. Speaker, I have no doubt in my mind, in the short time I have interacted with Hon. Adagala that she will also bring a lot of value to this Committee.

Finally, we have Hon. (Dr.) Pamela Odhiambo, Member of Parliament for Migori County. This is a don. I do not want to call her a former lecturer because she could still be teaching. This is a lady I have interacted with for a bit of time and I know she is going to add value to this Committee.

I ask them to move with speed and introduce amendments that are desirable. They should also look at Standing Orders because they are always being changed on the basis of circumstances and political environment.

Finally, even as I appreciate the amendments that were done to the Standing Order No.176, and I agree that our Constitution promulgated in 2010 brought with it due process, there is need, whatever decision we take, we need to be just. That is a principle in the Constitution. Due process is very important. If a Member is de-whipped, he needs to be explained the reason.

I also want us to be alive to the fact that we have borrowed heavily from mature democracies. We are members of the Commonwealth. We know that whipping is very important in the Commonwealth. When a party cracks a whip, it is an important action. So, we need to lecture and educate our Members that it is important especially on a matter where a party has taken a decision to respect it unless they want to go independent. We have a number of Independent Members here. One of them is seated next to me. He is Hon. Shakeel Shabbir who was a very faithful Member of my party. I do not know what happened that he had to come to this House on an Independent ticket. I know his heart is still in ODM. Whatever happened, we will make sure that it does not happen again. If the people of Kisumu East love him the way they do, they will vote him in on an ODM ticket.

If a Member does not agree always with the party position, the best thing to do is to go independent. The step to take is that one which my party leader took one time. I remember Hon. Raila Amolo Odinga did not agree with FORD- Kenya at the end of 1996. He decided to move to another party; National Development Party (NDP). I was one of the very strong youth at that time of his team. I remember when he told us that he was going to joining NDP we endorsed it. He resigned from Parliament and won his seat on the NDP ticket. If a Member feels strongly that he cannot agree with a party position, the best thing to do is to leave the party. It is not nice to find a Member of Jubilee Party opposing all the time. It can happen once or twice because we are people with individual thoughts, but it should not happen that every day you disagree with the party that sponsored you to Parliament. It is like you conned the electorate. I campaigned on the basis of ODM manifesto and on NASA in general. The voters voted for me not because of me as individual but as an ODM candidate. The moment I start fighting ODM, I will be betraying the trust and the confidence the Suba South had in me when they voted me.

With those many remarks, I second the Motion and ask the House to approve these names for appointment to the Procedure and House Rules Committee. Thank you.

**Hon. Members:** Put the Question! Put the Question!

**Hon. Speaker:** Hon. Members, I thought it is not too long ago since we did the first induction. We cannot put the Question before it is proposed. I know that should have been

among the very first things that you were taught. You are now telling me to put a Question which has not been proposed. It does not happen like that; not in the Kenyan Parliament.

I want to confirm what Hon. Mbadi said. Even in amending Standing Order 176, this Committee considered that it is the prerogative of political parties that sponsor Members to deal with questions of discipline among its members. It is for that reason that power and right was never taken away from political parties. All that was proposed is the due process: the power to reprimand and to de-whip. Those of you who have read the history of whipping will remember the story of the dog whippers. You can go and read it. The power to de-whip still resides in the political party. That has not been taken away. Therefore, it is just to confirm that what Hon. Mbadi has said is correct.

Please, as you wish to disagree with the political party that sponsored you, it is desirable that you approach the leadership and tell them in advance why you feel strongly against a particular position that the party maybe advancing. That means life becomes a lot easier. The whips - Hon. Washiali and Hon. Mbarire; Hon. Wamalwa and Hon. Junet - will hopefully be sympathetic of you and not propose any disciplinary action against you. Of course, that has also been provided for in the Political Parties Act as I am sure that many of you have read and seen the processes that are advocated.

*(Question proposed)*

Is it the desire of the House that I put the Question?

**Hon. Members:** Yes!

*(Question put and agreed to)*

**Hon. Speaker:** While on my feet, hon. Members, since I chair this Committee and because the leadership has approached me and indicated a desire that this Committee meets urgently to look at certain proposals to amend the Standing Orders, particularly Standing Order 177, more so for the circumstances of the House concerning the size of the membership, it requires that certain adjustments be made particularly to the maximum membership to the various committees, I direct that this Committee meets tomorrow at 11 a.m. Hopefully, the leadership, both from the Majority and Minority parties will have presented in writing their proposals by the close of business today so that the Committee looks at the proposals quickly and examines in context of the size of the House, the desirability or otherwise of your proposals.

Next Order!

## BILL

### Second Reading

#### THE COPYRIGHT (AMENDMENT) BILL

*(Hon. Washiali on 30.11.2017)*

*(Resumption of Debate interrupted on 30.11.2017)*

**Hon. Speaker:** Hon. Members, debate on this Motion commenced last week and seven Members had contributed. Just to remind those who may have forgotten what they may have learnt in the induction workshop, if you contributed you have to remain silent and listen to the others unless there is a dilatory Motion suggesting amendment to this Bill as it is. I am assuming that the names as they appear here are of those who desire to contribute to the Bill. The first one in the line-up today happens to be the Member for Mwingi Central.

**Hon. Mulyungi:** Hon. Speaker, I am not ready for that Bill. I wanted to contribute to the previous ones.

**Hon. Speaker:** The next Member, whose request is topping the list, is King'ara Ng'ang'a, the Member for Ruiru.

**Hon. Kingara:** Asante sana Bw. Spika, kwa kunitambua katika kikao hiki. La kwanza kabisa ni kuwashukuru Wabunge wote, haswa Wabunge wa upande wa Upinzani, kwa kukubali kuja tufanye kazi ile tuliyopewa na wananchi. Katika Kenya yetu, tumeendelea sana. Mambo ya usajili, utoaji na usimamizi wa utangazaji ni vizuri uwekwe laini. Kama munavyojua, nchi zilizoendelea zimepiga hatua kubwa na kuweka viwango vya juu sana ndiyo wasajili wasije wakaigwa na wengine ambao hawajachoka. Kenya ni nchi ambayo imeendelea na ina demokrasia.

Vilevile, Wakenya wanataka kula jasho lao. Ni vizuri tutafute mikakati mwafaka na ya uzito tutakayoiga. Hii ni ili tuone waliotumia vipawa vyao na kutoa mambo mazuri wakijiburudisha kimapato. Lazima nao wasimamiwe na sheria yetu. Sheria yetu haiwezi kuchukua mwelekeo mwema iwapo sisi kama Bunge hatutaweka mikakati itakayowachunga. Si hilo tu; ni mambo yote yanayohusu watu walio na vipawa ambavyo vingetumiwa kwa ubaya na wengine; tuone wamesimamiwa na sheria. Katika eneo la kutunga sheria, hawana lingine. Sisi Wabunge, ndio tuko na mwanya, nafasi na mamlaka kutoka kwa wananchi na Katiba yetu kusimamia wale ambao hawana nafasi kuingia katika Bunge na kujisimamia.

Wakati mjadala kama huu umeletwa, ni vizuri tujisahau kama watu binafsi. Tuchukue msimamo wa Wakenya wote na kuona watoto wetu na marafiki wakihusishwa katika vipawa vya aina mbali mbali. Kama hakuna mikakati kamili, wengine watatumia jasho lao nao wakapata hakuna matunda. Ndio watu wapate matunda yao, ni sisi Wakenya, haswa Wabunge, tutafute mikakati na uzito wa maneno yale yatumika katika usajili wa maandishi yoyote yatakayosimamia ujuzi wa Wakenya kwa njia mbali mbali. Ni jambo la busara sana kwa sababu kuna nchi ambazo vipawa vya watu binafsi, haswa muziki na michezo, vimetumiwa na wengine waliokuja kujinufaisha; wanawacha wanaotoa vipawa vile kuwa watu wanyonge. Ili hilo lisiwe la kuigwa hapa Kenya, itabidi sisi na Wabunge wa hapa Kenya tuwe na uzito wa usajili wa maandiko yote yatakayosimamia watu wenye vipawa.

Kwa hivyo, Mhe. Spika, nimesimama kuunga mkono. Ningeomba Wabunge wenzangu, Waheshimiwa, waungane na mimi tuunge mjadala huu mkono.

Asanteni.

**Hon. Speaker:** Member for Kisumu East.

**The Member for Kisumu East** (Hon. S.S. Ahmed): Thank you, Hon. Speaker.

Let me first acknowledge and thank the great people of Kisumu East who had the wisdom and independence to vote for me as an Independent Candidate. I think this is a great reflection of the maturity of the people of Kisumu East in that they went against directions from any party and said "we want a leader who will develop and be able to contribute; a developer." I pledge to them that I shall serve them as a leader, servant leader, for the next five years or any period they see fit.

Apart from that, I would like to contribute to the Copyright (Amendment) Bill. All over the developing economies in the 1950s, 1960s, 1970s and 1980s, there was no copyright restriction. Even if there were, Japan; when it was developing, China; when it developed, India and many others kept quiet and did not give too much credence to the copyright law. They wanted to bring their economies to per. I know that in India, books that are copyrighted, even medical books *et cetera*, cost less than Kshs1000 yet the market in Kenya and other places, they cost even Kshs50,000. It is basically because they are photocopied. Yes, I do understand that the authors need to be protected, but there are times you have to look at the greater good. We are now talking about copyright but we are finding a lot of medicine that is not genuine, they call it “generic”. There is no copyright. The other day I read that there was a drug that was being supplied in the United States of America. When the copyright was taken, the price of the drug went up nearly 50 times.

So, as much as I agree that Kenya is a developing economy and on the threshold of take off, we must also appreciate, pay respect to and also keep the copyright requirements in mind. There are times this will not be for the benefit of the country as a whole. As much as we are here, my colleagues and I should remember we were all in a campaign just recently. We were all being approached by the Music Copyright Society of Kenya and they would tell us: “You must pay Kshs200,000 to play the music; Kshs50,000 to play this and Kshs50,000 to play that.” I agree that this is something that must be done. I am not for one moment saying we should break the law, I am saying there should be some leeway. This Bill is very good. It is good for a developing economy. It is good for a developed economy, but, some of the requirements and the penalties that have been put here are excessive.

Furthermore, we passed another Bill not long ago. It was the Anti-Counterfeit Bill. What happened? Counterfeits are still going on because we do not give teeth to monitor and take action on all these laws we pass. As much as I believe this Bill is well thought out, it is actually quite detailed in the requirements. It is, in fact, too much to bear in this economy. I hope, when it comes to the Third Reading, I shall be proposing certain changes – certain requirements should be dropped and others be covered.

With those few remarks, I thank you. I support the Bill but, in part.

**Hon. Speaker:** Member for Saku.

**Hon. Dido:** Thank you very much, Hon. Speaker.

I rise to support this Bill. It is a good Bill. The Copyright Act that we have, which is the substantive Act, has gaps in many areas. It was just last year when we saw the community of the blind and visually impaired approach this House, particularly to amend Section 50 of that Act.

This Bill is about protection of intellectual property rights where those who can write books or come up with music are safeguarded in their talents so that they earn from their sweat. This Bill addresses substantive amendments to the Act which we should look at in detail in the Committee of the whole House stage. As Hon. Shakeel has said, we should look at it so that it does not kill the spirit of entrepreneurship by allowing easy access for work an individual has taken so many years of their lifetime to invest in. It is about protection of interest in various groups. What is happening currently in our country is, music is produced by Mr. X and in a few days, the CDs of that music are sold in the streets. If the original price tag of that particular music was Kshs2000, it will be sold on the streets for about Kshs 200. Basically, what the talent that an individual had invested in will be killed.

There are also good things in this Bill particularly in the new frontiers of knowledge; the internet service providers. From what is happening currently, the internet service provider is a

carrier. If that carrier is penalised because somebody is posting their music, their books or whatever talent on them, we will be penalising the wrong person.

I also think that the Copyright (Amendment) Bill will address the media and other areas of reproduction and distribution of other people's efforts without seeking permission from the original author of a particular talent. In Kenya, it is common knowledge that artists are very poor. They are poor because the knowledge and the energy that they have invested in, Kenyans have never tried to put a penny on it. We have seen fellows who are household names, when they die, they die poor. It calls for people to do some Harambees so that their bodies are properly interned. Through this Bill, such efforts should be addressed so that those individuals gain from their talents.

One of the things which I seek to amend is the issue of the post of Executive Director. In the Bill it is said that individuals must hold Masters of Law Degree, primarily in the field of Intellectual Property Rights. Unless the drafter of the Bill has somebody in mind, it should never be expressed that way particularly when the threshold of education is well specified, it beats the general principle of how individuals can be appointed to public offices.

Finally, as I said earlier, this is a good Bill. It shows progress in the Copyright Act. The Copyright Act has not been amended for a very long time. For the progression that this Bill provides, I beg to support.

**Hon. Speaker:** Godfrey Osotsi.

**Hon. Osotsi:** Thank you, Hon. Speaker for this opportunity to contribute to this very important Bill. I rise to support it. This is a very important piece of legislation. As you know, copyright issues are global. Therefore, as a country, that is globally competitive. It is important that our laws are aligned to the global standards. This Bill has very important provisions. One provision is the regulation on matters to do with software piracy. It is important because this country is losing a lot of money through software piracy. The country is losing about Kshs 12.8 billion every year through illegal and unlicensed software. That is a lot of money that I am sure can build a number of roads in this country. You can therefore see the importance of having laws that will govern the issues of software piracy. Software piracy is a global problem. One of the things I will be raising at the Committee of the whole House stage is how to ensure that there is collaboration between the Government and the international providers of technology like Microsoft on matters to do with software piracy. Globally the whole world is losing about Kshs 2 trillion every year because of software piracy. They say, if we try to control even one per cent of piracy, then the world will save up to Kshs7.3 trillion. If you localize that, you will understand why it is important to have very clear policies and laws around the issues of piracy.

The Bill talks about piracy on issues of computer programmes. Whereas that is important, there must be a balance between issues of regulating piracy and enhancing innovation. In the Committee stage, I would like to introduce amendments to this Bill so that in the process of handling piracy issues in the computer programmes, we are not at the same time stifling innovation. I am saying that because the modern technology allows for what we call object-oriented programme where you pick pieces of programmes and come up with an integrated programme to do something. It will be very difficult if we say that we are going to completely regulate specific programme. That will be stifling innovation.

I am also excited by the provision on Internet Service Providers (ISPs). This country is one of the major African countries which are internet-driven economies. Therefore, a lot of piracy will take place over the internet. We therefore need very specific measures to manage

online piracy and this Bill addresses that issue by requiring that internet service providers also adhere to the issues of online copyright infringement.

But this Bill does not provide for self-regulation by ISPs on the issue of online copyright infringement. In other countries, there is what is called industry code for ISPs on issues of piracy. In the Committee of the whole House stage, we will be introducing amendments so that ISPs in this country will be required to have industry code on the issue of piracy.

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

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Tuya) took the Chair]*

I also note that this Bill has taken into account the Marrakesh Treaty on matters to do with piracy. That is very important because issues of copyright are global and crosscutting and therefore it is important that we have an international aspect to it. This is a very important Bill. I am aware that it has gone through the relevant committee, but I think Members of this House who are from various disciplines, especially IT where I belong, will be coming with specific amendments on some of the clauses so that we make this Bill even better.

Thank you, Hon. Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Take note, Members, it is not Hon. Speaker anymore.

Hon. Cecily Mbarire.

**Hon. (Ms.) Mbarire:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support the Copyright (Amendment) Bill, 2017 that seeks to amend the Copyright Act, 2001. As you are all aware, we have a new Constitution and it was important that we align the 2001 Act to the new Constitution. I think it is important that we all know what it is that the 2010 Constitution provides for. We all know that the Constitution has one of the most supportive Bill of Rights to the people of this country. Article 11(2) says:

“The State shall—

- (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.
- (b) recognise the role of science and indigenous technologies in the development of the nation; and
- (c) promote the intellectual property rights of the people of Kenya.”

Out of these provisions of Article 11 of the Constitution, there is certainly need for us to ensure that these rights are properly taken care of in law, so that we can protect the intellectual capacity and property of our citizens.

“Further, Article 40(5) says:

The State shall support, promote and protect the intellectual property rights of the people of Kenya.”

Therefore, there is need for us to have legislation that will ensure that, that does happen. The same Constitution continues to say, in Article 69(1):

“The State shall—

- (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;

- (d) encourage public participation in the management, protection and conservation of the environment;
- (e) protect genetic resources and biological diversity;

Having said so, we realise that these particular amendments aim to ensure that the resources that we realise through the provisions that are in this Bill lead to socio-economic development of our people, and that payments such as royalties and others related to it that are paid to the people who create these intellectual property, the publishers or distributors do actually get there.

I remember in the last Parliament we had an informal setting that was being driven by Hon. Moses Kuria where we met musicians of this country. One of the challenges they told us they face was loss of revenue through piracy, counterfeiting and mismanaging of their copyrights. Therefore, through this Bill we hope that we shall be able to stem the online piracy that we are witnessing in our country today, especially that is really affecting our musicians and artists and ensure that we make ISPs liable for any online piracy that may take place. We know that by so doing, the biggest beneficiaries will be the young people full of talent.

We have seen Kenya lead the way in terms of Information and Communication Technology. We have seen Kenya coming out as the nation that developed mobile money application. M-Pesa is the creation of a Kenyan. But we want to make sure that the creators of these great ideas are protected and they get to earn a meaningful living out of their creation.

We also want to agree that our culture is one of the richest that we have in this world. We stand out as a country with cultural diversity. It is one of the things that sell our tourism. We have seen that in most of our tourism marketing strategies in this country, we use culture as one of the things in this market. We are a cultural destination. I am sure you will agree with me from where you sit that one of the richest cultures that have been greatly used by the nation to sell our tourism is the Maasai culture. Therefore, there is need to ensure that, that culture benefits the owners of that culture, who are the Maasai community. And they must be protected. They must gain meaningfully out of their own culture, so that whatever comes into the country through tourism and we know the contributors of that product, they can give something back to the community; the community can grow through that revenue; and we can see the counties from where these communities come benefitting in a big way.

I hope that this House will find it necessary to truly contribute and support this very important Bill and realise that this particular Bill, for the first time, takes into account a treaty that was signed by this country called the Marrakesh Treaty that aims to facilitate access to published works of persons who are either blind or visually impaired. That treaty needs to be domesticated. And this particular Bill seeks to do exactly that. So we really look forward to passing this Bill so that we can protect a very important sector of this country, a sector that brings revenue that is not well accounted for and does not reach the people that actually played a role in creating, and that we can empower our youth and the artists of this country.

With those many remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Let us have Hon. Muturi King'angi, Member for Mbeere South.

**Hon. Muturi:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice in supporting the Copyright (Amendment) Bill, 2017.

I do that by alluding to two aspects of the Bill. The first aspect is that this Amendment Bill seeks to remove ambiguity in the copyright area. We have seen that there is a period of about 16 years between the first Act and this Amendment Bill. In between, there has been a lot of

development and sometimes the words used in the Copyright Bill or Act do not mean the same after 16 years. For instance, 16 years ago we did not have the internet to the extent that we do now. There was no *WhatsApp*, *Facebook* or prolific enablement of sharing materials through social media. This Amendment Bill therefore brings clarity into what is meant by the Act and what is not.

I will give an example. During the campaign period in my constituency, Mbeere South, I had to deal with a situation where somebody was caught playing online music. The enforcers insisted he was infringing on the rights of the copyrights whereas the music was available online. Any effort to try and demonstrate that, that music was actually availed by the artist for public display was very difficult until we stepped in. Therefore, as we protect the corporate owners, we also need to protect the consumers. These corporate owners require the consumers. So, unnecessary harassment of the consumers also stifles the copyright owners. Both of them need to be protected. This Amendment Bill therefore brings clarity that is required for both the copyright owners, consumers and enforcers. The challenge I think is with the Copyright Board of Kenya to ensure that those they send to the field are not just going there on a fishing mission, a trip to listen to anybody playing music and then claim that they are infringing the copyrights.

These days there are many radio stations which are online and you can actually listen to them through the computer. If you are playing a piece of music through the computer, it does not mean that you have downloaded that piece of music illegally. A lot of it is availed for free by the copyright owners. Therefore, when we harass or when the agencies harass the consumers, the copyright owners are denied the market.

The first development particularly in the audio-visual area and in music is the creativity of the artists in various areas which has also brought a lot of diversity and new vocabulary into the game. Therefore this Amendment Bill brings clarity in that it helps us to catch up with technology, new expressions and creativity that are being seen in the Kenyan society. I also want to commend the Music Copyright Society of Kenya for their creativity. They are able to think outside the box and create things we did not know before. It is up to this House to keep up with development in this sector and legislate accordingly.

While supporting this Bill, I would also like to echo the sentiments of my colleague Colonel Rasso, the Member for Saku in the definition of "Director-General". The prescription that has been given for the qualification of the Director-General of the Kenya Copyright Board to the extent where you say he has to have this degree and this qualification, I think is wrong. One, it makes it very difficult to plan succession in that organisation because then you have to line up people with the same qualifications so that they are able to take over from the Director-General. Otherwise, every time there is a vacancy; every time the Director-General steps out, you have to go out fishing for a particular person. In any case, the work of the Director-General is not technical. It is in the leadership area and leadership can be provided from all manner of professions. This House for instance is full of people with various and diverse professional qualifications that came here to bring leadership. Therefore, when we prescribe we actually precipitate a crisis in the succession and this should be avoided. I think we should look for a leader for this organisation. It is not just law; since leaders come from all manner of professions.

With those few remarks, I rise to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us have the Hon. Member for Dagoretti South, Hon. John Kiarie. You have the microphone.

**Hon. Waweru:** Thank you very much, Hon. Temporary Deputy Speaker. I really appreciate this opportunity to rise and support the Copyright (Amendment) Bill, 2017 which in itself seeks to amend an Act of Parliament which is the Copyright Act, 2001.

From the outset, I would like to note that entertainment and the creative economy in Kenya is a multi-billion shilling industry. As such, this Bill is very timely. We will all agree that ideas are going to become the currency of the new world. The new world belongs to men and women who will be coming up with great noble and exemplary ideas. Our recent history is replete with examples of great men with great ideas who have contributed in a massive way to the development of our globe. I know names like Bill Gates will come to mind with his idea of a computer on every desktop; a man like Steve Jobs of the Apple Computers fame; and Mark Zuckerberg who recently visited Kenya. He created the largest country by population in the world today. This country or world that he created is actually online. It does not exist anywhere physically. However, by virtue of the population of the people on *Facebook* today, it is the largest world. And so, ideas are going to be the biggest driver of development of the globe going forward.

This House is also not short of examples; Hon. Njagua from Starehe Constituency comes to mind; Hon. Mohamed Ali of *Jicho Pevu* and of course, the Hon. Member for Dagoretti South, all who applied their trade in the creative industry. It is to such minds of great ideas that the future belongs. The Bible reminds us that we are co-creators with God and as such, the environment that God did not create naturally, he left for us to co-create with him and hence the need for us to look into this industry of idea creation.

Well, it has been said by my colleague and senior, Hon. Cecily Mbarire that if we are able to amend this Bill and put it out there, we shall actually be availing opportunities. This is because we realise that not all our young people will get employment opportunities in Government. Not all our young people will be employed in companies. However, if we widen the scope of tapping talents and making them an industry that pays our young people, we shall be availing opportunities to millions of Kenyans.

As such, this Bill is critical in the protection of copyright and intellectual property, and is very timely. I would ask this House to expedite the passage and implementation of the Bill.

Hon. Temporary Deputy Speaker, I do know that we cannot legislate creativity but I know that we can legislate the conditions that allow for creativity to thrive. That is what this Bill seeks to do. As I support it, I want to add that I see an opportunity for us to broaden our view of creativity beyond what was traditionally the visual and performing arts.

There are new worlds with great opportunities that beckon out there. These opportunities are in the new industries of information technology. There are great opportunities for creative ideas to thrive. With that, I would like to say that unlike what has been said by the Member for Kisumu East, I do not find the penalties punitive. Some of the offenders of copyright rules are multinational corporations. They exploit conceptual ideas and intellectual properties of young Kenyans to make billions of dollars while the creators suffer and linger in poverty in this country. As such, I support stiffer penalties for copyright offenders. There are big multinational corporations who go against the tenets of the Bible and reap where they did not sow. Hon. Njagua will tell you that for every shilling he makes, a pirate makes Kshs5 out of his creative works. Therefore, some punitive penalties have to be instituted.

I would like us to co-opt the ideas of creative bodies in this country. I urge this House to move with speed in forming the relevant committee so that these bodies can appear before us and share with us their ideas on the Copyright (Amendment) Bill 2017. These bodies include but are

not limited to Kenya Association of Music Producers, performing arts lobby groups, stakeholders in the local film industry, and digital content producers – who are very critical.

When you walk on the streets of Nairobi, you hear new lingua out there, with people talking about slay queens in this town. These are a creation of social media and digital platform content creation. Let me tell you, it is an industry that can grow with all the bloggers we have out there, who create amazing digital content online. What we need to do as a House is protect the ideas and make sure that they thrive from the art they trade in. I seek to retreat and put it on record that I support this Amendment Bill. Given the opportunity and the relevant committee, I will have some amendments to the Copyright (Amendment) Bill.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Okay, let us have Hon. Jennifer Shamalla.

**Hon. (Ms.) Shamalla Jennifer:** Hon. Temporary Deputy Speaker, I rise to support this Bill especially in view of the fact that we recognise that copyright intellectual property rights are indeed the works of the human spirit. Intellectual property is also the driving force of the economies for countries such as the USA. You will see that the copyright industry drives the film industry, from which they earn billions of US dollars.

The industrial designs in patterns and trademarks and other aspects of intellectual property, earns them billions of dollars, especially in the areas of pharmaceuticals and defence industry. I wish to reiterate that when this Bill goes to the Committee of the whole House, Members should carefully consider Section 22A of the amendment that says, in Clause 9, under Memorandum of Objects and Reasons that the registration shall be voluntary.

Indeed, copyright is an automatic right. Therefore, there is no need for compulsory registration. Hence it is important that this comes up very clearly in the amended Section 22A. Furthermore, Section 22A (3) says that the registration shall be *prima facie* evidence.

Again, I wish to reiterate that the position as per the Berne Convention that guides all copyrights and provides for all the issues related to copyright states that the *prima facie* evidence is the evidence that even the artist may have with himself. So, to state in Section 22A (3) that the registration becomes the *prima facie* evidence will be making it mandatory for copyright owners to register their works. I hope at the Committee stage they will recognise this and ensure that, in line with the Berne Convention, the amendments are made to ensure that registration of copyrights is not mandatory.

Indeed, it is important that we begin to see intellectual property rights as an economic driving force for this country.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Hon. Shamalla, you will have some good time during the next stage of this Bill. You will bring out those very important points that you have just highlighted.

Hon. Njagua Kanyi.

**Hon. Njagua:** Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to comment on this very important Bill. First of all, I thank the hon. Members who have contributed before me for supporting the Bill. I would also like to correct Hon. Rasso from Saku, who has said that artists die poor. I will tell him that in every business, if you do not invest, you will definitely die poor.

Art pays our bills. Therefore, the amendment of this Bill is aimed at fostering the growth of the art industry and allow Kenyans to live their talents. The Copyright Act that is in place now

was drafted in 2001. This was a long time ago. Hence, there is need to review the Act and make it current. I would like to recommend the broadening of this amendment Act. The 2001 Copyright Act was very narrow in definition owing to the time. The industry has now expanded to include a lot of things that were categorised under arts. For example, we now have spoken word. Comedy is also categorised under arts, just as we now have sign language in music. The amendments in Sections 5, 6, 11, 19 and 22 of the 2001 Copyright Act have to do with the refreshing of the Act to be in line with the new Constitution.

The Copyright Board has over the years been constrained in performing its mandate. This is the reason why this Bill under Sections 5 and 6 of the 2001 Act, seeks to clarify the functions and composition of the board members. The requirements in Section 11 of the Act state that the person should be a qualified advocate of the High Court with five years' experience in senior position in the copyright office. That is good.

I suggest that we add to that the requirement that a person should be a practitioner in the art industry who is directly affected by the conduct of the Copyright Board. I recommend involvement of artists directly in the claim of royalties as in Section 30 of No.12 of the Copyright Act, 2001. Involving the organisations representing the artists is fine but the Act should go further to put measures into place for involvement of the artists directly. This is because in many occasions organisations have claimed royalties for artists even without their consent.

We have seen this in the *Skiza* tunes saga, where money did not reach the artists but instead it was shared among a few people in the organisation of collecting societies. This calls for the need to involve the artists in claiming and managing the royalties. We have situations whereby an offender is taken to court and convicted. However, the pirated art still remains in circulation. This continues infringing on the rights of the original producer of the arts. In this sense therefore, I highly agree with Clause 30 of these amendments which allows for destruction of any materials seized upon order of the court, if a charged person is convicted.

Finally, Kenya still lacks national conviction on the intrinsic value that performing arts plays in society. Most media houses would opt to pay royalties for foreign content at the expense of locally produced content. We cannot and should not disown our own but rather put in place framework that cultivates our art such as increasing the airplay threshold for locally produced content.

I would like to comment on the issue of collecting societies as written in Section 46 of the Copyright Act, 2001. First, a collection society should be artist-oriented and should not be a busy entity whose aim is to exploit artists. To ensure this, these amendments should put stringent measures to be followed by the Board before licensing any collecting society.

I agree with the provision stating that there should not be more than one collecting society in a single art class. This will prevent confusion and overlapping of mandate. Section 47 of the Act also mandates the Copyright Board to be a regulator of collecting societies. This is welcome as all collecting societies must be regulated and audited yearly for the purpose of licensing.

With those few remarks, I support these amendments. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyu): Hon. David Sankok.

**Hon. ole Sankok:** Thank you, Hon. Temporary Deputy Speaker. From the outset, I support this Bill. I also want to thank you for giving me an opportunity to contribute to this very important Bill just after Hon. Njagua Kanyi whom we know as one of the great men in the arts industry. I know when he speaks to the Copyright (Amendment) Bill it is from his heart because

in one way or another he has been affected directly. Some of us have been affected indirectly unlike him and Hon. Kiarie.

For a long time as a country we have channeled our minds on natural and underground resources. We have forgotten that a lot of money nowadays is channeled towards talent development. Those who earn a lot in this world are great women and men of talent. Hon. Kiarie has mentioned Bill Gates who in 2001 was earning an approximate of Kshs.40,000 per second. If you do a bit of mathematics it means per minute you multiply that amount by 60, per hour you multiply by another 60, per day you multiply by 24 and then per year you multiply by 364 or 365 days. It is even overwhelming to imagine the amount of money that individual used to earn. As a country this is what we are not seeing in our young men and women and that is why this amendment Bill is overdue. We need to move with speed and make sure that we protect our young men and women.

As a country we are facing a problem of unemployment. If we have to create employment the first place we should channel all our effort is supporting talent. This will also touch on the protection of the rights of the Maasai as a cultural community because they have maintained their culture for many decades and have not benefited. Many times you find people stealing their rights and because there is no protection from copyright they end up losing resources which would have economically jump-started them. In as much as we protect the men and women of talent we also need to protect the consumers.

The problem is that we pass Bills in this House and we do not follow-up on implementation. Therefore, these Bills become an avenue for a few people like the Communications Commission of Kenya (CCK) and our police to make quick money by harassing consumers. When implementing we should ensure that penalties, specifically target offenders and not consumers. If we harass consumers, Hon. Kanyi and Kiarie will tell you that the market will shrink. There are many copyrights we need to protect, even the copyright of swearing in our President. This is because I have heard there are people who want to copyright and swear somebody else.

Since the current President of the Republic of Kenya was sworn in by the Judiciary using a Bible and the Army... I gather from rumours that some people want to copy that and use a Christian Religious Education (CRE) textbook to swear somebody on 12<sup>th</sup> December. Since, it was an army affair and there was 21 gun salute, I have heard that they will prick 21 balloons instead. We need to move the Copyright (Amendment) Bill with speed to make sure it is implemented to the latter so that we can protect our youth and create employment in this industry. I am sure the rest of the world is moving in that direction.

I support the amendment Bill in totality.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Next is Hon. Mwaniki Ruth, Member for Kigumo.

**Hon. (Ms.) Mwaniki:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. A lot of times, we have heard the Government speaking about creating jobs for our youth. I think this Bill could not have come at a better time. We have talents, but we must know how to manage them and when to tap into those talents. We must protect the talents rights. So, this Bill is seeking to do exactly that and I support it. I was reading the story of Jack Ma, now the richest man in China who is worth US\$25 billion yet he started his company just the other day in 1999. There was talent. He started online trading and from it, he has become the richest person in China. So, if we commercialise our talents, be it music, performing art or sports, our youth will not cry for jobs. Indeed, they will create more job opportunities.

First of all, the Bill seeks to help commercialise the talents our youth have and protect their rights. I was reading again that Las Vegas is one of the fastest growing cities in the world and it is not because of anything else, but talent, art, music and drama. This Bill could not have come at a better time. We need to commercialise our talents, be it the people who are bringing innovative ideas in ICT or in the music industry to ensure that we harness what these talents bring for them, so that they can make a living out of them. They can be the job creators of tomorrow.

With those few remarks, I beg to support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us have Hon. Kisang Kipkemoi.

**Hon. Kisang:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Copyright (Amendment) Bill 2017. It is a long time since this Act was passed in 2001 and 16 years down the line, many things have happened especially in the ICT industry. Many innovations and works have changed along the way. In 2010, we passed a new Constitution and we are amending the Act to align it with the new Constitution.

I specifically want to look at Section 11 which talks about computer programmes. Along the way, several systems have been written off over time. There are two major types. We have computer software that come with SOS code and there are those which come without the SOS code. So, we should introduce an amendment, so that we allow institutions or individuals to copy the programmes that have SOS code across institutions or maybe, have the offside backup for themselves as they use the system. The system will also allow them to make changes. Computer systems are very dynamic. Since they are dynamic, you cannot stop those who have legally bought the software from making changes. So, the amendment on Clause 26A is very important. There are those that come without SOS code and those ones are copyrighted and you cannot make any change. You are only allowed to use the way the person wrote the system.

Secondly, as Kenyans, we are basically second after South Africa when it comes to innovations. In some programmes, we are ahead like the money systems, especially M-pesa. The young man who invented M-pesa basically should now be among the richest persons in the world. However, because it was taken over by a corporate company, the young individual is just surviving and living outside there.

There was also a very good innovation. There is a young man who came up with a system to do mapping in the nation. Basically, they wanted to assist the Kenya Revenue Authority (KRA) to locate all houses within the country and track those who are not paying their taxes, but along the way, there were issues. That particular individual would now be very rich and contributing to the revenue. But because of piracy, this is not possible. The KRA is losing a lot of revenue. If we pirate software and music, it means the country is not getting its due revenue because these individuals are selling in the black market instead of going through the right channel so that the country can collect VAT and Income Tax revenue.

So, at the Committee of the whole House stage, we will introduce the many changes, especially on the wordings and also enhance the Bill so that our brothers in the music industry may enjoy. In the last Parliament, we met the Music Copyright Society and other groups of artists and they are really living in abject poverty. Those who are enjoying the benefit of their innovations are the pirates. We need to bring this to an end.

Finally, I want to talk about the qualification of the Director- General of this institution. As a CEO or a leader, you do not need to be a lawyer. If you need legal knowledge, below the Director-General, you can have particular heads of department with skills that are required like

ICT, legal and others. However, at the CEO level, you need a leader and somebody who can take the organisation to a higher level.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Member for Nandi, Hon. Tum Chebet.

**Hon. (Dr.) Tum:** Hon. Temporary Deputy Speaker, I support the Copyright (Amendment) Bill 2017. We know when individuals are left to do things on their own, they do not safeguard their venture into businesses and other areas of expertise. So, when we do not protect people, we kill initiatives and innovations and produce substandard goods and services in our nation.

We know what is happening. There is a lady from Uasin Gishu County who was number five worldwide in the beauty contest. We are going to celebrate her next week because she was left to work in a conducive and free environment. Her life is going to change. So, the youth in this nation are venturing into music and we should protect them so that they do the right things. The Bible tells us: "Out of your own sweat, you will produce bread." So, you should not eat out of somebody's sweat. Innovators in our nation should be left to work in a free and conducive environment. We should have laws to protect what they are doing.

In the academic world, we talk about plagiarism. You cannot uplift even two sentences from somebody's work without quoting the source. So, musicians and other people who have talents in other areas should be protected the way students in universities are protected. They produce their own work. You cannot copy without quoting the author. I support this Motion because the socio-economic development of our nation will be realised when we protect people who have worked hard to produce whatever they have produced.

I support this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Muli Fabian, Member for Kangundo.

**Hon. Muli:** Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to the Copyright (Amendment) Bill. I support the Bill. Kenya is in the Third World and we are moving to the Second World. We need Bills to protect materials and their authors.

We have cases in this country where the primary material is taken and copied. The person who copies the material sells it like the primary producer. Very many people invent materials, but they end up in the market from other sources. Even the security department and law enforcers are not able to carry out proper investigations or enforce the protection of our innovation because of lack of proper laws.

That is why I support the Copyright (Amendment) Bill to provide for the protection of the talents of our youth for future investment. We also understand that we have to encourage our youth to invent businesses. Meanwhile, we need to come up with policies and laws to protect this industry for our future innovations.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us have Hon. Tobiko Peris.

**Hon. (Ms.) Tobiko:** Thank you, Hon. Temporary Deputy Speaker. On behalf of the other Members, let me offer my very sincere condolences to you and your family because of the loss of your mother-in-law. Kenyans should see the commitment of Members to serve them - that you are here very soon after bereavement. My sincere condolences.

I support this Bill. It has come at the right time. Chapter 130 of the Kenyan Constitution contains the Copyright Act with the sole mandate of making provisions for copyright in literacy,

artistic works, audio-visual works, sound recording, broadcasting and other connected services. A lot has gone on in the world in terms of copyright issues. Globally, there is no specific law to regulate copyright, but there has been an attempt on a number of laws including the Berne Convention in 1886 which is now administered by the World Intellectual Property Organisation (WIPO) which sets the minimum standards for the protection of the rights of the creation of copyright works around the world.

Also, the European Union has tried to harmonise copyright laws and regulations including the 2001 Directive on copyright in the Information Society which had two sole objectives, namely, to reflect technology developments and to transpose into the law of all the European countries the provisions in the WIPO Treaty of 1996.

In the United States of America, the copyright world began in 1976 when they passed a new Copyright Act. Efforts around the world can be seen. This would ensure fair use of good works and innovations by people. Also, when you wanted to copy or reproduce somebody's work, it could only be for criticism, comments, news reporting, research and scholarship, otherwise, you would need permission from the originator.

This law will give protection to local entrepreneurs. There are so many young people who are becoming very innovative artists and in other fields like the cultural world. In the Maasai Community, there has been a lot of progress even in the work of using beads. A lot of these works need protection so that the beneficiaries become the innovators of such work. This law will also grant rights to the copyright owners. Today, knowing what has been going on in our music industry and also on the cultural heritage of many communities in this country, it is only right that we pass a law that will protect communities, individuals and our young people and give our youth a chance to prosper and get employment and employ others as they continue to develop.

We no longer have white collar jobs and we need to create an enabling environment for our young people to think harder and innovate so that their works will be respected. Like the Hon. Member had mentioned, the young person who started M-pesa might not necessarily be benefitting enough from his own innovation. There are a lot more innovations by young people that are going down the drain because stronger people or organisations are adopting their works at very minimal value.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuyua): Hon. Members, in the absence of any further interest in contributing to this Bill, I shall now call upon the Mover to reply. Hon. Mbarire.

**Hon. (Ms.) Mbarire:** Thank you, Hon. Temporary Deputy Speaker. Let me take this opportunity to thank all the Members who have contributed to this Bill. There is no doubt this is a Bill whose time is long overdue. We needed this law like yesterday.

I am happy to see that the Members realised the need to protect the creators of intellectual property and the talent that lies within our young people. This is to ensure that the Bill of Rights as stipulated in Article 11 of the Constitution is upheld and we give meaning to the provisions in the Constitution through this legislation. Therefore, I want to thank all the Members that have contributed and added their voice to this Bill. In fact, I call upon more Members, and even those who have contributed today, to take advantage of the Committee stage, so that we can propose the necessary amendments that we feel are required to make this Bill stronger.

I am particularly impressed to see that we have Members of Parliament who are artists in their own right and who have contributed today. I would like to mention Hon. John Kiarie and

Hon. Njagua, who have walked that walk and understand what the challenges artists are facing out there. Therefore, we will depend heavily on them to ensure that we strengthen this Bill and make it firmer so that we can give our young people a chance to participate meaningfully in their lives and to realise their full potential. As Hon. John Kiarie mentioned, the future is for the creative mind. Therefore, we have no choice, but to pass this Bill.

Let me also thank the relevant Ministry and the Jubilee Government for finding it fit to give this agenda a priority in the 12<sup>th</sup> Parliament. We look forward to even more pieces of legislation that are aimed at looking into the sectors that have been long forgotten.

With those remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Members, for reasons well known to all of us, we shall not put the Question on this Bill. We shall then move to the next Order.

## BILL

### *Second Reading*

#### THE BUILDING SURVEYORS BILL

**Hon. (Ms.) Mbarire:** Hon. Temporary Deputy Speaker, I beg to move that the Building Surveyors Bill 2017 be now read a Second Time.

The process of formulating the building surveyors legislation started in 1980s. The draft National Maintenance Policy and draft National Building Regulation was spearheaded by the Ministry of Housing which is currently the Ministry of Transport, Infrastructure, Housing and Urban Development. It identified the role of building surveyors as being critical to the building environment and further recommended the formulation and enactment of a building surveyors legislation. Consequently, on 26<sup>th</sup> April 2011, the Ministry formed a committee to spearhead the formulation of the Building Surveyors Bill. The committee comprised of representatives from the University of Nairobi, the Institute of Surveyors of Kenya, the Kenya Private Sector Alliance, Corporate Real Estate Firms, the Ministry of Nairobi Metropolitan Development, currently a department under the Ministry of Transport, Infrastructure, Housing and Urban Development, the Ministry of Housing which is currently the Ministry of Transport, Infrastructure, Housing and Urban Development, the Office of the Attorney-General, the Architectural Association of Kenya and the Kenya Bureau of Standards (KBS).

The principal object of the Bill is to govern the profession of buildings surveying by providing for the registration of building surveyors and to regulate the activities and conduct of building surveyors.

This Bill is divided into four parts. Part I deals with preliminary matters. Part II of the Bill provides for the establishment of building surveyors registration board with its composition and functions. The functions of the board mainly relate to the registration of building surveyors, issuance of annual practising licences and maintenance of the register of building surveyors. Part III of the Bill provides for the registrar and the register of building surveyors. The registrar shall be the Chief Executive Officer (CEO) of the board and secretary to the board. The board shall keep and maintain a register of building surveyors registered under the Act. The part also specifies other functions of the registrar and provides for the issuance of a certificate of registration and an annual practising licence to building surveyors registered under the Act. Part IV of the Bill provides for the conditions and qualifications for the registration of building

surveyors. The part also provides for the removal of a building surveyor's name from the register when he dies, fails to pay prescribed fee, requests for his name to be removed or he is convicted of an offence under the Act. The part further provides for the restoration of a building surveyor's name in the register and carrying out of an enquiry where a building surveyor has been involved in an act that amounts to professional misconduct.

Part V of the Bill sets out the financial provisions in relation to the board and provides for the money that shall constitute the funds of the board. Part VI of the Bill contains miscellaneous provisions. The part provides for the effect of registration, indemnity requirements, dishonest practices and includes a provision which empowers the Cabinet Secretary (CS) to make regulations necessary for the implementation of the Act.

The Schedule provides for the conduct and affairs of the board in relation to meetings, execution of instruments and minutes. This Bill does not limit rights, fundamental freedoms, and does not delegate any legislative power. The Bill does not affect directly the functions or powers of county governments as set out in the Fourth Schedule of the Constitution. The enactment of this Bill shall occasion additional expenditure of public funds which will be provided for under the annual estimates.

With those remarks, I beg to move. I request the Member for Tharaka to second the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Before the Member seconds the Bill, I want to remind the Members who are interested to contribute to this Bill to register their interests, so that we can have an opportunity to contribute.

Proceed, Hon. Member.

**Hon. Murugara:** Thank you, Hon. Temporary Deputy Speaker. I rise to second the Bill as put across by the Deputy Chief Whip on behalf of the Leader of the Majority Party.

The Bill before the House seeks to establish and regulate the body which will consist of building surveyors. It seeks to separate other surveyors from building surveyors, so that there is a distinction when it comes to legislation that regulates them. There is establishment of the building surveyors board which is the body that will regulate operations and conduct of building surveyors. It is a body that will have its own funds set aside. It will have the power to discipline building surveyors where it is perceived to be misconduct. It is a body that will use the due process to ensure that building surveyors conduct themselves professionally and in accordance with the law. The purpose of the Bill is to ensure that we have building surveyors who are available to the construction industry in the country. Sometimes the public does not make a distinction between building surveyors and other surveyors. The purpose of the Bill is to ensure that this distinction comes out clearly, correctly and in a manner that is understandable.

The Bill deals with building surveyors throughout the Republic of Kenya. In as much as this will go to the county governments, the regulation of building surveyors will be from the national Government, an act that removes the Bill from the purview of legislation within the counties. It is a law that is long overdue and should have been enacted earlier than today. Therefore, it is my plea to the Members of Parliament that we pass this law, so that as soon as it comes into force, we have a set of laws that will regulate the profession of building surveyors.

With those remarks, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Muturi King'angi, Member for Mbeere South.

**Hon. Muturi:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to the Building Surveyors Bill 2017.

This Bill could not have come at a better time. But before I go to it, I would like to explain the work of a building surveyor. To start with, building surveyors ensure that buildings are constructed and completed on time and on budget. They ensure the safety and the security of buildings and the soundness of the constructions. They provide for special requirements such as the provision of access to buildings for people living with disabilities. They also ensure that contractors and other professionals construct buildings that are up to standard.

Right now, Kenya is experiencing a construction boom and the skyline of Nairobi City is changing by the day. At the same time, we have had cases where buildings have collapsed during construction while others have collapsed after construction. Therefore, regulating building surveyors is crucial. It will ensure that the people who inspect buildings and supervise construction are actual professionals.

This Bill has come at the right time when we require control to ensure that the construction boom and those investing in it are protected from quacks presenting themselves as contractors or building surveyors. By regulating building surveyors, we will ascertain that our money will be utilised in the right way.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Let us have Hon. Peris Tobiko.

**Hon. (Ms.) Tobiko:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. Kenya is developing fast. We need to regulate building surveyors and raise our standards nationally. We also need to be competitive in the international market.

Whenever it is time for campaigns, Kenyans are very aggressive in speaking about the sort of leaders they require. So, we not only need to raise standards in leadership in this country, but also in professionalism. We need to raise standards in all aspects of development so that Kenya can be rated highly and respected internationally. We will be known in the world as a country of quality that does not compromise on standards. That is why this Bill is very important. There is a lot of development in real estate, commercial and retail, industrial, leisure, education and health industries. Many things are developing in this country. We need this Bill to protect individual Kenyans and institutions.

It has always been very painful to see buildings collapsing in this country burying Kenyans in the rubble. It is very scary. When you see buildings being constructed beside the roads, you wonder whether we have done enough to regulate, protect and make sure that the standards that are set are not compromised. In countries like Brazil, building surveyors are headed by the Royal Institute of Chartered Surveyors. This began after a lot of growth in the real estate market. I find it very important to support this Bill. Particularly, I am excited by the proposed Building Registration Board that will regulate activities and conduct of building surveyors to ensure they undertake their activities as required by law and not to exploit the general public.

Even as we build our individual homes, sometimes Kenyans go for cheap materials. What is cheap sometimes compromises many aspects. Sometimes you call a *fundi* to construct a building because you think it is cheap, but the building you have invested much in, goes down. It is very important that we regulate this profession, enhance and promote professionalism.

The Bill introduces changes that will ensure that building activities in the country meet international standards. This is very important. They will meet the international scope of works outlined for building survey. Currently, our country is experiencing a lot of growth in the real estate that is stimulated by both local and foreign investors. Such a Bill will increase their confidence in the Kenyan market. I am sure Kenya is headed in the right direction because of the laws we make in this House. I urge Kenyans that the way we are not ready to compromise the standards of leadership, we must also not compromise professionalism and on any development in this country. I am sure we will be taken seriously in the world.

Thank you, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Member for Funyula, Hon. Ojiambo.

**Hon. (Dr.) Oundo:** Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to contribute on this Bill. I support it. But before I do so, I need to correct the Members who have spoken before me on the exact role of a building surveyor. Being a member of the Institution of Surveyors of Kenya (ISK) and having just left the lecture halls to join the National Assembly, I know exactly what they do.

These members belong to the Institution of Surveyors of Kenya and are the only members who have not had a substantive Act to regulate their activities since the institution was formed in 1969. Land surveyors have an Act of Parliament regulating their work. Valuers and estate management surveyors have two Acts of Parliament that regulate their activities. That is why, in the case of building surveyors, this Bill is long overdue. I remember this is a journey we started some time back and aborted because of the definition of the scope of a building surveyor. I am happy it has come to fruition. We now need to proceed and finalise the Bill.

A building surveyor generally comes at the tail end of the project. They are basically people who manage buildings. They are not involved in the construction stage and are not construction managers. The duty of ensuring that buildings are constructed according to plan within cost and safety belongs to the design team and construction managers. Of course, the building surveyors come in at a later stage.

They ensure the buildings are sound. They undertake conditional survey occasionally to ensure that buildings remain strong and habitable. Obviously, cases of buildings collapsing once they are occupied should never have happened when a building has a building surveyor in charge. That is why you find in many instances most building surveyors are employed by the national Government and the county governments to do building inspection to ensure that they are structurally sound and can accommodate people. They ensure that buildings are habitable at all times.

This is a sound Bill. However, there are many areas that require amendments. If you go through a number of clauses in the Bill, we will be moving to make quite a number of amendments especially on Clauses 35 and 37. They will require substantial amendments to put them in line with the modern practice and align it to other pieces of legislation in respect to real estate and related activities. When we get to that point, we will clearly make those amendments. I concur that the spirit is good, the drafters have made their best efforts, but of course, those amendments are necessary.

To conclude, the problem in this country has been enforcement and policing. We have so many people who masquerade as real estate experts in this country who are literally quacks. We hope that with this new Bill together with the other Bills that regulate real estate practice, the police, together with the Valuers Registration Board, the Estate Agents Registration Board and

the Surveyors Registration Board they will make all efforts they can within their means to weed out quacks who masquerade as experts. When things go wrong, it is the real experts who are blamed yet people who are involved in those malpractices get away with it.

So, those are some of the issues we will move to amend as stated in the Bill, so that when it is being implemented, it is done in a manner that can give it effect and it becomes effective.

Thank you. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Ojiambo, I am sure you will have ample time to bring out those issues in the next stage of the Bill. Let us have Hon. Joyce Kamene of Machakos County.

**Hon. (Ms.) Kamene:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I wish to support the Building Surveyors Bill. This Bill will help in improving the housing industry in our country. Many building have collapsed in the past because of poor management and lack of professionalism in the people concerned.

So, with this Bill, the professionalism that is needed in the industry will be felt. With the establishment of the proposed board, clear structures of how to manage the building surveyors will be put in place.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Tonui Kiprotich, Member for Bomet Central.

**Hon. Tonui:** Thank you, Hon. Temporary Deputy Speaker, for this opportunity to also make my contribution on this very important Bill. This is a critical Bill. It is unfortunate we have to discuss this Bill without the benefit of a report from any committee possibly because we have been disorganised and we have not been able to form committees in this House. Such important Bills need to be scrutinised at the committee level before we go through them deeply so that we can pass Bills that are well analysed.

All in all, I support this very important Bill. We need to regulate the profession of building surveyors like other professions, so that the buildings that we live in can be safe. This will ensure that when we are in any building, we are sure of our safety. I believe that can only be assured if we have a law guiding those who deal with buildings. That is why this Bill is very important. It is unfortunate that we have taken quite a while before thinking of coming up with such a Bill to guide the building sector.

Going through the Bill, I believe the issues of regulation will handle the issues of qualifications of building surveyors. I have gone through the Bill and I have failed to see whether issues of qualifications for building surveyors have been addressed. I believe that can be captured by the Cabinet Secretary (CS) with the approval of this House so that we can know the academic qualifications of the people who work in this sector. All the people in this sector should be regulated right from the certificate holders, diploma holders, degree holders and even those with higher qualifications. With this, we can be sure that at this level, this can be handled by these kinds of professionals. Currently, we deal with contractors who are only there to make money, but may not be having the right professional background to ensure that there is safety in the houses we live in or the buildings we work from.

On the issue of the board, I am happy that the board is well empowered to deal with professionals who are found to be involved in professional misconduct. It is very important that operators in this field are of high integrity. They should be trustworthy to ensure the safety of Kenyans and the visitors who come to this country.

I am also happy to see the issue of gender representation especially at the board level in Part II of the Bill. It is well captured that there should be no more than two-thirds of either gender. This professional field is dominated by the male gender. We need to give our ladies and daughters a role to play when it comes to issues of building. I am also happy that the provisions dealing with the board are well captured especially the board membership in terms of removal and other issues. That is well articulated in the Bill so that issues of witch-hunt may not come in. It provides that whoever will serve on the board must be of integrity and professionalism to continue serving on the board.

With those few remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Wanjiku Gakuya, Member for Kasarani.

**Hon. (Ms.) Mercy Gakuya:** Thank you, Hon. Temporary Deputy Speaker. I support the Building Surveyors Bill, 2017. Building surveyors are barely recognized. They cover a wide range starting with design, construction, maintenance, repair and the general supervision. In most urban areas or cities, people just construct buildings. Other than Government buildings, any other common citizen who is constructing a building is not aware of building surveyors.

When the board is in place, the profession will be made known to the public. This will reduce incidents of buildings collapsing. Buildings collapse because proper measures are not put in place. If we provide that for any building to be constructed we must engage the services of building surveyors, starting from the design, buildings will not collapse. This will ensure that we have organised cities and habitable buildings. In most of our estates, there is no controlled development. In the absence of controlled development, there is no order. In our estates, you will find seven-storey buildings, bungalows and other types of buildings. If the seven-storey building happens to collapse, it endangers the whole zone and even the other houses. I support the proposed board. With the board in place, in the next few years, our urban areas and cities will be different. If we ensure that things are done differently and correctly during the implementation period, things will improve. We will, at least, have positive change.

At the moment, we never know when a building will collapse. We keep waiting for the news so that we can react. But we need to act. The Buildings Surveyors Board will act accordingly instead of reacting. We need to move from reacting to acting. If we act accordingly, we will be able to plan for the next few years in terms of how our estates should be constructed. Kenyans should be engaging the board so that they do not do things in a hurry. We should do things at the time they are needed. We need to be very careful when planning in Nairobi City because it is a residential and an economic city. It also happens to be an international city. It is everything. If we do not regulate the profession of building surveyors, Nairobi will not be an organised city.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Hulufu Oda, Member for Isiolo South. Is it Oda? I think it is all in order, whichever way we see it.

**Hon. Hulufu:** Thank you, Hon. Temporary Deputy Speaker. I am Hassan, Member for Isiolo North, not Member for Isiolo South.

I support the Building Surveyors Bill. In our country, in the last few years, a lot of buildings have collapsed in many of our towns and cities. Part of the reason we have experienced such disasters is because the various professions involved in the building industry have not been well regulated before the introduction of this Bill. Building surveying is probably one of the professions which are so crucial in ensuring that all buildings are safe for habitation. The

profession lacks a law to regulate the practice. For that reason, I feel the Bill is very timely. Like one Member has said, one of the things which I feel should be clearly spelt out is membership, although reference is being made to who should be a member under Clause 21. We know that professionals are trained at different levels. We have the certificate level, diploma level, degree level and beyond. Probably, like other professions, we needed to have some clarity in terms of who qualifies to be registered.

All in all, the Bill is quite okay in terms of what happens if a professional who is registered under the Act, once it is passed, is found to have violated any of our laws including violation of the chapter on ethics and other misconduct. It is clearly spelt out. It does not give room for unfair treatment of any professional. It is so elaborate in terms of how the board should take action against any member who does not stick to what he or she is required to do as a building surveyor.

Otherwise, I feel that apart from this, once we have the House committees in place, all the professions which have a role to play in building who have up to now not had a law regulating their practice, should be regulated. We need to bring new Bills to ensure that all types of engineers, surveyors and those involved in building and construction are regulated. Many professionals contribute towards the realisation of safe structures in the building industry. We need to have harmony between the various laws which regulate the practice of these different professions.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, I do not see any more requests for contribution to this Bill. I think you will all agree with me on the very important nature of this issue on building surveyors. I, therefore, suggest that we continue with this debate tomorrow. I am sure we will have more Members expressing their interest on it. So, I think we can move on.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Tuya): Hon. Members, the time being 5.37 p.m., this House stands adjourned until tomorrow Wednesday, 6<sup>th</sup> December 2017 at 9.30 a.m.

The House rose at 5.37 p.m.