

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 15<sup>th</sup> March, 2018

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

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

### PRAYER

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM THE PARLIAMENT OF UGANDA

**The Speaker** (Hon. Lusaka): Honourable Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation from the Parliament of Uganda, comprising Members and staff from the Committee on Commissions, Statutory Authorities and State Enterprises.

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

They are: -

- (1) Hon. Medard Sseggon Lubega, MP - Leader of the Delegation;
- (2) Hon. Florence Namayanja, MP;
- (3) Hon. Francis Takirwa, MP;
- (4) Hon. Agnes Amedede, MP;
- (5) Hon. Byandala Abraham, MP;
- (6) Hon. Abigaba C. Mirembe, MP;
- (7) Ms. Justine Namubiru - Parliamentary Officer; and,
- (8) Ms. Dinah Muhangi - Parliamentary Officer.

Honourable Senators, the delegation has been in the country since 11<sup>th</sup> March, 2018 to interact with our watchdog committees and other Government accountability offices.

On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them fruitful engagements during their stay in the country.

I thank you.

*(Applause)*

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VISITING DELEGATION OF HANSARD STAFF  
FROM KIAMBU COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): Honourable Senators, I would also like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Hansard Staff from Kiambu County Assembly. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf wish them a fruitful visit.

I thank you.

*(Applause)*

VISITING DELEGATION OF SERJEANT-AT-ARMS STAFF  
FROM KERICHO COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Finally, honourable Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Serjeant-at-Arms Staff from Kericho County Assembly. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf wish them a fruitful visit.

I thank you.

*(Applause)*

**The Senate Majority Leader** (Sen. Murkomen): Mr Speaker, Sir, on behalf of my colleagues, allow me to join you in welcoming our friends and honourable Members from Uganda. We are very glad to have our brothers and sisters from the East African Community (EAC) joining us to benchmark on the progress we have made in areas of accountability.

There is a lot to learn from the two countries. The relationship between Uganda and Kenya is good. We believe that the process of political federation will be expedited so that in future, maybe, one of us sitting here or at the Gallery will be the president of the EAC. I also hope that we will have one large Parliament that will bring us together to take advantage of the numbers so as to make a strong economic bloc that will compete with other countries in the world.

I also congratulate and welcome the staffers from Kericho and Kiambu counties. Our responsibility here in protecting devolution continues and under your leadership, we will continue mentoring our counties in different spheres.

I thank you for giving me the time.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for the opportunity to welcome staff from Kericho and Kiambu. I encourage them to work with the assemblies that provide primary oversight over the management of affairs of the counties. Like my colleague has said, this House will continue giving them support so that they can discharge their responsibilities fully.

Lastly, I join you in welcoming my good neighbours from Uganda. The County of Bungoma that I represent shares a boundary with Uganda. We are a common people with a common destiny and we would like to see the shared values of the East African integration within the Community further. In future we should have direct elections for members of the East African Legislative Assembly (EALA) like the European Parliament, so that we bring the awareness of our countries and its people to the values of our unity.

Equally important, I thank the neighbouring country of Uganda for continually working with us along the common border to improve security, increase trade and make it easy for people on both sides of the two countries to live in peace and harmony. I am sure that my brothers from West Pokot, Turkana and Busia counties who share the common boundary, share the same views.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Langat:** Thank you very much, Mr. Speaker, Sir. May I also join you and my colleagues in welcoming our friends in the Speaker's Gallery. The Members from Uganda are highly welcome to this country because they are our great neighbours. I note that Uganda is one of our greatest friends and it has contributed to the economy of this country, being one of the biggest importers of commodities from this country. I want to thank them for this. We have enjoyed this because of the great peace that we have been sharing within our borders.

Mr. Speaker, Sir, I also want to welcome Members from Kericho County Assembly. I wish they were here yesterday when Sen. Cheruiyot moved a Motion on the issues facing tea farmers in this country, considering that Kericho is one of the counties that are a major tea grower in this country. So, I would like to join you in welcoming them and also Members from Kiambu County Assembly. They are welcome to this House.

Thank you, Mr. Speaker, Sir.

**Sen. M. Kajwang':** Thank you, Mr. Speaker, Sir. I also join my colleagues in welcoming the delegations from the two counties and also the one from Uganda. I would have trouble at home if I did not welcome the Ugandan delegation. I went to Uganda with a suitcase and I came back with a wife, children, two degrees and a lot of experience.

*(Laughter and applause)*

I spent seven good years of my professional life in Uganda. I am married to a lovely lady whose parents one comes from Gulu and the other one from Jesa in Buganda land. So, Uganda is very much home for me; they are my *bakois*, which means in-laws.

Mr. Speaker, Sir, there is a lot that we can learn from Uganda. We tend to think that Kenya is a big brother or a big superpower. However, even in parliamentary practice, you will realise that what Uganda has done when it comes to the budgeting process, it is something that Kenya can still emulate. You will realise that even when it comes to issues that we have been grappling with, like the Constituency Development Fund (CDF), Uganda had that experience and out of that, they have made the right decision. They have

ensured that Parliament retains its role in legislation, representation and oversight but not in development.

Mr. Speaker, Sir, allow me, in the Kenyan tradition, '*kutuma salamu*,' or, in other words, to send greetings to my in-laws in Uganda through the delegation that has visited Parliament.

Thank you, Mr. Speaker, Sir.

**Sen. Poghiso:** Thank you very much, Mr. Speaker, Sir. I am told that Sen. M. Kajwang' might be dealing with the balances in dowry, but they also take it through West Pokot.

*(Laughter)*

Mr. Speaker, Sir, I am very grateful that we have an opportunity, as a tradition, to welcome our colleagues from Kericho and Kiambu counties. However, I would like to specifically thank my friends from Uganda. I do not have to belabour the point, because that is my second home.

*(Sen. Murkomen consulted loudly)*

The Senate Majority Leader himself has declared that, that is my second home. For starters, for my friends from Uganda, I went to Moroto and Nambale High Schools and then to Makerere University. So, that completes my journey. I agree with Sen. M. Kajwang' about Uganda; but the only thing I did not do is to come back with a wife and children. However, I came back with education.

Mr. Speaker, Sir, the importance of Uganda to us, in West Pokot County, cannot be gainsaid. The President of Uganda has really helped with the peace and security situation along the border and we are very grateful to the Ugandans. Those of us who border Karamoja, Turkana and Endesabi, have enjoyed great peace since the Uganda Government embarked on pacifying that area. I am, therefore, very grateful. I am hoping that I can now send my cows to graze in Uganda and they will come back in one piece; that is a great advantage.

More importantly, Mr. Speaker, Sir, we have a shared educational structure. A lot of our people go to study there and a lot of them also come to study this way. So, we share an East African border situation where the border does not literally exist, because we crisscross the boundary at will.

Welcome and we thank you.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I take this opportunity to welcome our brothers and sisters from Uganda. I really enjoyed myself at the East African Legislative Assembly (EALA) when we would have to spend more than two weeks in Uganda and it felt like we were home. I was happy with the kind of hospitality we had in Uganda and I thank them for that. Every hotel that we went to, we always found Kenyans employed there in the hospitality industry. In fact, if there is a country where Kenyans move freely, conduct business freely; enter and leave freely, it is Uganda. I thank you for that kind of brotherhood. As of now, I miss the plantain, which is one very sweet banana from Uganda.

Mr. Speaker, Sir, we had a chance to visit almost every corner of Uganda and it felt so much at home. I hope that that brotherhood will continue. Finally, thank you for coming to visit us this afternoon.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. I would like to welcome the three delegations; one from Uganda, the other from our neighbour, Kericho County and Kiambu County. Like my colleagues who have spoken before me, I have very sweet memories of Uganda, having spent my formative years from 1952 to 1957 there. I did not come back with a wife, but to the extent that I became very fluent in Luganda language; *wabale nyo, senyuse nyo, kubala bawano*. That is the language saying thank you very much and welcome for being with us.

Mr. Speaker, Sir, with regards to our visitors from the county assemblies, we are happy and grateful that you are able to come and see what we do here. We have recently had very tumultuous sessions, but you can appreciate that we are now taking another path which is guaranteeing us peace as we transact our Business in this House. So, it is good to benchmark with what we are doing, as Senators, in this august House.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Thank you, hon. Senators.

Next Order!

## PETITION

### ADVERSE ENVIRONMENTAL AND SOCIAL EFFECTS OF CONSTRUCTION OF PHASE 2A OF SGR

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Orders 220(1)(a) and 224(2)(b), I hereby report to the Senate that a Petition has been submitted through the Clerk by concerned residents of Kajiado County namely:

- (1) Sen. (Eng.) Peter Mositet
- (2) Florence Gatwiri
- (3) Judith Karamana
- (4) Mathew Mwikya
- (5) Richard Leiyagu
- (6) Farida Tarus
- (7) DorinaPrech; and,
- (8) Mukumbe Goodknows.

As you are aware, under Article 119(1) of the Constitution, every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. The salient issues raised in the present petition are as follows:-

(a) That, the construction of phase 2A of the Standard Gauge Railway (SGR) is presently ongoing, with sections of the route passing through Kajiado County.

(b) The construction of phase 2A of the SGR has caused serious adverse effects to the environment and the communities along the SGR route, including air and noise

pollution, damage to buildings adjacent to the quarries, diversion of waterways and underground reservoirs as a result of tunneling, water pollution, and increased human-wildlife conflicts.

(c) Meaningful public participation was not undertaken prior to commencement of construction of phase 2A of the SGR, which deprived affected communities of the chance to express themselves on the issue.

(d) Compensation of affected persons and communities along the SGR route has been inadequate, and has ignored the devaluation effect to the properties along the SGR route.

The Petitioners, therefore, pray that the Senate urgently investigates this matter and makes appropriate recommendations thereon. Among the proposals made by the Petitioners are that the Senate should:-

(i) Direct the phase 2A Contractor, as part of its Corporate Social Responsibility (CSR), to rehabilitate roads, schools and other infrastructure which have been adversely affected by the ongoing construction.

(ii) Direct the phase 2A Contractor to build water reservoirs to compensate for the adverse effects of tunneling along the SGR route in Kajiado County, which has affected the existing streams and underground reservoirs in the area.

(iii) Direct the phase 2A Contractor to put appropriate measures in place to ensure the air and noise pollution levels from the projects are significantly reduced.

Hon. Senators, pursuant to Standing Order No. 226(1), I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

**Sen. Seneta:** Thank you Mr. Speaker, Sir for giving me the chance to comment on the Petition. From the onset, I want to declare an interest because I am from Kajiado County, having in mind that the SGR transverses the whole of Kajiado County; from Kiboko to the Ngong Hills in Kajiado North. The SGR project has had a huge impact on our people in terms of pollution, environmental issues and compensation.

Therefore, I want to urge the Committee concerned when they are looking into this Petition, they should deeply look into compensation. There are still a number of people who have not been compensated, especially in Sultan Hamud, and Sen. Mutula Kilonzo Jnr. has stood and talked on the same many times. We also have some plot owners in Emali town and Kajiado north who have not been compensated. There is also the issue of Nairobi National Park and issues surrounding human-wildlife conflict.

I also want to urge the Committee to look into issues of community related services that are also supposed to be offered in this case. The project contractors should also make sure that whenever they are doing such a kind of a project, whether it is SGR or any other project, they should involve the citizens in public participation for them to understand the implication of any project that is done within their counties. I also want to request for an invitation when the Committee is sitting on this Petition for us to understand the issues for we are the concerned parties.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to support the Petition. Fortunately, I have experienced SGR in Makueni. What my former colleague, Sen. Mositet, has raised is a very serious issue. In Makueni, it took the intervention of the

President, Uhuru Kenyatta, when he came to Mtito Andei, to understand that the law requires that the National Environment Management Authority (NEMA) Report concerning the SGR should have been given to the community and published before they started the project.

In the Environmental Impact Assessment (EIA) Report, they did not tell the people of Makueni that although they acquired land that was three hundred metres away for the purposes of the rail, the blasts were going to destroy houses that were five kilometers in diameter. If this issue is not discussed, because in the case of Makueni, the contractors were each given a 100 kilometres, they will complete the project like in some sections in Kilome constituency without repairing schools, houses and public facilities that would crack as a result of the blast that they are going to use.

The Committee concerned must interrogate and particularly ask questions regarding the blast. The Chinese are blasting the rocks with such a magnitude that it causes an effect that even affects the animals. That issue goes beyond the expertise of NEMA for it is a moribund organization in Kenya. Therefore, I would ask the Committee to dig into details and even suggest that when there is a project of this magnitude, the persons in charge of NEMA should actually have experts.

Possibly, the county governments can be involved to hire experts who can give independent advice on some of these issues that are affecting the public. Nobody will tell you that when you live five kilometres away, the blast is going to affect you yet you will not be compensated by the Kenya Railways for your land and your house.

**Sen. (Dr.) Ali:** Thank you Mr. Speaker, Sir, for giving me the opportunity. I wish to support the Petition as well. The blast and the thing that they use when they are getting the rocks will cause a lot of damage to the communities and their property. The Committee should make sure that the contractors rehabilitate the environment to the same state they got it when they finish the construction of the SGR. The SGR is very important to this country and we want to support it but they are creating a lot of gullies and quarries when harvesting rocks and they should be asked to fill up these quarries.

Otherwise, we should not even talk of compensation when the whole environment is messed; the trees have been cut and the roads have been destroyed as earlier stated by the Senators. The Committee should look into these things and the quarries should be closed.

**Sen. Olekina:** Thank you Mr. Speaker, Sir for giving me an opportunity to support this Petition. The issue of SGR has caused a lot of problems within the Maasai community, not only in Kajiado but also in Narok. I know that a lot of you saw that the Narok road split into two yesterday. This could have been an impact of the blasting that the SGR contractor is doing.

However, on the Petition, I urge the Committee to come up with a standardised way of compensating land owners. This is because on this issue of compensation, it is very sad that when you are within a kilometre, for instance, in Suswa, you are paid “X” amount of money on the side of Narok while in Duka Moja, you are paid “Y” amount of money, and by the time you get to Sotik, it will be very different.

Therefore, the Committee ought to come up with a procedure and set up a committee on setting standards on what should be compensated to the land owners. This

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issue is not only affecting Kajiado County, but it is also affecting Narok County and the entire line. It will cause many problems. It is important for---

*(Sen. Haji spoke off record)*

Mr. Speaker, Sir, the distinguished Senator wants to contribute.

**The Speaker** (Sen. Lusaka): What is your point of order? Switch on your microphone.

**Sen. Haji:** Mr. Speaker, Sir, it is not a point of order. It is a point of information.

**The Speaker** (Sen. Lusaka): What is your point of information?

**Sen. Haji:** Mr. Speaker, Sir, compensation is paid according to the value of the land. If the land is at a very high value area, it is paid higher and if it is in marginal areas, normally, it is paid lower. I do not think the Committee can do anything concerning that issue because this is according to the law of the country.

**Sen. Olekina:** Mr. Speaker, Sir, my issue is this; land is valuable and the issue of land is emotive. When the people of Duka Moja realise that the people of Suswa who were one kilometre away from them are being paid Kshs200,000 more per acre than their piece of land, it will bring a lot of problems. So, it behooves the Committee to consider coming up with a process whereby the valuation of land is done and the community is given time to respond to it.

The other issue is title deeds. The Maasai people live in most of the pieces of land where the SGR is passing. There are no title deeds. When you go through Narok, Kedong Ranch, there has been a huge court case regarding the ownership of that land for very many years. So, it will bring a lot of issues. Yes, we do love the effects on the economy that the SGR will bring, but if it will affect our people's standard of living and the way they live, then, of course, we will object to it.

So, I encourage, urge and fully support this Petition to allow the people to be involved. These are their issues and assets which are being bought or taken. So, on that matter, the Committee should also look at the issue of employment. This is because the locals have to be employed. Recently, a Maasai young man was killed when he was going to seek employment. There were issues that people were being brought from other areas and given those jobs. Therefore, this Petition is so timely.

Finally, Mr. Speaker, Sir---

**The Speaker** (Sen. Lusaka): Order, Senator! Keep it short.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I want to raise the issue of the passage that the Committee should also look at. The way the SGR was constructed in Makueni was that, after every 800 metres, there is a passage for the animals. That standard should also be maintained.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Sen. Lusaka): For the remaining Senators, you just take two minutes.

Proceed, Sen. Pareno.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I rise happily that this Petition has come. It is long overdue. I am happy that the people of Kajiado have seen it fit that this matter be addressed by this Senate.

There are a lot of issues that will arise. I am happy that this will go to a Committee that will take time to look at the Petition. I happened to have been affected by that same SGR where I come from. As I speak, there is a place in Sultan Hamud that I know, as of now, is impassable. You cannot access the place through the tunnels that they put for purposes of access because of the way the construction was done.

We have complaints from the locals that the tunnels that were done in this SGR are so far apart that for someone to reach his or her home, he or she has to go through a very long route to access his or her home. So, it really became an inconvenience to most of these people and some of their cases should be heard.

On the issue of compensation, we really would want this Committee to look at it keenly. We had a very touchy issue concerning Kenya Electricity Transmission Company Limited (KETRACO). The compensation rates that they were giving to the Kajiado side which is only separated from Makueni by the railway were different. So, it brought a lot of issues. We should be treated in the same way and get the same compensation if the same rates could be applied for the same area. We have issues arising out of this SGR. It is a big project, but the people's concerns must be taken care of.

Thank you, Mr. Speaker, Sir.

**Sen. Faki:** Asante sana, Bwana Spika. Swala la SGR ni nyeti sana kwa sababu linaathiri watu kutoka Mombasa mpaka labda Naivasha wakati itakamilika. Ijapokuwa SGR kwa sasa inafanya kazi, kuna baadhi ya watu ambao wameathirika kutoka sehemu ya Mombasa 001 mpaka 020 ambao hawajalipwa ridhaa kwa ardhi zao zilizochukuliwa kwa maswala ya SGR.

Vile vile, kuna sehemu ya baharini kule Eneo Bunge la Changamwe ambapo mikoko na miti mingine ya thamani imeharibiwa na mpaka sasa, hakujakuwa na njia yoyote ya kurekebisha madhara kama yale ambayo yametokea kwa mazingira. Kwa hivyo, ninaunga mkono *Petition* ya watu wa Kajiado. Imekuja kwa wakati mwafaka kwa sababu kuna sehemu zingine ambazo hazijaathirika na mradi huu wa SGR ambazo zitakuwa muhimu kwa watu kuzichunguza kwa makini. Pia, wanafaa kuona kwamba yale madhara yanayosababishwa na mradi huu yanaweza kupunguzwa na wananchi wapate mradi bila kupata madhara ya mazingira.

Asante sana, Bwana Spika.

**The Speaker** (Sen. Lusaka): Proceed, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. Just very quickly, I thank the Petitioners, especially, the immediate former Senator for Kajiado, Sen., Mositet, for still engaging with this House on such matters. In as much as we also have similar concerns in Nairobi County, I just want to stress on the issue of standardisation and a standard for compensation. Only yesterday, close to 200 households of my residents in Imara Daima in a place called Riara Village were evicted rightfully because they were under the Kenya Power and Lightning Company (KPLC) electricity lines. I agree that they should not have been there because of the fires that have been occurring in the city.

However, the concern is that, those across the road, who are on the Kenya Railways way leave had been compensated, but they were not compensated. This is because it is not KPLC policy to compensate. Can we, through this Petition, agree on a standard policy of Government because KPLC, Kenya Railways, Water Resource

Management Authority and Kenya Pipeline Corporation (KPC) are all Government agencies? Do we have a standard policy that is followed by all of those agencies? I hope the Committee will go through it.

It is very unfair for the normal *mwananchi* to see his or her neighbour just across the road being compensated for a similar land, yet he or she is not being compensated. It brings about doubts and political questions arise.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Sen. Lusaka): Proceed, Sen. Mwaruma.

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity. I support the Petition from Kajiado County because people from my county were also affected by the same, especially, on the issue of compensation. There is no standard value for land. You will find that somebody who has a title deed and a house gets Kshs4 million, but his or her neighbour without a title deed gets Kshs200,000. It is the role of the Government to give title deeds. Most land in Kenya has no title deeds. Some people are living in ranches and since ranches have block title deeds, they have not been able to get compensation.

So, I would like to be enjoined in that Petition so that we can look at issues of compensation from Mombasa up to Naivasha.

I beg to support.

**The Speaker** (Sen. Lusaka): Proceed, Sen. Madzayo.

**Sen. Madzayo:** Asante sana, Bwana Spika. Ningependa pia kuchangia *Petition* hii. Bw. Spika, swala la Standard Gauge Railway (SGR) ni nzuri katika nchi yetu ya Kenya, lakini limeweza kubadilisha maisha ya watu katika nyanja tofauti. Imebidi watu wahame mashamba na ploti zao ili SGR iweze kupata nafasi ya kupita. Tunaona malipo ya ridhaa yaongezwe kwa sababu yamekuwa duni na yanatofautiana kila mahali. Kwa mfano, upande wa Changamwe, watu wanalipwa kiasi tofauti na upande wa Mariakani au Mikindani.

Serikali inafaa kuunda mikakati mwafaka ili wananchi wanaoishi katika sehemu ambazo SGR inapitia wajue jinsi watakavyolipwa pesa zao. Haifai wengine kulipwa laki mbili, wengine laki moja na wengine nusu laki. Hiyo si haki. Watu lazima walipwe kisawa. Sio kulipwa kulingana na pahali wanapoishi.

Bw. Spika, reli ya SGR isitumike kama kielelezo cha kuua Bandari ya Mombasa. Hivi sasa, kunayo maoni ya kwamba, Bandari ya Mombasa itakufa.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I congratulate our former colleague, Sen. Mositet and team for the Petition. It is ironic that there are those who are complaining about SGR passing their counties while where I come from, my people are complaining why it is not passing their counties. There is a lot of contradiction. There are those who are hurt by the SGR passing where they live and those of us who wish that it passed through our counties.

What is important is to look at the national interest. As the Committee looks at it, there is a problem in this country where people do something close to what they say in company law 'to be insider trading'. Once someone realizes that there is a Government project that will pass a particular area, the speculators quickly buy land from the locals at a cheap price and inflate the price to a level where it is becoming impossible to develop in this country.

Mr. Speaker, Sir, they are the ones who cash the money but the locals who live in that area do not benefit in any way. We must ensure that we protect this. In fact, there is a law that is in the National Assembly that will soon come to this House that will curb the amount of money that one will ask for compensation in a particular area to ensure that we do not have this kind of characters who will fleece locals in the name of making exorbitant amounts of money.

The reason why Kenyans are complaining that the cost of SGR was so exorbitant is because the compensation figure is unbelievable. We will not develop the Lamu Port-Southern Sudan-Ethiopia Transport project (LAPSET), construct the airports or the roads in this country if there are conmen who own nothing but come to fleece money from local people, inflate the prizes then the cost of project becomes too high.

Mr. Speaker, Sir, I have heard the argument that the Port of Mombasa will be replaced by SGR. This is the most fallacious argument I have ever heard. There is no way to export the Indian Ocean to Naivasha. That is frivolous and preposterous. We must condemn that kind of argument. It must not be made by anyone who has gone to any school. We know that when we have ---

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

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Madzayo?

**Sen. Madzayo:** Bw. Spika. Ninasimama kwa hoja ya nidhamu. Ninataka ndugu yangu Sen. Murkomen aelewe Kiswahili kisawa sawa. Je, ni sawa yeye kuanza kujibu akijua kwamba sitapata nafasi ya kujibu? Pili, mbona tumetengeneza bandari nyingine itakayoitwa *dry port* na ambayo mizigo itakuwa inashuka ilhali tunajua katika ulimwengu, bandari zote ziko kwenye bahari. Ikiwa mizigo itatolewa kule na ifanyiwe *clearance*---

**The Speaker** (Hon. Lusaka): What is your point of order?

**Sen. Madzayo:** Nisikize, Bw. Spika.

**The Speaker** (Hon. Lusaka): Ninakusikiza lakini hoja ya nidhamu ni gani?

**Sen. Madzayo:** Bw. Spika. Hoja ya nidhamu ndio hiyo niliyoisema.

**The Speaker** (Hon. Lusaka): Hapana. Umenza kutueleza *story*.

**Sen. Madzayo:** Bw. Spika. Ni sawa Sen. Murkomen kusema Bandari ya Mombasa itapitisha mizigo lakini *clearance* ifanywe Naivasha?

*(Loud Consultations)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I do not know why Sen. Madzayo is so worked up and I did not mention his name. I just said that there are some people who behave like they did not go to school who said the Port of Mombasa will be replaced by a dry point. I did not say it is Justice Madzayo.

As a matter of fact, there will be no ship that will dock in Naivasha. There will be no sea to bring that ship all the way from Mombasa to Naivasha. This is commonsense. The role of the sea is the mode of transport and the Port of Mombasa as the final of destination. Unless anyone has a complaint about the Port of Lamu, you cannot compare the Port of Mombasa to the Port of Lamu.

Mr. Speaker, Sir, as a country, we must be ready to support development that makes a difference in the country. My colleague from Narok is uncomfortable with the train passing through Narok. I wish it could pass through Kiambu, Nyandarua and Elgeyo Marakwet counties. My people wish that it would pass through their county because of the economic benefit of employment and tourism which will make this country a different place.

I beg to support and rest my case.

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

**The Speaker** (Hon. Lusaka): What is your point of information?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, it depends whether I want to be informed.

**Sen. Seneta:** Mr. Speaker, Sir, I want to inform the Senate Majority Leader. We are not against SGR passing through our county.

**The Speaker** (Hon. Lusaka): What is your point of order?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I am not willing to be informed. Unless I accept to be informed---

**The Speaker** (Hon. Lusaka): Order! Is that a point of order or point of information?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Wetangula, what is your point of order?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, is it in order for the Senate Majority Leader to continue using fallacious arguments to the extent that, one; the distinguished Senator for Kilifi County, Sen. Madzayo, who raised the issue of the undermining of the Port of Mombasa, is doing so because he is uneducated?

Two, to continue pursuing an argument that has absolutely no foundation; that a port cannot be undermined by the creation of a dry port because the sea will not be moved?

Mr. Speaker, Sir, this kind of argument flies in the face of common sense, common decency and everything else that goes with it.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. For the record of the Senate of the Republic of Kenya, I did not say Rt. Justice Stewart Madzayo is unschooled. In fact, I did not base my arguments on Sen. Madzayo's arguments but on political arguments that people are making out there. It has nothing to do with Sen. Madzayo unless he wants to juxtapose himself to that argument.

Secondly, I will continue to insist that the Port of Mombasa, which is a sea port, cannot be compared to a dry port. It is even self-explanatory. If you have a sea port, it is a sea port. A dry port, has always been ---

*(An hon. Senator interjected)*

CFA says and so forth--- this has always been all over the country including Mombasa County. So, it is my point of argument and you cannot use it to say that I am out of order. I am not out of order. You can make a different argument. You may not agree with me

but I insist that – as the Senate – when we look at the issues affecting our local interests, let is also have the bigger picture and the benefit that will accrue to that county.

As I said, I wish SGR was passing in Elgeyo-Marakwet County ---

**The Speaker** (Hon. Lusaka): Okay, hon. Members, 30 minutes are over. You will make those arguments in the Committee when the matter gets there.

Hon. Senators, pursuant to Standing Order No.226(1), the Petition stands committed to the Standing Committee on Land, Environment and Natural Resources.

In terms of Standing Order No.226(2), the Committee is required in not more than 60 days from the time of reading the prayer, to respond to the petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

I, thank you.

Before we progress, I want to make a communication.

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MWENDA-ANDU  
SECONDARY SCHOOL, NYANDARUA COUNTY

**The Speaker** (Hon. Lusaka): Hon. Members, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Mwenda-Andu Secondary School in Nyandarua County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and my own behalf, I wish them a fruitful visit.

I, thank you.

Next Order.

Where is the Chairperson of the Committee on Justice, Legal Affairs and Human Rights?

### PETITION

REPORT ON PETITION: HISTORICAL INJUSTICES  
SUFFERED BY THE TALAI CLAN

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I beg to lay the following Petition Report on the Table of the Senate, today, Thursday, 15<sup>th</sup> March, 2018.

This is the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on a Petition by Gov. Stephen K. Sang' on the historical injustices suffered by the Talai Clan, reported by the Speaker on 7<sup>th</sup> November, 2017. It laid out the historical injustice suffered by the Talai Clan at the hands of the colonial administration.

The Petition was presented on behalf of the Talai Clan who are residents of Nandi County and the entire Talai Clan in the greater Nandi County and parts of Kericho County in the Rift Valley region. The Petition alleges that the Talai Clan suffered the following injustices at the hands of the colonial administration:-

- (a) Abuse of fundamental human and civil rights by way of mass murder;

- (b) Detention without trial;
- (c) Economic crimes through unfair confiscation of their property including cattle and land;
- (d) Imposition of internal exile and travel restrictions, pursuant to the Natives Removal Ordinance;
- (e) Forceful eviction from ancestral land including various parcels of land in Nandi Hills, Kipchamo and Kiptega estates;
- (f) Forceful transfer of populations; and,
- (g) Brutal assassination of Koitalel Arap Samoei.

Mr. Speaker, Sir, during the pre-colonial period, the Talai Clan held a prominent position among the Nandi, Kipsigis and Tugen communities and provided political, military and religious leadership ---

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. Just for clarity, is the Report being tabled or discussed?

**Sen. Cherargei:** It is being laid.

**Sen. Sakaja:** Mr. Speaker, Sir, it sounds like it is being read out in full.

**The Speaker** (Hon. Lusaka): Just lay the Report.

**Sen. Cherargei:** Mr. Speaker, Sir, okay.

*(Laud consultations)*

So, do I table the ---

**Sen. Sakaja:** Read the recommendations and then sit.

**Sen. Cherargei:** Mr. Speaker, Sir, let me just go through the recommendations and then Table the Report. I beg your indulgence, just quickly.

The Standing Committee on Justice, Legal Affairs and Human Rights resolves that:-

(1) The Report of the Committee be forwarded to the National Land Commission (NLC) to undertake investigations on land injustices suffered by the Talai Clan, pursuant to the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 (L.N. No. 258 of 2017) and recommend appropriate remedies for the community.

Further, that the NLC shall submit a report to the Senate on this particular issue within 6 months of the receipt of this Report pursuant to Article 254(2) of the Constitution which states as follows:-

“At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.”

(2) The Report of the Committee be forwarded to the Commission of Revenue Allocation (CRA) to make recommendations regarding solutions for realizing the social and economic rights of the Talai Clan and other historically marginalised communities before the Second Marginalisation Policy (SMP) is finalised. The Commission should

make recommendations on how the Talai Clan can benefit from the Equalisation Fund pursuant to Article 204(3)(b) of the Constitution, which states as follows:-

“The national government may use the Equalisation Fund—

(b) either directly, or indirectly through conditional grants to counties in which marginalised communities exist”

Further, the CRA shall submit a report to the Senate on this particular issue within six months of the receipt of this Report pursuant to Article 254(2) of the Constitution.

(3) The Nandi County Government takes deliberate measures to ensure special provisions for the Talai Clan pursuant to the Constitution and the County Government Act. Specifically, Article 201(b)(iii) states as follows:-

“The following principles shall guide all aspects of public finance in the Republic—

(b) the public finance system shall promote an equitable society, and in particular—

(iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas.”

(4) The National Government assists with remedies for the Talai Clan, in particular, to pursue judicial proceedings against the British Government for the atrocities committed against the community pursuant to the Mutual Legal Assistance Act, 2011 and for the return of the remains of the Nandi Leader, Koitalel Arap Samoei, to allow for a decent burial.

It is now my pleasant duty to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Petition on historical injustices suffered by the Talai Clan.

I, thank you.

*(Sen. Cherargei laid the document on the Table)*

**The Senate Majority Leader** (Sen. Murkomen): Are we supposed to comment?

**The Senate Minority Leader** (Sen. Wetangula): Yes.

**The Speaker (Hon. Lusaka)**: Yes, briefly.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, under Standing Order No.226 when such a Report is tabled, you have discretion to allow a few comments that do not amount to debate.

I have listened very carefully to the recommendations of the Committee and I am surprised that the Committee makes absolutely no reference to the Truth, Justice and Reconciliation Committee (TJRC) Report. This is because the brutality with which the people under reference, the Talais of Nandi, met at the hands of colonial settlers, is the same brutality people met in every settlement area in this country. I would have loved for the Committee to look at the TJRC Report that has a broad and clear analysis and recommendation on how to address those historical injustices so that the case of Nandi becomes a catalyst for resolving national issues that are similar in nature, countrywide.

I encourage that the matter is not closed by the tabling of the Report. The Committee can remain seized with this matter and look at and reconcile their recommendations, with the recommendations in the TJRC Report.

**Sen. M. Kajwang’:** Mr. Speaker, Sir, allow me to comment on this issue, because the problem of the Talai Clan is not just a Nandi Community problem; it is, indeed, a Kenyan problem. When the leadership of the Talai Clan was exiled, many of them were sent to Lambwe Valley, which is in Suba in my county. Some of them were also sent to Mfangano Island. The intention of the colonial powers was for them to be killed by malaria from the tsetse fly or mosquitos. The footprints of the Talai in Lambwe Valley and Mfangano Island exist to date. You can still trace the lineage of some of the elders and the seers who were sent to those areas. Indeed, the Olusuba of the Abasuba community is richer because of the small interaction they had with the Talai Clan.

Mr. Speaker, Sir, the recommendations are fairly tepid because this is a matter that has come to this Senate before. We need to be much more aggressive and decide how we want to deal with our heroes. This is especially for those heroes who resisted colonialism and who fought physically against white domination and land grabbing. We have muted this subject in this country, which is live in Zimbabwe and South Africa. Until the day we deal with this matter radically and face it head-on, it will continue to be a painful blister.

As I conclude, Mr. Speaker, Sir, the petitioner is currently the Governor for Nandi County and he sponsored a Bill in the last Parliament called the County Hall of Fame Bill. I am not sure whether it was enacted into an Act of Parliament. This would be a good opportunity for Gov. Sang to push the County Assembly of Nandi to enact a County Hall of Fame Act, so that the Talai Clan and other heroes from Nandi and within his county who contributed to the liberation of this country could be recognized and respected.

Finally, Mr. Speaker, Sir, how I wish the Committee would have made some radical recommendations on the issues of the land leases on the land that was taken from the Talai Clan by the white colonialists. The leases on these lands have now been renewed for the benefit of a few bourgeoisies in this country.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr. Please, make brief comments.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I wanted to mention that in making some of the recommendations, we acknowledged these issues. First, I am the one who brought the Motion here for the National Commission (NLC) to bring the Bill on land injustices. However, instead of doing that, they sneaked in a small amendment to the Land Act. The regulations on how to handle historical injustices are now in place. We, therefore, considered the Report of the Truth, Justice and Reconciliation Commission (TJRC).

However, since there is a process that is required to be followed under the regulations, it was, in our wisdom, correct to allow the NLC to interrogate the matter in detail, because it rests with them. We have since asked that the TJRC Report together

with the recommendations of the NLC be tabled in this Senate as per Article 254 of the Constitution.

Lastly, Mr. Speaker, Sir, the question of the return of the remains of Koitalel Arap Samoei really bothered us. Sen. M. Kajwang' is actually right, because I met seven people who were in Mfangano Island for more than 50 years and they have families there. These people and, in fact, that clan have really suffered. I was very surprised that a clan that belonged to what they would call the 'first family' of the Kalenjin has been treated so badly by all administrations since 1963.

To that extent, Mr. Speaker, Sir, I am happy that we have managed to issue this report. I was happy that Gov. Sang launched a very interesting exercise in Nandi this morning. They have even hired lawyer Karim Khan from London in this exercise to file a suit in the East African Court of Justice and any other place so that they can get reparations, just like the Mau Mau did in the case that they filed, and they got billions of shillings.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Ongerri. Please, make brief remarks.

**Sen. (Prof.) Ongerri:** Thank you, Mr. Speaker, Sir. I commend the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. We would have wanted to see these issues of historical injustices dealt with in a wholesome manner. The case of Kericho and the one of the Mau Mau have gone through. However, there are many others that we need to look into so that this country can take time to heal.

For instance, we also have the historical injustices which were meted out against the Kisii community, where my grandfather was killed holding a shield, thinking it can protect him against the bullet; he was shot dead. There was also the case with the Otenyo family. These are issues that have never been resolved and they are with us here.

So, Mr. Speaker, Sir, through that Committee, it may be now prudent to revisit the TJRC Report and the recommendations from the NLC so that we can tackle this matter together and put it to rest.

Thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I also want to make very brief comments about this Report, bearing in mind that amongst the people that I represent in this House, are members of the Talai community. This community today continues to wallow in extreme poverty, thanks to the atrocities that were committed against them by the colonial Government. I have had the opportunity to briefly read through the report and listen to some of the recommendations. However, two things come to mind.

Mr. Speaker, Sir, history has taught us well that part of the reasons why human beings succeed is when they get a good foundation from their family. The reason why members of the Talai Clan continue to wallow in poverty is because one of the things that the colonialists did was to destabilize them and get them off their ancestral land. This report does not, in any way, propose measures and ways in which the Talai can be compensated either monetarily or otherwise.

I wish that this report had gone into depths, saying that in as much as we may not bring Koitalel Arap Samoei and other members of the Talai Clan back to life, the known members of that clan who still live today can be compensated. This will, at least, make

them feel that the atrocities committed against their forefathers have been properly paid for.

Finally, Mr. Speaker, Sir, I completely agree with the points raised by Sen. Moses Wetangula about merging all our efforts in these issues. Gov. Sang today launched that report. Similarly, in my county of Kericho, the Governor has filed a suit against the British colonialists, which includes some of the things that are being discussed here, including the report from the NLC. This means that there are scattered efforts all over and, at the end of the day; they do not have any bearing towards success that the members of the Talai Clan can celebrate.

It is my sincere wish that, through our concerted efforts, we shall see to it that for once and for all, the Government agrees and says, 'this is the end of these issues; this is what we are going to do for the Talai Clan' so they can be properly compensated.

Thank you, Mr. Speaker, Sir.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I join my colleagues in supporting this report. I believe I am one of the Senators who went to visit the Talai community with the then Sen. Sang, who is the Governor for Nandi County. With us were also Sen. Amos Wako and Sen. Mutula Kilonzo Jnr., if I am not wrong.

Mr. Speaker, Sir, this community is living in abject poverty in Nandi County. When we went there, it was actually like they were liberated on that day, because they had never seen anything like that. Their children are not going to school and they are even called wizards. It is a big violation that in Kenya today, where we have the new Constitution and so many other legislations, a whole community is regarded as an outcast.

Mr. Speaker, Sir, what Gov. Sang is doing can be imitated by so many counties that have gone through such problems, especially where I come from. During Independence some of them were chased out of Kenya and went to Somalia. Up to date they are living in utter poverty in Somalia which they have now regarded as their country. Some of them returned to Kenya but were unable to access identification cards ten years down the line.

I will emulate what Governor Sang has done by bringing a petition against the Government of Kenya after Independence and also the British Government. This is because people were killed and unfairly exiled from Kenya. With this, the Talai community will be liberated and be able to live in Nandi County. Under the leadership of Governor Sang, I am sure their interests will be protected.

Thank you, Mr. Speaker, Sir.

*(Interruption of Petitions)*

**COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM OSENI GIRLS HIGH  
SCHOOL, BARINGO COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Oseni Girls' High School in Baringo County.

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

I thank you.

*(Applause)*

*(Resumption of Petitions)*

**The Speaker** (Hon. Lusaka): Let us have the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

REPORT ON PETITION: USAGE OF THE WORD "HARAMBEE"  
IN THE COAT OF ARMS AND THE PUBLIC SEAL

**Sen. Cherargei**: Mr. Speaker, Sir, I beg to lay the following Report on the Table of the Senate, today, Thursday 15<sup>th</sup>, March, 2018.

Report of the Senate Committee on Justice, Legal Affairs and Human Rights on a petition by Isaac Aluoch Aluochier on the usage of the word "harambee" in the Coat Of Arms and the Public Seal reported by the Speaker on 14<sup>th</sup> February, 2018.

The Committee made the following observations:-

(1) That languages are dynamic and often borrow and give new meaning to words, noting that the people of the east African coast have been in contact with many cultures and languages.

(2) That the plain and ordinary meaning of the word as defined in the *Kamusi ya Kiswahili* is widely used and accepted. "Harambee" is defined in the Kiswahili dictionary as "*Mwito wa kutia moyo watu ili kuweza kusukuma na kuvuta kitu.*"

(3) That the plain and ordinary meaning of the word "Harambee" as defined by *Kamusi* is widely used and accepted. "Harambee" is defined and used in the Kiswahili dictionary as such.

The Committee on Justice, Legal Affairs and Human Rights, therefore, resolved that the Petition did not have merit. It is, therefore, my pleasant duty to lay this Report before the Senate.

*(Sen. Cherargei laid the document on the Table.)*

**The Speaker** (Hon. Lusaka): Let us have Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I support the Report. The only thing that the Chairperson did not say, which he should have done for the record, is that we discovered from the Hansard reports of Parliament that, in fact, the word ‘Harambee,’ used by the founder of the nation, Mzee Jomo Kenyatta, was a mispronunciation.

The correct word was ‘halumbe’ that ended up being ‘Harambee,’ which was adopted. However, the correct word that was captured and corrected much later is a word that we got an interpretation from Sen. Faki from Mombasa. The word is ‘halumbe,’ which means pulling together. The word ‘Harambee’ was a slip of the tongue.

*(Loud Consultations)*

**Sen. Faki:** Asante Bw. Spika. Neno ‘*halumbe*’ ambalo Mhe. Seneta wa Makueni amelizungumzia ni ‘Halambe’ kwa lugha ya Kigiriyama. Jina la Kiswahili hasa ni ‘halambe.’ Kama alivyotangulia kusema maana ya ‘halambe’ ni kuvuta pamoja. Harambee ilikuja kwa sababu ya matamshi. Kwa mfano, dada yangu pale, Sen. Kihika, anaweza kusema ‘hera’ badala ya ‘hela.’

*(Laughter)*

**The Senate Majority leader**(Sen. Murkomen): On a point of order Mr. Speaker, Sir. Is it in order for the Senator for Mombasa County to use the example of Sen. Kihika? I think it is the wrong one, when we know very well that there is a proper---

*(Loud consultations)*

I hold her brief and that is why--- He should have chosen a more appropriate example.

**The Speaker** (Hon. Lusaka): Order, Senator. I think the Senator is extremely happy. Proceed Sen. Faki.

**Sen. Faki:** Bw. Spika, neno ‘Harambee’ linalotumika katika *Coat of Arms* halihusiani kamwe na ‘ambe’ ambaye anasemekana ni Mungu katika sehemu zingine za dunia. Kwa hivyo nakubaliana na uamuzi wa Kamati ya Haki, Maswala ya Sheria na Haki za Kibinadamu, kwamba ombi la ndugu Aluoch Polo Aluochier halina msingi na linafaa kutupiliwa mbali.

Asante.

**The Speaker** (Hon. Lusaka): Thank you so much.  
Next Order.

## PAPERS LAID

### REPORT OF THE COMMITTEE ON DEVOLVED GOVERNMENT ON VARIOUS BILLS

**Sen. Kinyua:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday 15<sup>th</sup> March, 2018.

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The Report of the Standing Committee on Devolved Government and Intergovernmental Relations on its consideration of:-

- (1) The Urban Areas and Cities (Amendment) Bill (Senate Bills No.4 of 2017.)
- (2) The County Government (Amendment) (No.2) Bill (Senate Bills No. 7 of 2017.)
- (3) The County Government (Amendment) Bill (Senate Bills No.11 of 2017.)

*(Sen. Kinyua laid the document on the Table.)*

**The Speaker** (Hon. Lusaka): Let us have Sen. Mutula Kilonzo Jnr. Is he not in the Chamber?

Next Order!

## STATEMENTS

### CONSIDERATION OF VARIOUS BILLS BY THE COMMITTEE ON DEVOLVED GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

**Sen. Kinyua:** I rise to make a Statement pursuant to Standing Order No. 46 (2) (d) concerning Bills before the Committee. With regard to the County Ward Development Equalization Fund Bill 2018 that was forwarded to the Committee for prepublication scrutiny, I wish to report that my Committee scrutinized and communicated its decision to the Hon. Speaker for publication.

With regard to the following three Bills; The Urban Areas and Cities (Amendment) Bill (Senate Bills No. 4 of 2017), The County Government (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017) and The County Government (Amendment) Bill (Senate Bills No. 11 of 2017), my Committee has undertaken public hearing and compiled a report that I have tabled today, Thursday 15<sup>th</sup> March, 2018.

Mr. Speaker, Sir, with regard to The Assumption of Office of the County Governor Bill, 2018, my Committee has received public views and is currently compiling a report to table by next week.

With regard to The County Boundary Bill, 2017, the Committee is still receiving memoranda and presentations from the public and key stakeholders. Owing to the sensitivity of the matter of boundaries, we hope to finalise and table the report by next week, Thursday, 22<sup>nd</sup> March, 2018.

Mr. Speaker, Sir, I have also noted that you have just referred to the Committee The County Government Amendment Bill, 2018 by Sen. Cheruiyot for pre-publication scrutiny.

In conclusion, I wish to assure the House that my Committee is committed and up to the task to deliver its mandate within stipulated timelines in spite of the heavy workload.

CONTINGENCY PLANS TO MITIGATE ADVERSE EFFECTS OF  
HEAVY DOWNPOUR ON INFRASTRUCTURE

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir, for your kind indulgence. Pursuant to Standing Order No.46(2)(b), I rise to seek a statement from the Chairperson, Standing Committee on Roads, Energy and Transportation on the contingency plans to mitigate the adverse effects of the heavy downpour on our infrastructure; mainly roads and drainage systems.

In the response, the Chairperson should address the following:-

(1) Given the fact that majority of the major road arteries in Nairobi are classified as national Government roads, what is the Government doing to ensure proper drainage on the roads, especially Uhuru Highway, Mombasa Road, Langata Road, Jogoo Road, Outering Road and other major road arteries in Nairobi City County and the drainage?

(2) What are the plans by the national Government on the repair and the rehabilitation of nationally classified roads in Nairobi City County that are in sorry state following the heavy downpour being experienced?

(3) What collaboration, if any, exists between the national Government and the Nairobi City County Government on the development of a modern mass transit system to address the current and future traffic flows.

**The Speaker** (Hon. Lusaka): Where is the Chairperson Energy, Roads and Transportation? We will hear from him when he comes.

**COMMUNICATION FROM THE CHAIR**

REMOVAL OF SENATE MINORITY LEADER;  
SEN. MOSES WETANGULA

**The Speaker** (Hon. Lusaka): Hon. Senators, following the receipt in my office this morning of a letter from the Senate Minority Whip, Sen. Mutula Kilonzo Jnr, it has become necessary that I make the following communication to the Senate.

By a letter dated 15<sup>th</sup> March, 2018 and referenced; communication on removal of Senate Minority Leader, Sen. Moses Wetangula and election of Sen. Orenge, pursuant to Standing Order No.20, (4) (5) and (6), the Senate Minority Whip informed me as follows and I wish to quote verbatim:-

‘Greetings, this morning, 15<sup>th</sup> March, 2018 at 11.00 a.m. I received minutes of a meeting of the Orange Democratic Party held on 14<sup>th</sup> March, 2018 at Crown Plaza and resolutions dated 14<sup>th</sup> March, 2018, addressed to the undersigned and yourself, to 16 Senators confirming the resolution of the said meeting.

Under Standing Order No.20(6)(a), of the Senate Standing Orders, I hereby convey the said resolutions for your appropriate action.

Yours faithfully,  
Sen. Mutula Kilonzo Jnr.”

Hon. Senators, upon receipt of this correspondence, I have extensively perused Standing Order No.20(1), (4), (5) and (6) which I will quote provides as follows----. Standing Order 20 says:

(1) The second largest party or coalition parties in the Senate shall be the Minority Party and shall elect-

(a) a Senator belonging to the party or coalition of parties to be the Senate Minority Leader;

Hon. Senators, in the present Senate, following the advice of the Registrar of Political Parties by letter dated 12<sup>th</sup> September, 2017, reference RPPELE/3 Vol.2, the Minority party in this Senate is the NASA coalition consisting of the following parties;

(a) the Orange Democratic Movement Party.

(b) the Wiper Democratic Movement Party, Kenya

(c) Ford-Kenya

(d) Amani National Congress and

(e) Chama Cha Mashinani.

The foregoing is sufficient to show that the Minority Party, for all purposes of the Senate is the NASA coalition consisting of the named constituent parties.

Hon. Senators, by a letter dated 16<sup>th</sup> November, 2017, Ref./NASA/Admin 45/19c under the hand of Mr. Norman Magaya; Chief Executive Officer, NASA, informed my office that Sen. Wetangula had been elected as the Senate Minority Leader. Minutes of the meeting of the NASA Parliamentary group leadership held at Wiper House on Tuesday 2<sup>nd</sup> November, 2017, which arrived at this decision were attached.

Hon. Senators, I now wish to draw your attention to Standing Order 20(4) which provides as follows:-

“A senator elected under paragraph (1), may be removed by a majority of the votes of all the Senators belonging to the Minority Party.”

Hon. Senators, accompanying Sen. Mutula Kilonzo Jnr.’s letter are minutes of the first Senate ODM parliamentary group meeting held on 14<sup>th</sup> March, 2018 at the Crown Plaza Hotel in Nairobi between 12.30 p.m. and 2.00 p.m. In attendance are shown, 15 Members of the ODM Party with five others listed as Absent with apologies. Under Minutes 214/3/2018 titled ‘Review of the Senate Minority Leadership and under Paragraph (5) thereof, it is indicated as follows.

“Senators resolved to remove the current Minority Leader Sen. Wetangula in accordance with the Senate Standing Order 20(4) and to replace him with Sen. James Orengo.

Further attached to these minutes are the signatures of 16 senators subscribing to the resolution to remove Sen. Moses Masika Wetangula and appoint Sen. James Orengo as the new Senate Minority Leader with immediate effect.

In this respect, the questions which I must determine are whether this was a proper meeting within the meaning of Standing Order 20(4) and whether therefore the resolution can properly be said to have been carried. Additionally, if the answers to these two questions are to the affirmative, I will have to determine when the resolution takes effect.

Hon Senators, to the first two questions, it is clear to me that although all the senators listed as having attended the meeting are Members of ODM and although the meeting was in fact a meeting of the ODM party parliamentary group, the criteria set out at Standing Order 20(4) that the removal of the minority leader be by a majority of the votes of all Senators belonging to the Minority Party has been met. I am satisfied that the 16 Senators constitute a majority of the 27 senators belonging to the NASA coalition and that all the said senators belong to the minority party, which is in this case is the NASA coalition.

Standing Order No. 20(5) governs what is to happen upon the removal of the Minority Leader. It provides as follows and I quote:-

“The removal of a Senator from office under paragraph (3) shall not take effect until a Senator is elected in the manner provided for under paragraph (1).

The evident logic of this paragraph is to avoid a situation where at any particular time, there is no occupant of the office of the Senate Minority Leader because the incumbent has been removed and no new one has been elected.

Hon. Senators, Standing Order No.20(5) also clarifies who the legitimate entity to elect a leader of the Minority Party is. As already recited, the Minority Leader is required under Standing order No. 20 (1) to be elected by the second largest party or coalition of parties in the Senate.

The question I have had to address is whether the meeting of the ODM parliamentary group yesterday as evidenced by its minutes qualifies as a meeting of the NASA coalition that could properly elect a new Senate Minority Leader within the meaning of Standing Order No.20 (1).

Hon. Senators, it cannot be gainsaid that political parties are recognized under Article 91 of the Constitution and are subject to the requirements thereunder. Political Parties are also subject to legislation made, pursuant to Article 90(2) of the Constitution.

In the context of the Senate, political parties have the opportunity to present themselves for recognition in the Senate either as single political parties or as an alliance or coalition of parties operating under a coalition agreement deposited with the Registrar of Political Parties. It is their prerogative; it is their choice, but when they make their choice, they must abide by the consequences of that choice.

Coalitions enjoy the benefit of being a coalition, such as enhanced numbers resulting therefrom, but must similarly, put up with the language that comes with the coalition status such as the decision making required under Standing Order No.20(1).

Hon. Senators, in light of all these, I, therefore, wish to communicate as follows with regard to the letter forwarded to me by the Senate Minority Whip earlier today:-

I find and hold that on the basis of the letter, and the minutes and the signatures appended thereto, the criteria and threshold set out in Standing Order No.20(4) has been met and Senator Moses Wetangula, has been validly removed from the office of the Senate Minority Leader.

According to Standing Order No. 20(3), I also find and hold that to the extent that the appropriate entity to elect a Minority Leader for the Senate is the National Super Alliance(NASA) coalition and to the extent that the entire entity and the meeting that has

purported to elect a new Minority Leader for the Senate is the Orange Democratic Movement (ODM) Parliamentary group, an organ and constituent party of the NASA coalition which is an entity unknown to this Senate, the requirement of Standing Order No.20(5) have to be met.

Accordingly, the removal of Senator Moses Wetangula as Senate Minority Leader, though valid, stands suspended and will not take effect unless and until a Senator has been elected by the NASA coalition in the manner provided for by Standing Order No. 20(1) has occurred and a communication to that effect, together with the minutes evidencing that, that decision has been made in writing to my office by the Senate Minority Whip.

Hon. Senators, I thank you.

Sen. Wetangula, please, you have the Floor.

**The Senate Minority Leader** (Sen. Wetangula): Thank you Mr. Speaker, Sir, for that communication. I have the following to say.

In terms of this Senate, there is no party called Orange Democratic Movement (ODM). This House has only NASA coalition, Jubilee Party, the Kenya African National Union (KANU) Party, Chama Cha Mashinani (CCM) and one Independent Member. Those are the entities in this House.

The communication that elected yours truly, Mutula Kilonzo Jnr., Senator for Makueni, Petronila Were, nominated Senator of Amani National Congress (ANC) Party and Sen. James Orendo of ODM came from the Parliamentary Group Meeting (PG) of NASA. A PG of NASA is not a PG of ODM and a PG of ODM is not a PG of NASA.

NASA is a coalition and nobody was invited to join it; we formed it. I want to tell my colleagues – because Mr. Speaker Sir, I have heard this communication from the Chair after being informed an hour before the start of the House proceedings that mischief has been going on behind my back.

I want to say that if anybody wants a divorce, it will be messy and noisy and it will not be easy. For avoidance of any confusion, I want to tell my colleagues in ODM that for the last two presidential elections, we have supported a candidate fronted by ODM and that is the reason they are more in both Houses of Parliament than their partner parties. If Kalonzo Musyoka was to be the presidential candidate, probably Wiper Democratic Movement party would be having the majority because of the advantages that go with being a candidate. The same would have happened if the Forum for the Restoration of Democracy - Kenya (FORD-Kenya) and ANC had provided a candidate.

So, I want to tell my colleagues to try to go to NASA, bring the constituent four parties together and see if they will extract a resolution to bring to this House because NASA has ODM, WIPER, ANC and FORD Kenya. The leaders of these parties; Raila Amolo Odinga, Stephen Kalonzo Musyoka, Wycliffe Musalia Mudavadi and Moses Masika Wetangula are an integral part of all the organs of this party and whenever we hold even PGs, the party leadership attends.

I know that since we started this House, a conspiratorial process has been going on with nocturnal meetings taking place. The very least my colleagues could have done is to have called me into a meeting and told me: “As our leader, the following are issues that we have against you and we want to change”; not to go and seat in the comfort of a five-

star hotel without members from ANC, FORD-Kenya, Wiper, CCM and then purport to bring minutes to this House

I want to urge the Chair that, even that majority of 16 Members is not a majority in law because it is not a majority of the coalition. It is a majority of a section in the coalition that has sat without a proper colour of right in law. ODM is not a member of this House; Members of ODM access this House and have a colour of legitimacy by virtue of being Members of NASA.

I want to end by telling my colleagues that: “I am going nowhere, I am here and I will be here because I was not invited to join NASA.”

*(Applause)*

I am in NASA as founder and I founded the Coalition for Reforms and Democracy (CORD) that transitioned to NASA.

**Hon. Members:** Yes! Tell them.

**The Senate Minority Leader** (Sen. Wetangula): If anyone wants to play games, anybody can play games. Many of us are good at it and we have not come to this level of leadership because anybody has been pushing us; we have come to it because of commitment and dedication.

Mr. Speaker, Sir, I represent people and nobody can belittle me in this House. Nobody! And nobody has a right to play games behind my back. Nobody! Let them be frontal and we will fight *Mundu khu mundu!*

*(Laughter)*

**The Speaker** (Hon Lusaka): Order! Hon. Senator.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is as simple as that. I take great exception to the conduct of my deputy and whoever chaired this meeting because I have been receiving phone calls, SMSs and threats. I delivered a resounding vote to the leader of ODM and this cannot be wished away. These games are totally unhelpful. I want to repeat, as I end, that if anyone wants a divorce, it will be noisy, messy and unhelpful, and it will have casualties.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for making that communication. I want to inform my dear brother and friend whom I respect a lot that it is not true that I came to this House through the NASA Coalition. I came to this House through my name and picture being on the ballot papers on an ODM ticket. As I stand here, I represent the ODM Party.

Leadership is not given but you have to fight for it. As Members of the ODM, we have been asking questions. I know most of us will not talk here but it is always good to talk. We have been raising concerns of being the majority in the coalition yet the entire leadership is with our brothers.

We sat and deliberated on the issues and the majority opinion was that we need a change of leadership. We have been talking about things in this House. Our House needs to focus on issues of oversight. We need to go out to see how governors spend money.

Last Friday, we witnessed something which assured most of us that this country is now moving forward, lest we forget the death of a child called Samantha Pendo who was killed when she was doing what a child does because of conflict in this country. She was just playing. It is time we took bold movements to ensure that the leadership we have is one that will save this country for the future of this nation.

I am a Member of the ODM and I know that we have four principals. We had five but my dear brother Isaac Ruto decided to run away. I know they say “we are together” but it is really confusing.

I agree with the distinguished Senator who is my good friend and I respect him a lot but I do not agree with him telling us that we were doing things behind his back. We sat down and we have the powers to do it.

Mr. Speaker, Sir, you made a communication and gave a direction. I request my dear brother, whom I love so much, to sit with the other principals who are not in this House. It is sad and I feel bad for him because he is a “minority” in this country just like and we are always sidelined but sometimes that is how democracy is. Some of us have belittled democracy and tried to change it into something called a written law. We all have to move forward and support our political parties for prosperity.

**Sen. M. Kajwang':** Mr. Speaker, Sir, I thank you for your ruling and as a Member of this House, I must submit to it. I am a signatory and one of the 16 that signed the petition that came to you. Whereas I might not agree fully with the ruling, I have no option but to submit to it and ensure that we do as directed. If the number is valid to elect, then it is valid to replace. However, it must be made very clear that Sen. Wetangula has been a leading light in this country and the NASA Coalition up to 30<sup>th</sup> January and I believe he is still a leading light in the NASA Coalition.

For those who signed, we took that decision not because Sen. Wetangula has not led us well but because we believe that there are people who can lead us better. We also believe that the political environment is in a state of flux and the leadership also needs to change.

Politics by its nature is messy and noisy. Anyone who went through an election went through mess and noise. Let us not reduce this to a forum where we issue threats. As the Minority in the House, we need to retreat and make sure that we do as the Speaker has ruled and as the Standing Orders require. Those of us who are interested in the leadership of the Minority in this House should convince Members. We have repeatedly said this again and again. You cannot lead people by force. When Sen. Wetangula gets the loudest cheers from the Majority side, it tells you something.

I thank you.

**Sen. Wambua:** Mr. Speaker, Sir, thank you for giving me the Floor. For the avoidance of doubt, I also want to go on record on this matter. Yesterday this House debated a matter on building bridges. Today, the party that brought that Motion is building bridges their own way.

I would like us to remember that the NASA is a coalition of the willing. As we speak today, we have Amani National Congress (ANC) led by Wycliffe Musalia Mudavadi, Ford Kenya led by Moses Masika Wetangula, the ODM led by Raila Amollo Odinga and the Wiper Party led by Stephen Kalonzo Musyoka.

The Coalition Agreement which I will be willing to table in this House on Tuesday is very clear on the transaction of the business and the appointment of the leadership of the coalition in both Houses of Parliament. The letter that appointed Moses Masika Wetangula as the Senate Minority Leader came from the NASA Coalition and not from the ODM. So, the ODM cannot purport to fire a Senator that they did not hire.

The Coalition Agreement is clear that the NASA as a coalition will remain intact for as long as the affiliate parties remain on board. The exit of one political party from the NASA does not invalidate or interfere with the architecture of the leadership of the NASA. If the ODM has decided to join Jubilee, they should just leave the NASA and its leadership intact.

On a light note, I want to warn the Senate Majority Leader that maybe the ODM will be seeking to take the Majority position.

*(Laughter)*

**Sen. Pareno:** Mr. Speaker, Sir, I thank you for your communication and ruling. I am happy that this is a House of rules and we have rules which we must abide by as a Senate. I am happy that the Speaker went through and enlightened this House about the provisions of our rules.

So that we understand, Standing Order No.20(1) provides that the second largest party or coalition of parties shall be the Minority Party. I do not want to believe that Members in this Senate do not know that some of us are here by virtue of nomination by the ODM Party. I have been lucky to be nominated twice by the party.

I would want to say that this rule recognizes Orange Democratic Movement (ODM as the second largest party in this House. As a very senior member of my party and the Chair of the Election Board, I am not aware of having sat in a parliamentary group meeting to elect the initial leadership that is in this House. Be that as it may, what these rules envisage is an election. These rules also envisage that the second largest party can elect and remove any member from any position in the leadership of this House.

Mr. Speaker, Sir, I am aware that ODM has 20 Senators in this House and all of them came to this House by virtue of a certificate issued by none other than by myself, the Chair of the Election Board of ODM. We did not issue a certificate by the name of the National Super Alliance (NASA) to anybody in this House.

So, it is not proper to say that we came in as NASA in as much as we have not disowned NASA. We are simply taking our rightful position in this House and going by the rules as provided for. Out of the 20 Senators in this House, 16 Senators appended their signatures and five Senators gave their apologies as they are not in the country.

Of the four Members of the leadership structure that was submitted to this House, the largest Minority Party had only one; the Deputy Minority Leader. I am on record, and Sen. Wetangula knows, that I raised a red card. I said that there is no proper representation in the leadership that has been submitted. The ODM having 20 Senators and the rest of our coalition partners having seven Senators, cannot take all the four positions apart from one. So, if we are doing anything, it is not a divorce because we are not the ones to pronounce divorce at this time. We are simply taking our space as

provided for. If there was a coalition agreement, it did not say that ODM should be marginalized by the other partners just because we happen to be a minority party.

Mr. Speaker, Sir, we are trying to correct things and ensure that we are doing the right thing. We shall abide by these rules and we shall not go out. I can assure you that we will abide by your orders.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. This is a very complicated matter for me but which is also significant as far as the issues of this House are concerned.

First, I would like to pass my utmost sympathies to the Senate Minority Leader, Sen. Wetangula. Sen. Wetangula has been the Senate Minority Leader for the last five years and also in this term. I sympathize with his situation. For avoidance of doubt, as Sen. M. Kajwang' had said, I am not worried that anyone can take up my position. This is because the way things are done within Jubilee Party cannot be compared with the way they are done on the NASA side. I want to make it abundantly clear that Sen. Wetangula is welcome to Jubilee Party, if the NASA people are tired of him.

*(Applause)*

Mr. Speaker, Sir, we welcome him to Jubilee Party and he can cross the Floor as early as Tuesday next week. I will create some seat for him somewhere here and his debating skills can be transferred to this side.

My advice to the Senate Minority Leader is that as much as I sympathize with his situation, there is no need to force yourself on people who do not love you. Even if you force yourself to sit in the office, who will you lead if 16 people out of 28 have said they do not want you? It is better you become a member of the flock of a side that will recognize you where you will play a role. We have enough team on this side with 11 players and many reservists. Sen. Chergargei is slightly injured at the moment, and Sen. Wetangula can come in to play some role for the time being.

I believe there is a misinterpretation of what happened between the former Prime Minister and the President. That misinterpretation is getting itself into the debate of this House. Let me make it abundantly clear; we welcome the relationship of the former Prime Minister and the President. However, as we welcome it, we in Jubilee Party are not interested in creating other fault lines and fights in this country. We welcome that relationship but we also welcome the relationship of Sen. Wetangula, hon. Stephen Kalonzo Musyoka and hon. Musalia Mudavadi. I hope, like the former Vice President said, that they will be meeting the President next week. I believe that will happen. If that happens, we, as the Republic of Kenya, would have an opportunity to sit down together on one table.

Mr. Speaker, Sir, I wish our brothers in ODM well as they think through their leadership in NASA team and as they push it through. Similarly, if ODM wish to come to this side, I will only be happier to be leading a bigger troupe. It is not that I will in any way be concerned about what might happen. If any game is going to be played where Sen. Murkomen will be replaced as a player so that Deputy President William Ruto can score a goal, I am ready for that game. Any day, if that game will lead to a situation

where the Deputy President William Ruto will sit in State House in 2022, I am ready to be a reservist or to play no.10. In any case, I am a good footballer.

But I want to tell Sen. Wetangula that, yes, you have said that you will hang on and I wish you well. I do not know how you will do it because these people seem to be very determined. After this, we can have tea and let us agree on how you can move to this side so that we can work together.

Thank you.

**The Speaker** (Hon. Lusaka): Hon. Senators, we have heard the comments. I have given direction on that matter and they will proceed as directed.

Hon. Senators, looking at the time, I direct that all remaining requests for statements be issued or deferred to Tuesday, 20<sup>th</sup> March 2018.

## STATEMENTS

STATUS OF THE PHYSICAL DEVELOPMENT PLAN FOR  
SOUTH C ESTATE, NAIROBI COUNTY

MUSHROOMING OF SCHOOLS IN RESIDENTIAL ESTATES IN  
NAIROBI COUNTY

TRANSFER OF TEACHERS FROM NORTHERN KENYA

THE MANAGEMENT OF KNH

HUMAN CAPITAL FLIGHT OF HEALTH PROFESSIONALS  
FROM KENYA

ALLEGED DEBT OWED TO THE NAIROBI CITY COUNTY  
GOVERNMENT BY THE NATIONAL GOVERNMENT

ISSUANCE OF TITLE DEEDS TO RESIDENTS OF KIBAGARE VILLAGE,  
KITISURU WARD, WESTLANDS CONSTITUENCY

DELAY IN HANDING OVER OF THE LAKE BASIN MALL TO LBDA

SHOOTING OF RESIDENTS IN LUANDA MARKET, VIHIGA COUNTY

PROVISION OF WATER SERVICES TO KITENGELA TOWNSHIP  
AND ITS ENVIRONS

EFFECTS OF CLIMATE CHANGE ON PASTORALISTS

CONSTRUCTION OF APARTMENT BLOCK ON THE NAIROBI RIVER BANK

LICENSING AND CO-ORDINATION OF LIQUOR RELATED LAWS

DEROGATORY SONG AGAINST THE KAMBA COMMUNITY

RELOCATION OF ELEPHANTS FROM LAIKIPIA TO  
TSAVO NATIONAL PARK

SEVERE DROUGHT IN ISIOLO COUNTY

REGISTRATION AND PROVISION OF FACILITIES IN PRIMARY  
AND SECONDARY SCHOOLS

DISAPPEARANCE OF PATIENT LEMELOI SHONKO  
FROM COPTIC HOSPITAL

RAID BY ARMED BANDITS IN SUYIAN AREA, SAMBURU  
NORTH CONSTITUENCY

DELAYS IN PROCESSING OF BIRTH CERTIFICATES

ONGOING RECRUITMENT EXERCISE BY KDF

VIOLENCE IN JAMHURI HIGH SCHOOL, NAIROBI

COMPENSATION FOR PERSONS AFFECTED BY KETRACO  
HIGH VOLTAGE POWER LINE PROJECT

HARASSMENT OF OPPOSITION LEADERS

RAMPANT ROAD ACCIDENTS ON THE NAKURU-ELDORET HIGHWAY

COAL EXPLORATION AT MUI BASIN, KITUI COUNTY

CLAN CLASHES AND TERROR ATTACKS IN WAJIR COUNTY

ALLEGED KILLING OF DEMONSTRATORS IN AHERO TOWN,  
KISUMU COUNTY

EMPLOYMENT REQUIREMENTS FOR FRESH GRADUATES

RAMPANT FIRE OUTBREAKS IN INFORMAL SETTLEMENTS  
OF NAIROBI CITY

*(Statements deferred)*

**The Speaker** (Hon. Lusaka): The Senate Majority Leader, you can issue a Statement on the business of next week.

*(Sen. Sakaja stood up his place)*

What is your point of order, Sen. Sakaja?

**Sen. Sakaja:** Mr. Speaker, Sir, on a point of order. I requested the Statement on the issue of the floods in Nairobi County but it has not been designated to the Committee. In as much as the Chair might not be there or any other Member, could it, for the record of the House, be designated to the Committee? An undertaking can also be given by the Majority Leader on when we can have a response.

**The Speaker** (Hon. Lusaka): The Committee can give us a response in the next one week because of the urgency of the situation.

**Sen. Sakaja:** Mr. Speaker, Sir. much Obligated.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 20TH MARCH, 2018

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I hereby present the Statement on the Business of the Senate for the week commencing 20<sup>th</sup> March 2018, pursuant to Standing Order 42(2)(c).

The Senate Business Committee will meet on Tuesday, 20<sup>th</sup> March, 2018, to schedule the Business of the Senate. Subject to the directions of the meeting, the Senate will continue with the consideration of Business that will not be concluded in today's Order Paper. On Wednesday, 21<sup>st</sup> March, 2018 and Thursday 22<sup>nd</sup> March, 2018, the Senate will proceed to consider Business that will not have been concluded on Tuesday and any other Business scheduled by the Senate Business Committee.

Hon. Senators, as you will note from today's Order Paper, debate on the Second Reading on the Assumption of Office of County Governor Bill (Senate Bill No. 1 of 2018) will resume for the Mover to Reply. Debate is also scheduled to commence on the County Governments (Amendment) Bill (Senate Bill No. 11 of 2017). Other Bills due for Second Reading are as follows:-

- (1) The County Governments (Amendment) (No.2) Bill (Senate Bills No 7 of 2017)
- (2) The National Flag, Emblems and Names (Amendment) Bill (Senate Bills No. 8 of 2017)
- (3) The Food Security Bill (Senate Bills No. 12 of 2017)

I take this Opportunity to request Standing Committees which are yet to table their Reports on the respective Bills referred to herein to do so. This is in order to enable the House to proceed to the Committee of the Whole on Bills that have already gone through Second Reading and those due for Division in the coming week.

I also wish to commend the Standing Committee on Justice, Legal Affairs and Human Rights for concluding consideration of and tabling Reports on two Petitions this

afternoon. I urge Committees which have Petitions pending before them to ensure that the Reports thereon are tabled within the timelines.

As Senators have noted with regard to Statements, we are facing a challenge. This is a good challenge because there are very many Statements being requested for and which are due for response in each sitting. This has affected how we process both Statements and other Businesses of the House. The matter is now under consideration by the Senate Business Committee, which will give directions at the appropriate time.

Mr. Speaker, Sir, the following Motions are before the House for consideration:-

- (1) Establishment of offices of the Commission on Administrative Justice at the county level by Sen. Were.
- (2) Teaching of Kiswahili language to learners with hearing disability by Sen. (Dr.) Musuruve.
- (3) Registration of persons with disability by Sen. Khaniri.
- (4) Reports of the 47<sup>th</sup> and 48<sup>th</sup> Sessions of African, Caribbean and Pacific (ACP) Joint Parliamentary Assemblies by Sen. (Prof.) Kamar.
- (5) Development and implementation of a National Disaster Risk Financing by Sen. Khaniri.

I continue to urge all Senators to be available whenever the House is sitting to ensure that the Business before the House is dealt with expeditiously.

Mr. Speaker, Sir, I hereby lay the Statement on the Table of the House.

*(Sen. Murkomen laid the document on the Table)*

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Next Order.

## BILLS

### *Second Reading*

#### THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO.11 OF 2017)

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move that The County Governments (Amendment) Bill (Senate Bills No.11 of 2017) be now read a Second Time.

Thank you, Mr. Speaker, Sir. I have waited for this Bill for a long time. I am very happy that the Committee on Devolved Government and Intergovernmental Relations has finally returned its report. Therefore, as we proceed on this Bill, we are doing so when we have the report of the Committee.

Mr. Speaker, Sir, this is a Bill that carries along various concerns and issues regarding county governments. It deals with matters of the County Executive Committees (CECs), including the roles of the CECs and the role of the governor over the supervision and management of CECs. It also deals with the role of the deputy governor and the

County Public Service Boards in terms of dealing with human resource management in the counties. It also deals with the question of replacement of the deputy governor in the counties.

Therefore, this Bill carries along so many aspects of the County Governments Act as it is at the moment, for purposes of aligning them with some decisions that have been made by the court. These amendments are also aimed at filling the gaps that currently exist in the Constitution and the Act. This is because the County Government Act, which is the primary Act, was enacted pursuant to Chapter 11 and Article 200 of the Constitution that required Parliament to deal with matters of devolution.

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

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

I want to admit here, as I have done several times, that I was privileged to serve in the Task Force on Devolved Government (TFDG). Interestingly, this task force was under the then Deputy Prime Minister and Minister for Local Government under the current leader of Amani Coalition. He is the one who gazetted my name and appointed me to serve in it. Interestingly, my name was proposed by Sen. Orengo, who is now proposed to be the Senate Minority Leader.

I am glad to say that my interaction with Sen. Orengo, who gave me that opportunity as he said yesterday on the Floor of the House when I was training on matters of devolution. He is the one who actually took my Curriculum Vitae, having been instructed by the former Prime Minister that I should be included in that task force. Therefore, I am a person who has interacted with different people who are serving in different parts of this country. You can see how excited I was because of that handshake, because it brings people to work together as a team and for the best interest of this country.

Madam Temporary Speaker, as a member of that task force, I learnt and contributed a lot to the primary Bill that we have here, together with five other legislations, making it six Acts of Parliament. That was one of my greatest contributions to the body of law in this country, other than or even more than the period we have been here for the last five years. This is because the Report we provided is the one that is guiding this country on matters of devolution. The legislative framework and institutions created therein exist now because of the job that we did then.

Madam Temporary Speaker, Clause 2 of this Act deals with matters related to county symbols. The primary Act had ignored the role of the College of Arms, which deals with granting of arms in accordance with the College of Arms Act. Clause 2 brings in the role of that very important institutional Act in ensuring that county governments have a procedure on how they can be allowed approval of the County Coat of Arms.

Clause 3 deals with the timelines of the sittings of county assemblies. As it is at the moment in the Act, it is difficult to say that the county assembly must sit immediately after 14 days after elections. However, practically, we amended the County Government Act in this very House last term to ensure that until issues related to nominations of

gender or persons with disability and the youth are resolved, a county assembly is not properly constituted. Pending that proper constitution of the county assembly, it will then be necessary to allow the county assembly to wait for the period that is necessary to create that sitting as provided for in Clause 7(b). Therefore, the place and date of the sitting will be gazetted by the Speaker and during that sitting, the county assembly will officially commence.

Clause 4 amends the principal Act to just correct a typographical error, where a reference was made on Section 27 (3) instead of Section 26 (3) of the County Governments Act, so that it makes proper cross-referencing. That is a small amendment on a typographical error that is being dealt with.

Clause 6 makes correction to adopt what has been provided for as far as the first sitting of the county assembly is concerned. The amendment creates Section 9A, which is basically to institutionalise the office of the deputy speaker in the county assembly. At the moment, there is no provision in the Act on how the deputy speaker will be elected and that office of the deputy speaker. Now, instead of different county assemblies---

I heard a story of one county assembly where because of lack of uniform provision on the deputy speaker, when the speaker of the county assembly is not so happy with the deputy speaker--- I do not want to mention the county where this happened in the last five years, but the Speaker would just wake up one morning and sponsor a Motion to reduce the threshold for election or removal of a deputy speaker. We have now provided a uniform legal framework that protects the deputy speakers, so that their election and removal mirrors that of the speaker and they are protected by law across the country. This will ensure that their principal bosses will not take advantage of their challenges. I do not want to say who I am referring to, but he or she might be in this House.

Clause 7 of the Bill provides for what happens when there is a vacancy in the office of the speaker of the county assembly. At the moment, the law says that a speaker can only be removed by 75 per cent of the members of the county assembly. We have created a uniform framework of two-thirds, just as it is in this House, the National Assembly and all over the country. This is to ensure that two-thirds majority of the members of the county assembly can remove their speaker, in the same way we can also remove our Speaker here.

This is not like the case of the Senate Minority Leader, where the threshold seems to be very low and dangerous. I am saying this with a lot of caution. I must now be careful and work closely with the Jubilee Senators because I might wake up one morning and find a different name on my office door. Especially with the resent handshake, I am properly warned.

What we are trying to do here is to strengthen the office of the speaker and that of the deputy speaker, and ensure that the deputy speaker is properly recognised in law. So, the Motion for the removal of deputy speaker is provided for there. We have provided for how the speaker and deputy speaker will be notified and given the opportunity to be heard in terms of the allegations that are against them, before the county assembly can make their decision.

Last year or the year before, the courts made a decision on the question of recall of Members of Parliament and Members of the County Assemblies. For that reason, you will realise that in Clause 8 of this Amendment Bill, which amends Section 27 of the principal Act is basically to clean up the law as per the court decision on that Section. It also provides the grounds for recall of a member of county assembly, which includes gross violation of the Constitution, incompetence, gross misconduct and if one is convicted of an offence, which carries a sentence of imprisonment of at least six months.

Therefore, sub-clauses (b) and (c) delete sub-sections 3 and 6 of the principal Act because they were discriminating someone who ran for office in the county assembly from initiating a process of removal. So, that is just cleaning to capture the decision of the court and make the Act become constitutional.

Section 28 of the principal Act is also being amended to accommodate the requirement that the petitioner should be a voter in the ward. That is, not including other issues of saying that he or she should not have voted and all those other limitations that the courts declared that they were unconstitutional.

Clause 10 is very critical because it also makes it possible for the governor to dismiss a County Executive Committee (CEC) member as a right. Currently, most of the CEC members who are dismissed rush to court and say: "Why am I being dismissed? I have not been given the reasons and not violated any law. Am I am incompetent?" It should be the right of the appointing authority to appoint and dismiss at their will; that is for CEC members. That is the same for Cabinet Secretaries at the national level.

We must not tie the hands of the governor in terms of changing or removing these officers from office because the person whom the people elected was not that CEC member. We do not want to make them lords and queens that cannot be removed because it is important for the governor to be accountable to the people. He must, therefore, be able to appoint competent or trusted people to deliver on the responsibility. Of course, those CEC members are entitled to their rights and protection in terms of what we call 'adequate compensation for work done,' but they must always know that they serve at the pleasure of the governor who appointed them.

Clause 11 provides for situations where if a governor-elect dies after he is declared as governor or is unable to assume office for whatever reasons, for instance, through sickness or being involved in an accident *et cetera*. In that case, the deputy governor should be sworn in and act as the governor for a period of 60 days before a fresh election is done. There is a reason to that. There must be a difference between the case where a deputy governor had already been sworn in and assumed the office.

In the circumstance we are discussing here, we do not have a deputy governor who has been sworn in. If the governor dies in that situation, before the deputy governor is sworn in, it will be wrong to say that they should assume office in the normal manner as a deputy governor who had been sworn in and holds office. That provision is there to cover that situation. Of course, I will be willing to listen to other ideas by Members who may want to contribute towards improving this Bill. That is the thinking behind this provision.

I want to go back to the proposed Section 32B. I had requested from my office for the advisory opinion of the Supreme Court on the replacement in the office of deputy governor, which I hope to get in a short while. So, I will come back to that clause.

For the moment, I want to skip to Clause 17 of this Act which actually amends Section 58 of the principal Act. Section 58 of that principal Act is being amended so that it provides that we make the County Public Service Board more independent. At the moment, if you read the current Act, the people who are being appointed to the County Public Service Board are almost like appointees of the governor. When new governors come in, they orchestrate the removal of the existing members of the County Public Service Board (CPSB).

Going back in history, I confess that I served in this taskforce. We wanted to create a CPSB with some independence that mirrors the national Public Service Commission (PSC). At the moment, the governor nominates the chairperson and sends the nominee to the county assembly for approval. There were concerns raised by the people of Kenya, including county assemblies, in the last Senate. The independence of the CPSB can only be guaranteed if we create an independent process of interview and appointments.

In this Bill, we are creating a selection panel. For lack of a better way of creating that independence, we have said that the governor should appoint the chairperson and one person from the private sector to the interview panel. One person to be appointed by the Law Society of Kenya (LSK), the Federation of Kenya Employers (FKE) and the Institute of Certified Public Accountants of Kenya (ICPAK), respectively. We have 47 counties and every time they have a replacement, they will need a lawyer, an accountant and a person appointed by FKE. The challenge we will have is to what extent are these institutions devolved so that they can pick people in the locality to serve?

Madam Temporary Speaker, I am willing to listen to amendments to this clause, to may be, say that the LSK will appoint someone who resides in a particular county. If they do not get someone from that county, they appoint one person from the neighbouring county, so that it makes work much easier. I am the one who drafted this clause. However, the problem with it is that it is likely to create bureaucracy. It will make it difficult for the governors to make a decision quickly and replace an officer in case someone resigns, dies or is removed from office. We can strike a balance at the amendment stage on how to guarantee independence without creating unnecessary bureaucracy that will make it difficult for the counties to perform their responsibilities.

The rest of the provisions are to ensure that there is independence in the process of appointments and nominations in the CPSB.

Madam Temporary Speaker, Section 68 of the Act is being amended to ensure that there is equity in the county. The principles of equity are enunciated, that the CPSB must ensure that it takes measures for diversity to be seen in the county, implement strategies that creates fair opportunity to everybody and ensure the policy that 30 per cent of the people who serve in the CPSB do not come from the dominant community in the county. This is very important because it already exists in the original Act.

There must be ways and means of auditing whether a county is doing so. That is why these provisions have been put here so that they can become a basis for auditing either by a Commission on Administrative Justice or institutions, like Kenya National Commission on Human Rights (KNCHR) or the National Gender and Equality Commission (NGEC), so that when Kenyans are complaining about county (x), they have a basis and a checklist that provides for what they ought to do. That is what is provided for in these important provisions.

Madam Temporary Speaker, you must have heard the other day the Governor of Kiambu insisting that people who will be employed in Kiambu County must be indigenous from Kiambu. How do you define who is indigenous from Kiambu? Some residents in Kiambu migrated from Murang'a or Congo Forest. If we bring the issue of originality, we are likely to create tension and difference in the country.

This law insists that a dominant community in a particular area must follow the 30 per cent requirement by employing the minority communities in their county. Kiambu County has a good catchment area for the rest of Kenya. For example, the Member of County Assembly (MCA) for Kahawa Wendani Ward is hon. Omondi who necessarily does not come from the Kikuyu Community. We must recognize that we have Omondis in Thika, Kipchumbas in Kiambu Town and others in Gachie who must have that opportunity.

The same applies to Elgeyo-Marakwet County which is not just about the Marakwets and Keiyos. The other smaller communities that are living there, whether they come from former Nyanza, the former Central Province or Ukambani must get the reserved opportunities. How beautiful it is for a country to have staff who are diverse than to just have people who purely come from one community!

This law intends to make a county a place that mirrors what our Republic looks like. That is why we insist that these provisions must be obeyed and entrenched.

Madam Temporary Speaker, the CPSB is required to set out positive policies and practices that deal with matters of hiring and retention of employees, outline strategies and ensure that at least 30 per cent of offices in the county shall consist of persons who are not from dominant communities, set out affirmative action measures, set out a framework for monitoring and evaluation and implementation of equity plans and so forth. Section 68(d) provides for review of the CPSB to ensure that those provisions are achieved.

I do not know why I am sweating a lot. The place is a bit hot. Maybe the earlier politics were indeed hot or the air conditioning is not functioning.

Madam Temporary Speaker, that section is necessary. I want to get the advisory opinion of the Supreme Court from the Senate Majority Whip, but maybe she did not pick it. I want to use the section that deals with replacement of deputy governor and make it clear.

I thank God this Bill delayed a little bit until the Supreme Court made that decision. This is an advisory opinion sought by the Embu County Assembly. When there was a pending impeachment of the governor and the deputy governor, the Embu County Assembly rushed to the Supreme Court to find out what would follow if the governor and

the deputy governor had been impeached. If the governor had been impeached and the deputy governor took the position of the governor, what would happen to the position of the deputy governor? The Supreme Court has finally pronounced itself in a manner that validates my intellectual abilities.

The Bill that has been drafted here mirrors exactly what the Supreme Court said. In the case of Nyeri County, there are Members who came to me saying that they cannot allow someone who was just a deputy governor to unilaterally appoint another deputy governor without going through the process of involving the voters or the public.

Madam Temporary Speaker, the Supreme Court has agreed with this Bill that where there is a vacancy in the office of the deputy governor, the replacement should mirror that of the Deputy President. When there is a vacancy in the office of the Deputy President, the President appoints someone who will assume the office of the Deputy President once approved by the National Assembly. In the same way, we have drafted that when there is a vacancy in the office of the deputy governor, the governor will nominate a person and submit the name of that person to the county assembly. That nomination must take place within 14 days from the time that situation occurred.

Madam Temporary Speaker, one thing I like about the Supreme Court is that in the absence of legislation, they filled the gap in terms of timelines. They picked 14 days in terms of that appointment, which is already mirrored in the provisions of the Deputy President. This Bill departs from the Supreme Court decision in terms of county assembly, where we are saying the county assembly, upon receipt of that nomination, must act within 14 days and not 60 days.

The Supreme Court had said that the county assembly can act within 60 days. However, the good thing is that the Supreme Court qualified that decision by saying that it is because there is no Act of Parliament providing for this. We have said that, that should be done within 14 and not 60 days. So, within 14 days, the county assembly should approve.

Therefore, the offices of the deputy governor of Nairobi City County and the deputy governor for Nyeri County can be filled even now, with the advisory of the Supreme Court. However, so that we provide procedure of how that approval will be done, we have provided here that the county assembly will approve by simple majority. That is something that is also absent from the Supreme Court advisory opinion.

The simple majority of the County Assembly should be able to pass. Some may say that, maybe, the threshold should have been made too high. If we make it too high, you make the politics too complicated and difficult for governors to replace their deputies. For that reason, the simple majority was chosen. This is also the case in the National Assembly when approving a nominee for the office of the Deputy President. It is for that reason that we must do so.

Let me tell my colleagues, any person who had---

*(The Temporary Speaker consulted with  
the Clerk-at-the-Table)*

Madam Temporary Speaker, I think you quietly ordered that the air conditioner be switched off. We were suffering here.

All political parties should be given a chance to vet the person that the governor will appoint and so forth. Now, that issue should be rested because even if we do anything to change it here, the Supreme Court has pronounced itself and that is the law and we must go by it. Here, we are just providing it in the Act itself and also providing the procedure for the 14 days that the approval must be done.

There is a remaining question; what happens if – God forbid – the current Governor for Nyeri County, will have appointed and now has a deputy in office and then that Governor decides to resign and says he no longer wants the position? I do not want to use another example. I just want to say: “Resignation”. He says: “I no longer want to serve as Governor of Nyeri County.” What will happen? Can the Deputy Governor who was not part of the election itself – at least the current one was part of the election – ascend to the office of governor and then appoint another person who was not part of the elections?

I think, as it is, it must be, yes. However, I avoided bringing it in the Act so that we leave it to the advisory opinion of the Supreme Court when the time comes. Since there is controversy around that issue, many people would say, no. Common sense should mean that we go back for elections.

Also, times and situations where that can occur can become very limited because it can be one in a very long time. By the time a governor who was elected is ceasing to hold office, the term of that Government will have remained maybe one or two years. So, maybe it will only make sense so that the same process will follow because the governor who is in office is a substantive governor.

It is not qualified in any way. It is not in the manner he came; he is already holding office officially as a governor.

Madam Temporary Speaker, that is the part that has been publicized a lot about whether this Bill--- Many people think that this Bill only deals with the question of deputy governors. This Bill is beyond the question of Governors and deputy governors.

It is also dealing with the issues of County Public Service Boards (CPSB). There is some way I talked about it. It is also dealing with how to appoint the County Secretary in an independent manner. This is because the County Secretary outlives the term of the governor who is in office. Since it is an office in the County Public Service, one will serve until retirement. We must ensure that the office enjoys a certain level of independence and the person who comes into that office, will not fear that he must please the immediate political interests at the expense of the staff and the county public service.

This Bill is very important. I appreciate everyone who has assisted me in drafting it. I thank the Committee which has come up with various amendments which we will consider at the Committee Stage. They have raised issues such as incompetence being ground for removal of a County Assembly Member (MCA) and whether a deputy governor should hold office for 60 days or permanently.

This provision from Ngatia and Associates that deals with three persons who should be appointed by a political party and submitted to the county assembly has now been dispensed with. This is because, as I said, the Supreme Court has made it

abundantly clear that replacement of a deputy governor will be the responsibility of the governor himself to do what he ought to do.

I thank the Committee for taking the trouble to listen to members of the public – including the Council of Governors (CoG), Forum of Deputy Governors (FDGs), Forum of County Assemblies (FCAs) – and coming up with a Report that will guide this House when we reach the amendment stage.

I still encourage Members to think through this issue of the independence of county assemblies, particularly whether we should retain the Law Society of Kenya (LSK), Certified Public Accounts (CPA) and so forth. Also, whether that will create a huge bureaucracy at the expense of service delivery in the 47 entities. If it was the National Government, it would be easy because the headquarters of the national Government is the headquarters of most of these entities. However, we have counties such as Mandera where by the time LSK is nominating someone to sit for the CPSB interviews, will it be very costly for the county and so forth. I am willing to listen to these issues so that by the time we go to Committee Stage, we can amend them.

I am immensely gratified that I have had this opportunity to move this Bill. I look forward to the support of hon. Senators so that we can expedite this process and so that the Nairobi City County Government and Nyeri County Government can go ahead and do what they ought to do in terms of nominating a deputy governor to serve. A vacancy in that office is a serious constitutional breach in case anything happens in those counties.

I beg to move and request the Senate Majority Whip to second.

**Sen. Kihika:** Thank you, Madam Temporary Speaker. I wish to second and in doing so, make a few remarks and also congratulate the Mover.

It is a timely amendment in many ways because after 2013, it became apparent in the course of running county governments, that there were some gaps which could only have been felt once the application of the law was felt. In bringing forth this amendment, it will help cure many issues that we have come across, as county governments have set on the way.

In addition, the amendment has touched on a few of those important issues that we have experienced in the last few months. For example, Nyeri County where we had the unfortunate loss of two governors since 2013. After the loss, we had an issue as to how to replace them. It was a challenge due to the emotions that these losses caused and the political issues that have surrounded the ones who now take over the offices. As this has continued, then it has become apparent that an amendment to this County Governments Act is extremely necessary, more so, for the office of the deputy governor.

It has happened in Nairobi City County when the deputy governor there resigned and also in Nyeri County where the sitting deputy governor was elevated to be a governor after the governor passed on. We had issues because we did not have clear laws as to how we replace a deputy governor. However, with these amendments and the advisory opinion of the Supreme Court, we are in apposition where there are no more conflicts as far as who takes over the office when the office becomes vacant.

Also, many residents suffer in the counties once the deputy governor's office becomes vacant. As the governor tries to carry the county forward, there are a lot of politics surrounding who takes over the office. However, with this new amendment, that

will no longer be an issue. The Bill has provided for a seamless replacement and appointment process for the deputy governors. This is a timely Bill. It will also ensure integrity and public participation through the county assemblies as we fill the office of the deputy governor that is left vacant.

This Bill tries to plug the gap in defining the steps for the counties to acquire the emblems, flags, Coat of Arms, *et cetera*. It has provided the manner for the counties to acquire these. We have had a conflicting process from one county to the other, with some not being able to do that in the first term between 2013 and 2017. With this streamlined process, it should no longer be an issue but a process that is well laid out in the county law. We will also get public participation in the process.

There is an important amendment in this Bill that seeks to close the gaps as far as providing smooth operations in convening of the first sittings of the county assemblies by the governors is concerned. This is an important process because after the 2017 elections, there was confusion across the counties with some not knowing when or where to have this first sitting. With the amendment from the previous Senate where the first sitting would not happen until the nominated Members of the County Assembly (MCAs) were included, there was a bit of confusion.

This amendment has taken away the confusion and it will help in ensuring that there are clear timelines, once the elections have happened. It will also ensure that these timelines are adhered to and respected, therefore, the Constitution is respected. We have heard some county assemblies beginning earlier and some later with a lot of uncertainties regarding parliamentary democracy, rules, etiquette and traditions. This amendment will help streamline that so that we have a uniform process in all the 47 county assemblies.

The County Governments Amendment Bill (Senate Bills No. 11 of 2017) has also helped the County Public Service Boards (CPSBs) which was previously quite a big problem. Many of those boards across the 47 counties tended to be beholden to the county executives, specifically, the governors. With this streamlining, we will have CPSBs that are professional, ethical and that will carry out their mandates in the proper way that the law requires. With that, we will have boards that are not completely under the governors, filling the county positions through favoritism, cronyism, nepotism, clannism, and all manner of corruption that we have witnessed before. I believe this is an important Bill.

There is also the County Assembly Service Boards (CASBs). Coming from the counties, I appreciate what was done here by the previous Senate led by Sen. Amos Wako which passed the County Assembly Service Bill 2017. The Bill has aligned the CASBs membership to the Parliamentary Service Commission (PSC). This has also streamlined the operations; funding, clear roles of the board secretary and fund administrator. That has made these CASBs become more effective and accountable. This amendment Bill will fill in the gaps that have become apparent after the application of the laws from the previous terms.

Madam Temporary Speaker, I beg to support and second the County Governments Amendment Bill (Senate Bills No. 11 of 2017).

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I now propose the question that the County Governments Amendment Bill (Senate Bills No. 11 of 2017) be now read a second time.

*(Question proposed)*

May I give the opportunity to Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker. First of all, I thank the mover of this Bill for bringing to this House an important Bill of the County Governments Amendment Bill (Senate Bills No. 11 of 2017). This Bill could not have come at a better time, more specifically, now that we are starting the second governments in the counties.

This Bill has dealt with so many of the issues that were bedeviling the counties in the past. Some of the first county governments would be run in a wanting manner because of issues of employment and removal of employed staff. In some of the counties, you find that even speakers – in one of the counties that I do not want to mention – by the close of business in five years, the county had had five speakers in place. The reason of removal was just petty issues. This Bill will deal with issues of clear separation of powers. It has given an indication of the way forward in dealing with all vacant offices.

Furthermore, in the recent past, apart from witnessing the issues of vacant deputy governors' and governors' offices, there were counties where even the deputy governor would be removed at will and the office will stay vacant without the governors bothering to fill it. This time, because of the timelines that a new appointment must be done within 14 days of the resignation or death of whoever is holding the office; it is going to encourage the people holding the offices to do things above board.

We realise that even the County Executive Committee (CEC) members could not perform their duties as expected, and the governors' hands were tied. Some of the CECs would just come to the office, leave their coats and even go on trips without having to bother whether they had delivered the mandate of their offices.

Madam Temporary Speaker, I thank the mover of this Bill because for the first time, the County Public Service Boards shall have to follow a legal structure in terms of employment. In some of the counties, employees were just handpicked and most of them were not even qualified. That is the reason why many of the counties were not able to deliver on their mandates. However, Clause 68(b) of this Bill requires that County Public Service Boards must collect all the necessary information and check the qualifications before employing somebody to occupy a certain office.

Additionally, Madam Temporary Speaker, the issue of diversity has been a challenge in various counties. Our country has been facing conflicts because of tribalism and ethnic imbalance in various counties. This is based on the fact that employment of 'our own' was the mode of the day, despite the fact that our national policy stipulates that for us to encourage national cohesion, we should bring on board various employees to interact. Furthermore, bringing on board different employees from various counties would encourage new ideas, new methods of working, it would reduce corruption and, by so doing, encourage cohesiveness.

Madam Temporary Speaker, you will recall that during the last Parliament, impeachments were done haphazardly such that at the end, they were unable to go through the Senate. The same people would then be forced to go back and work together, resulting in governors and Members of County Assemblies (MCAs) not seeing eye to eye. This resulted in people in the county suffering. Therefore, this time round, before an impeachment is brought forward, whoever is going to conduct that process should sit down and analyse whether somebody is ripe or fit to be impeached or not.

Finally, Madam Temporary Speaker, with this Bill, our counties will now have a better way of working and the governors will deliver on their mandates with a lot of ease. For the first time, I am sure we shall have qualified people working there; we shall even have a smooth method of running the counties.

Thank you, Madam Temporary Speaker. I beg to support.

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. Cherargei.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker, for giving me this opportunity to express my comments on the County Governments (Amendment) Bill, 2017. I am a Member of the senate Committee on Devolved Government and Intergovernmental Relations. From the outset, I thank the Senate Majority Leader, who happens to have been my lecturer in international Law at Moi University. I am happy and excited to be part of the Amendments he has brought before the House.

This Bill could not have come at a better time. This is because coincidentally, a fortnight ago, the Supreme Court of Kenya under Reference No. 1 of 2015, the former Speaker of Embu County, hon. Mate, sought an advisory opinion on what happens on the issue of running of county governments, especially when the county governor is impeached and the deputy is not.

Although the Supreme Court of Kenya captured what is envisaged under this Amendment Bill, they admitted in their advisory opinion that there was no legal framework. It is important, at this point in time, that we are now actualising and putting in place a legal framework so that our county governments, as critical as they are, can be run without any hitches. As we talk, the county governments of Nyeri and Nairobi do not have deputy governors. This Bill is timely because we are looking into posterity on how we can, in future, cure such situations where the Constitution has not provided for them.

I agree with the issues that have been raised so that it becomes easy to run county governments. I know that governors were not comfortable with the introduction of Section 32(a) of the County Governments Act, where the deputy governor could assume office – and God forbid – when the governor-elect is not, as envisaged under Article 182 of the Constitution, in a position to assume office. The deputy governor could, therefore, hold office for a brief period of 60 days and then we go back to elections.

The governor and deputy governor vie on a joint ticket and there are so many factors that we consider before running for governor. Fortunately or unfortunately, I know that we might not have members here who have tried to run for governorship. Only a few of us have tried to vie for that position. There are so many dynamics that you must consider before running for governorship.

I, therefore, agree that if, in any case, the governor-elect dies before assuming office, it is important to go back to the people because they were vying on a joint ticket.

This is also to avoid other scenarios because when the people are electing a specific person to be the governor of that county, they do so having considered particular dynamics and strengths. Anybody who is a governor will tell you that the choice of the governor depends on dynamics such as regional balance at that level, ethnic composition, gender considerations and many others. For example, in my county, my governor went for a female deputy to try and ensure he got the votes from women.

Some of the people might argue that some governors are uncomfortable with that provision because they think we are premeditating their death; or it could be a ploy for their assassination so that their deputies could take over. However, it is important that we pass this provision so that we allow for seamless and smooth transition, in case what unfortunately happened in Nyeri County happens again.

Madam Temporary Speaker, what this part specifically tries to put in focus is adding flesh to Articles 163 and 182 of the Constitution to ensure that grey areas that were left are clarified. Therefore, governors should not worry at all that one is premeditating their exit from power. I know that being a governor is very sweet, with all the trappings of power and being called 'your Excellency' wherever one goes. However, that should not make them fear anything because as the Bible says, we should not fear somebody who kills the flesh; but one who kills both flesh and soul.

Madam Temporary Speaker, I encourage them to be with us on the same page. This is where the issues in Nyeri come into focus. We are putting in place a provision for the County Assembly to approve. It is good that the Majority Whip is here. The Mover of the Bill should raise the threshold for approving the appointment of a deputy governor in the county assemblies to be a bit higher; to the level of a super majority.

We have allegations in our county assemblies that there is political patronage of the county executive. Thus, we avoid cases where somebody can nominate their relatives, business partners, girlfriends or wives to become the deputy governor. When we increase the threshold to be a super majority it will give an opportunity to county assemblies to approve the right people to serve a full term.

I call upon our county assemblies across the 47 counties to be aware that they have an onerous responsibility and commitment. When such a responsibility is bestowed on their shoulders, they should know they are undertaking it on behalf of the many people they represent across our 47 County Assemblies. Therefore, this Bill is timely and will give an opportunity to the counties that do not have the deputy governors at the moment. It will also breathe life into the Supreme Court advisory.

Madam Temporary Speaker, secondly, I agree that county secretaries, as per the structure that has been provided legally, are somehow the Chief Executive Officers (CEOs) of our counties. Therefore, they ensure the daily running of the affairs of the counties. To ensure that we get the right person for the job in our counties, we should allow a competitive and open process, through a panel.

Most of the counties are struggling in setting up both institutional and infrastructural development. There is also a problem with running the human resource, the finance department, procurement department, the roads department and other departments to ensure synergy and seamless working relationship between the county

executive, county assemblies and other stakeholders that we have in our county governments.

Therefore, as Sen. (Dr.) Milgo has said, it is important that the terms of reference for the County Public Service Boards are provided. We have also given them the legal mandate. This is because some of us are aware of daily struggles in the county governments. For example, the new governors want to employ their people in our counties. When some of the governors were voted out, the new governors came into office and started sacking people. In my own county of Nandi over 1,000 workers were sacked. There was a public outcry and we demanded that they be reinstated.

Therefore, the County Public Service Board will not make our 47 counties to be ethnic conclaves. We should not have a situation in Nandi County, for example, where all employees come from one ethnic community. We should be proud of our diversity as a country. The County Public Service Boards should ensure the implementation of the 30 per cent rule that provides for people from outside the region - the ethnic diversity envisaged under Article 10 of the Constitution.

We should have regional balance, the face of Kenya and ensure the rule of law. The County Public Service Boards should now know that they are no longer at the beck and call of the county governors. To ensure that we have impartiality in our county governments, the law should be followed.

Madam Temporary Speaker, as Sen. Murkomen has indicated in this Amendment Bill, we need to ensure that the County Public Service Board is properly constituted. This will ensure the human resource that we have in our counties is competitive, professional and has the right composition. This will ensure that devolution works for our people. For instance, we should not have somebody who is an expert of soil science or an expert of fashion design, being the head of procurement in a particular county. I am not saying they cannot work, but they should be properly placed.

Madam Temporary Speaker, one of the problems we face in our counties is wrong constitution of the human resource. Our governors normally come with a long list of people who campaigned for them, some of whom do not have the requisite educational background. This affects the quality of service delivery to our people.

Therefore, the people mandated to run our human resource should do proper recruitment, placement and staff review. The County Public Service Boards have been given the mandate legally and are beyond reproach. I agree that this amendment has come at a better time, so that we address the issue. Our governors should not worry because the future of devolution is bright. Some of these changes will always come so that we better devolution.

Madam Temporary Speaker, I wish to address the issue of creation of the office of the Deputy Speaker at the County Assembly level. Our distinguished Majority Whip, Sen. Kihika, had the privilege of serving as the Speaker of Nakuru County Assembly. It was very important that she gave her thoughts on the importance of having a deputy speaker with an operational office.

We have seen some Members of County Assemblies (MCAs) in the media fighting over who should sit in the Deputy Speaker's Office. Our MCAs should realise that the office of the Deputy Speaker is very serious. We want our county assemblies to

ensure that they function properly such that when we do not have the Speaker, the Deputy Speaker will take over and ensure that business is discharged. We are facilitating to ensure that devolution works.

The county assemblies and the county executive led by the speakers and governors, respectively, should work together. There are many county assemblies and governments that do not work together. There should be a seamless working relationship, so that the agenda of devolution is implemented. We should ensure that the county assemblies do not frustrate the governors' agenda across our 47 counties. The MCAs should know that their responsibility is to be a conveyor belt to a better development agenda at the county levels. This is because devolution is the best thing to ever happen to our country. We are products of the new Constitution and should guard devolution jealously.

Therefore, I agree that the office of deputy speaker is very important and we should also go beyond house business committees in the county assemblies. We should also have the speakers' panels at that level to facilitate the governors' agenda. However, our MCAs should not be a conveyor belt of looting, corruption or facilitating governors to misappropriate our resources.

Finally, I agree with issues of County Executive Committee (CEC) members. Last term, when some of us were not in this Senate, it reached a point that some of the CEC members were declining executive orders. Not just orders of buying airtime to call somebody, sending messages or to do something mischievous. When you look at the CECs, it has been restructured to ensure they know their place. By the time five years were over, some of them had usurped governors' power.

We need to see some semblance of discipline and order in our counties when we oversight governors. The CECs should do what is expected of them. They should act within the law. If they do not follow the law to the letter, then they can lose their jobs.

These amendments have come at the right time and we will give them the necessary support. We have already discussed them with the Council of Governors (CoG) and met several stakeholders on the same. Our duty is to ensure that we work hard so that these amendments are passed in this House. We want to see devolution working for all of us so that our country can move forward. Everybody will be its custodian to ensure we move forward and that Nyeri, Nairobi and other counties where, unfortunately, the county deputy governors will not be able to work as envisaged under Article 182 and mirrored Article 32(a), is addressed.

Madam Temporary Speaker, I support these amendments.

**Sen. Pareno:** Thank you, Madam Temporary Speaker. I was just perusing through the Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018) and the County Governments (Amendment) Bill (Senate Bills No.11 of 2017) that we are discussing now. I have seen a lot of similarities in some of the provisions.

If I may point out a few of them, for example, some of provisions in Clause 2(a) of the County Governments (Amendment) are similar with Part III, Clause 11 of the Assumption of Office of the County Governor Bill. I feel there is so much relationship between the two Bills. Clause 32(a) of The County Governments (Amendment) talks about inability by these officers to assume their office. In Part 11, Clause 11 of the

Assumption of Office of the County Governor Bill also talks about the same. Clause 32(c) of the County Governments (Amendment) talks about a vacancy in the office of the County Governor and his deputy and Clause 13 of the Assumption of Office of the County Governor also talks about the same thing.

As we refer to these Bills to the relevant committees, we need to check on these similarities so that we do not duplicate one or the other. I, therefore, urge the Mover to consider looking at both Bills because there are so many similarities. In some areas, we are providing for the same thing in both Bills. We can either merge or find a way not to duplicate these particular aspects of the county government.

Be that as it may, I wish to make my comments. The County Governments (Amendment) Bill will help us realise the intentions of devolution. It is meant for the smooth running of the counties, which is what we all want to see. We are trying to mirror the county assemblies' operations with that of the national Parliament. Once offices are vacant, this Bill is providing when the sitting can start, when it can be gazetted and within how many days. What kind of ceremony to hold before assumption of the office. We have always done that in the national Parliament.

This is not a bad idea because the county assemblies, in their own rights, are also assemblies. Therefore, trying to mirror their sittings with ours in terms of operations and administration is a good thing to do. I have looked through the amendments, they are addressing challenges that we have experienced so far.

Devolution is good for this country. However, it has some teething problems which these amendments will address as we implement devolution. I like its content because we are proposing the finer details that could otherwise bring conflict. Imagine if you were to be voted to go to a county assembly where there are no laws stating when its first sittings will commence, how to start it and where the venue is. This Bill gives details for county assemblies to have a smooth running.

On the issue of allowing the assemblies to develop their own symbols by public participation is a good idea. You can imagine, I am from Kajiado County and I do not know its symbols and what we stand for as a county. Probably, one would want to have a shield and another one would want to have a spear. Mostly, this is culturally based. In Masaai land, you will find that you will have something to do with beadings, a shield or a sword. This is a way of creating ownership and a feeling that this is your county. Therefore, this proposal is good so that we differentiate one county from another.

You can imagine if Kajiado's is a shield and Nandi County's is also a shield, it will be problematic to our people. We have different cultures and symbols, but we are one nation. To me, this promotes culture, patriotism and a sense of ownership. This Bill provides for these symbols to be submitted to the college of arms so that when they register and attach a particular symbol to a particular county, then that symbol will not be available to another county. That is like what we do at the Companies Registry where you reserve a name. Once that name has been reserved, another company cannot be registered under it. It cannot be shared. This will also iron out any conflicts when it comes to ownership of these symbols.

The Bill also provides for the procedure for the removal of the Speaker. The two-thirds threshold that has been given is so high. We need not to make it easy for anybody

because people can be so malicious and derail programmes. We have seen it happen in many areas. It is good that the threshold is so high because it will ensure that if it is a speaker to be removed pursuant to this amendment, then he must have been in gross violation or misconduct.

This provision ensures it will not be easy to remove a speaker if there will be no sufficient grounds to do so. Without such a procedure, you can imagine the nightmare that can occur in removing a speaker from the office. Everyone will be applying their own ways. I am sure that if a speaker will be removed, it will be because of sufficient reasons and support for such removal.

This Bill also provides for how we can recall Members and that is very important. Once you are elected as a Member, you may end up forgetting your duties and fail to carry out your mandate in the manner that is expected by your people. In that case, the people will have a right. It is unfair if people vote for you and then they do not have a say or a chance to vote you out or question you. If you make it impossible to be recalled, then it negates the importance of your voters. So, this is also a good provision because if we do not have it, people will feel so bad that they can elect but they cannot do anything once you are elected. The threshold is still high and it will not be easy for somebody to abuse this particular provision.

I support these amendments but I have a concern about the duplication of some provisions in The Assumption of Office of the County Governor Bill and this Bill. So, the committee should look at both Bills because I have seen a lot of similar provisions in Clause 32(a) and (c) being replicated in Clauses 11 and 13 of The Assumption of Office of the County Governor Bill. If they are interrelated, then we will be duplicating. We should not duplicate but have other provisions in the other Bill.

I have also noted that The Assumption of Office of the County Governor Bill duplicated the guidelines that had come before the Bill was passed. So, we have had a benefit of having a Bill that came after guidelines had been done. Normally guidelines flow from the Bill but for this particular Bill, guidelines were done before because there was no law. Therefore the Act came into being after copy-pasting of the guidelines.

This Bill also came after the court had pronounced itself. You can imagine how rich the Bill should be because it is a Bill that has the benefit of an advisory opinion. So, we should pick what is good from the advisory opinion. The Bill also came after regulations have been done and they have been reflected. The Bill should be very rich and guide us in everything that we do.

**Sen. Cheruiyot:** Madam Temporary Speaker, thank you for giving me this chance to make my contributions and share my thoughts with regards to this Bill which I consider extremely important. It is important because in the first cycle of devolution we witnessed many things. Unfortunately as a House, for those of us who were here, we were not able to rise up to the many challenges that county governments were facing with regards to issues that this Bill addresses.

It is the duty of this House as a principal custodian and defender of devolution, rightfully so provided by our Constitution in Article 96, to always ensure that when we rise to transact business each and every afternoon, to endeavour to ensure that county governments operate better and implement service delivery.

The dream of devolution came at a difficult time. Many Kenyans lost their lives and many others were injured while yearning for a better Kenya. The biggest promise that this nation has is through devolution. So, we must always support such Bills that will make the operations of county governments more efficient.

From the outset, I support the County Governments (Amendment) Bill (Senate Bills No.11 of 2017) because of many reasons, some of which I will share. I will share some thoughts because there are ways that the Senate Majority Leader who is the author can improve on this Bill with regard to specific areas that he needs to put on more emphasis.

I will move on to Clause 3 of the Bill which amends Section 9 of the County Governments Act with regard to the election of a Deputy Speaker, that:

“There shall be a Deputy Speaker for each County Assembly who shall be elected by the county assembly in accordance with the Standing Orders of the respective county assemblies.”

While I have no problem *per se* with that provision, I wish to challenge us as a House, now we are in our inception period as the Twelfth Parliament; have we thought of standardizing the Standing Orders in our county assemblies? I know the practices in this House are borrowed from the Commonwealth Parliamentary Practice. Unfortunately, with regard to our county assemblies, we have given them the space and room to maneuver when reviewing their standings orders.

To some extent, you will find that there is deviation from this Commonwealth Parliamentary Practice where our parliamentary system borrows heavily from. Therefore, when drafting such Bills, let us have clauses that encourage this practice and not to have every county assembly have their own Standing Orders. However, this is for the Mover of the Bill to consider and for us to see if there is a way to standardize the Standing Orders in our county assemblies.

Madam Temporary Speaker, at Section 7 of this Bill, the drafter of this Bill has laid down important regulations and grounds for the removal of a county Speaker. If you can remember, there was a lot of politics that happened during the first sessions of county assemblies with the disappearance of a county assembly speaker and other bad things.

It was a challenge for us as the Senate because there is nowhere else where county assemblies can run to. The county assemblies look up to the Senate to give them guidance and to provide rules and regulations for them to carry out their duties effectively. More importantly, the drafter laid the grounds upon which a speaker may be removed from office. This is important as they have set the rules of gross violation of the Constitution, incompetence, misconduct and many that have been listed there.

This is well thought out and this begins to clean up the system. When members of county assemblies think about impeaching a county speaker, they would know that there are certain regulations. We are trying to protect State officers who are sometimes subject to manipulation by members, either in Parliament or county assemblies. For example, if the Members are not included in a trip, they can whip up emotions of their colleagues and get a Speaker of a county assembly out. That will be a thing of the past with the passage of this Bill because you will have to establish and give facts that support and warrant the removal of the county speaker.

On Section 7 (3), I do not agree with the threshold of the number of members of county assembly that are needed for one to move a Motion for the removal. When you put it at one third, it makes it a bit too low and it is subject to manipulation by members who are disgruntled by small misdemeanors of the office of the speaker. As the Speaker, you are the head of an institution and sometimes you have to make difficult decisions that will protect the interests of devolution.

We have heard stories of how speakers have been forced to approve members to travel out of their own counties to go for bonding sessions because they want to protect themselves from the wrath of the members of county assembly. This is bad practice that we need to avoid. To set a third as the number of Members of the county assembly which is required before passing a Motion on the removal of the speaker is extremely low. It will be better if they could garner the support of at least half of the MCAs. That is for the Mover of this Bill to think about.

There is also another important phrase, and I like the diction that has been chosen by the drafters of this Bill where under Clause 7(4), it says that: ‘A Motion for the removal of a Speaker shall specify---’

Under part Clause 7 (4)(b), it says:- ‘the facts constituting these grounds’.

‘Fact’ in proper use of English is an undisputed knowledge of a subject. Therefore, you would not just rise up and say, as an MCA, I want to remove the speaker because of some reasons. This law requires the Member of County Assembly (MCA) to table the facts in the House before he is allowed to move the Motion. If you are claiming that your speaker is incompetent, you will be required to table evidence before the House allows you to move that Motion.

I laud the choice of this word ‘facts’ otherwise, people may introduce rumors and all sorts of innuendos against the leadership of county assemblies and still be allowed to move the Motion to remove the speaker. I am sure this will be a subject of litigation in the future because people will demand to know whether the reasons for the removal of the speaker were adduced before the Motion was moved.

While seeking to amend Clause 32B, it states: ‘when the office of the governor becomes vacant---- It gives a specific timeframe within which the vacant office will be filled. This is extremely important because we know that the Chief Executive Officer of a county is extremely important. Therefore, it will be a thing of the past for county governments to stay for prolonged periods without properly defined roles and measures and a functional head of that county government. Therefore, we must support this.

The drafter of the Bill has listed several grounds upon which the office of the deputy governor may become vacant. They have also introduced the fact that the deputy governor may resign from office by giving a written notice to the governor. This has happened in Nairobi City County and other counties where men and women of integrity who realize that they cannot achieve the promises they gave the electorate while out on the campaign trail, because of one or two reasons, have resigned. It is good to provide the grounds upon which a deputy governor can resign and give their own reasons as they move to do other things. It is also good to provide the procedure for filling up that position.

With regard to the passage of a Motion for the approval of appointment of a deputy governor, I am happy that in Clause 11, while amending Clause 32D(4), it says:-

‘A Motion for the approval for appointment of a deputy governor- the appointment of a deputy governor shall be supported by a majority of the Members of the county assembly’.

This means, in my own interpretation, that you are not subjecting the same measure it takes to reverse maybe the election of a speaker, a County Executive Member and placing the same demands on someone who has just been freshly elected to office. Otherwise, if you set the threshold too high, then nobody may be approved in the long run. It is not easy to gather two-thirds of the Members of the County Assembly (MCAs).

Many of our counties have MCAs from across the political divide where, for example, you will find that Jubilee has X members and the National Super Alliance (NASA) has Y members. If you place upon them that demand for the approval of a deputy governor, all it will take to bar his or her approval is having members of the opposing political coalition refusing to assent to that Motion, and the office will stay vacant for a certain period of time.

However, when you put the threshold as just a simple majority, then it becomes easy; it reduces the cases of extortion and those kinds of things that we have heard about in terms of what people sometimes go through in our county assemblies. Therefore, this is extremely important.

Madam Temporary Speaker, in the county that I represent, the assembly passed a Motion for the removal of some County Executive Committee (CEC) members. However, because the county governor did not agree with the decision of the county assembly, he refused to act on the instructions of the county assembly and that CEC member remained in office. The governor even advised that CEC member to go ahead and seek relieve from our courts – and you know how generous our courts are with such matters – and the CEC member continued to serve in office for more than a year.

This was rather unfortunate because county assemblies need to be respected because when they make a decision, they are doing so on behalf of the residents of the county. Therefore, when a Motion has been brought properly before the county assembly and it has garnered the requisite number of support to send a CEC member packing, then that decision should be respected.

Unfortunately, Clause 13, which seeks to amend Section 40 of the principal Act, has listed the grounds upon which a CEC member can be removed from office. However, they have not gone ahead to explain what happens and what we should do when the governor does not comply with these conditions. Maybe we need to think of what to do in such a case.

Moving on to Clause 14, which seeks to amend Section 44 of the principal Act; it reads that:-

“The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel in accordance with Section 58A(2).”

This is also extremely important because in the principal Act, the procedure is not properly set out yet the office of a county secretary is a very important one. Elevation to

this office and the process therein, where a member gets to sit in this office, needs to be properly laid out. This will ensure that we have men and women who are competent to execute the mandate of this particular office.

You will remember that we have passed Bills before where, for example, when you have the election of a new governor; a county secretary is the person who chairs the Assumption of Office Committee. Therefore, at one point in their career, these are members on whose hands all the affairs of the county will be placed. Therefore, it is extremely important that such men and women be taken through a competitive process and be properly brought into office.

Under Clause 16, they have laid out a list of people who do not qualify to sit in the County Public Service Board. If we get a chance and the Senate Majority Leader, who is the Mover of this Bill, gets an opportunity to listen--- I still do not see the reason why he strongly feels that amongst the people not to be allowed to serve in this board are people who have been members of Parliament or county assemblies.

Politicians are the most misunderstood people. They also need to make a livelihood when their terms end or when they are no longer in public offices. Therefore, to bar them from such job opportunities is unfair and discriminatory. I have seen this practically, because most of the young people we were with in the last Parliament and who did not make it back are in the streets, trying to fend for their families.

One of the hardest things for politicians is to get a job after they have left political office. No one seems to trust them because everyone feels that they are disorganized and so on. Therefore, by limiting in this Bill, we are continuing with the discrimination that is already in existence without such a law. I do not agree with that part of the proposed legislation. I will share my thoughts with the Senate Majority Leader, and I hope he will reconsider this decision. I believe there are good reasons they thought about it.

Section 68 of the principal Act provides the list of members to be considered to serve in the selection panel. While I have no particular problem with subsections (a), (b), and (c), I have a problem with (d), which speaks of one person nominated by the Federation of Kenya Employers (FKE). It is my hope that we can add that the person that is to be nominated to serve be from the specific county. Otherwise, when we have organisations like the Central Organization of Trade Unions (COTU), FKE and other professional bodies, we will end up having busy bodies in Nairobi who have no understanding of how some of the counties operate.

This being a legal requirement, county governments write to the offices in Nairobi to nominate one particular person to serve in this panel. I feel that we should encourage organisations like FKE, COTU and all these other bodies to have representation in our counties. The spirit of devolution is to send as much service, offices and representation to our counties. Therefore, I feel that the person being nominated by the FKE be from the said county that is seeking the services of this particular person.

I feel that Clause 18 is extremely important. I agree with the drafters of this Bill that it is extremely important for our County Public Service Boards (CPSBs) to remain independent and not be under the direction or control of any other person or authority. Despite the fact that the governor appoints them and takes them through a recruitment

process, it is important that they remain independent and live to the true calling of their duty.

This is for the sake of professionalism and ensuring that we do not replicate some of the ills that we thought we would do away with by forming county governments. Therefore, that provision is extremely important so that from time to time, they can be reminded that they are not there to serve the interest of the governor, but the residents of the particular county.

Clause 21 of this Bill speaks of the values that a CPSB should aspire to live up to and deliver within our counties, especially the national values. We were here yesterday when we were all speaking and giving glowing tributes to the events that happened on Friday, last week in Harambee House. We do not want a situation, in years to come, where opposing politicians in the county governments will have to shake hands for members living within the same county to speak to one another.

One of the greatest ideals that we should translate right is to foresee the challenges that we see within the national Government and find ways to stop them from happening within our counties. Otherwise, if we are not careful, we shall end up with the very challenges that made us to have a devolved structure of Government.

Madam Temporary Speaker, one of the reasons why people fight or disagree is when the CPSB does not inculcate or send a good signal of inclusivity. People feel they do not have a chance to compete, especially in counties that have diverse ethnic groups. I come from an almost monolithic ethnic community county. However, I sympathise with some of the challenges that minority groups in certain counties go through. Some of them are considered strangers and they are denied employment opportunities. They cannot become CECs or chief officers in counties. It is not in order. I hope CPSB members will read and understand this provision once this Bill is passed.

I still have many other thoughts--- How many more minutes do I have?

**The Temporary Speaker** (Sen. Nyamunga): Five more minutes.

**Sen. Cheruiyot:** Madam Temporary Speaker, I know there are Members, especially Sen. Olekina who also want to contribute.

A final thought is under Section 21(1), where they have set the implementing provisions that the CPSB should aspire to have. Among the values that they are supposed to aspire to, as captured under (c), is to identify and eliminate employment barriers against persons who do not belong to dominant ethnic groups within the county or marginalised persons that results from the systems of employment, policies and practices which are not authorised by the law.

This continues to support the claim and thoughts that I was sharing just before this. In my neighbouring county of Migori, you find smaller communities that do not come from there. Sen. Olekina, you need to be impressed by this because your county also has this kind of challenge where you have a dominant community and other smaller tribes. These are some of the national values we need to uphold.

Even those of us who come from counties that have a dominant ethnic population, it is time we spoke against the practice of say, naming 10 of 10 CECs from one particular ethnic group and yet there is no single county that I know of in this country, that can claim to have 100 per cent membership from only a single ethnic group.

We need to speak against these things and let our county governments know that it is against the law and unconstitutional. People need to even move to court when this Act is violated. This is because some of these CEC member positions are not in compliance with these provisions. Governors will then be sent to the drawing board and told that the maximum that they can have is six or seven from one ethnic group and the other three to be distributed to the other Kenyans living within that county.

This is important because it continues to inculcate the national values that we have aspired to for so long and wish could be seen within our counties. Otherwise, we will end up being at the same place where we were as a country in 2010. One of the guiding principles of devolution is that people thought that with all the inefficiencies that we were seeing in the national Government, maybe we should each have a small kingdom which we will run the way we want. However, we need to guard against falling into the same mistakes that led us to the point where we felt it was important to devolve and resources.

With those many remarks, I beg to support and thank the Senate Majority Leader for this well thought out Bill.

**Sen. Kang'ata:** Thank you, Madam Temporary Speaker. I support this Bill because it seeks to clarify some of the lacunas we have been encountering in the running of county governments. It will address the issue concerning the vacation of offices of key personnel in counties. That is the speaker, deputy speaker and CPSB members. How do you remove such persons? To that extent, it is a good Bill.

I will be proposing some amendments at the Committee stage. I believe that every time there is a change of government, those officers should leave office. For example, the CPSB members. Every time we have a new governor, that board should vacate. The same principle should also apply for chief officers. That happens in the national Government. The same principle should also apply in county governments. Otherwise, you may have a situation where you have change of government, but the officials who are currently holding offices owe their loyalty to the former regime. They may, therefore, frustrate a governor's plans. The governor may not achieve what he promised his people when he was campaigning.

To that extent, I would be proposing amendments to, for instance, the proposed new insertion of Clause 7A. This one is about vacation of the county assembly which is okay and I do not have a problem with it. However, on the one on the Speaker and the Deputy Speaker – the insertion of the new Clause 9A. It should be clear that a Speaker and a Deputy Speaker serve for only five years.

Once the five years and the term of governor have elapsed, you do not have people staying in office past five years. That spirit should also be imported in other positions such as the tenure of the chief officers of the county assemblies. They should also vacate office under the same circumstances.

Madam Temporary Speaker, there is a provision concerning the appointment of a County Public Service Board (CPSB) member. How do you fill up a position of a CPSB member when a vacancy arises? There is a new Clause 58A that is proposing to constitute a selection panel comprising of various persons – one nominated by the governor from the private sector who is an advocate of the High Court; one nominated by

the Institute of Certified Public Accountants of Kenya (ICPAK). We need to give governors more leeway on this one.

This panel is coming to select people who are going to work with the governor. Therefore, when you limit the choices of the governor, it will be unfair. Again, once this selection panels receive these names, we must have a provision where you take these names to the governor to do the final nomination and thereafter submit the names to the county assembly.

Some few sub clauses are somehow capturing that principle, but they need to be firmed up so that we appreciate the principle that the ultimate power in the county government reposes in a governor. I say that because when we whittle down the powers of a governor who is directly elected by the people, it is unfair and negating the sovereign will of the people of a certain county. We should appreciate ultimately that it is the governor who will be accountable to the people and not these members of the 'civil society.'

For instance, when we say one person nominated by the Federation of Kenyan Employers (FKE), it should be one person nominated by the governor as per the proposals of the FKE. The same also applies to the person nominated by the ICPAK. The governor should have some role in that nomination. It should not be a situation where you allow nominations directly from that board.

Madam Temporary Speaker, I have also looked at Clause 68A where it talks about promotion of equity by the CPSB. That is a good provision which needs to be supported because we have seen counties not respecting equity and diversity. There are employments that favor certain regions and ethnic groups.

We also need to take into account whether we can use this law to tell counties that they cannot overemploy people. There is a situation where currently almost 70 per cent of the resources that we devolve go to pay employees of the counties. We would want more resources devoted to development because it is unfair to have 70 per cent of resources going to the pockets of, let us say, five per cent of the entire population. We, therefore, need to compel counties to reduce their workforce. More money should go to capital projects and development. That way, we spark economic growth and benefits at the grassroots and therefore have a more equal and better society that is going to achieve Vision 2030.

Madam Temporary Speaker, the objects of this Bill are good and I wish to support it, save for those few clarifications that I will be asking the Senate Majority Leader to consider amending.

Madam Temporary Speaker, Sir, allow me to read the objects of this Bill so that people can know why we have brought it.

Looking at page 313 - Memorandum of Objects and Reasons, Statement of the Objects and Reasons for the Bill, the Bill seeks to amend the County Governments Act, No.17 of 2012, in order to achieve the following objectives-

(a) Clarify on the commencement and sitting of a county assembly;

Currently, it is not very clear.

(b) Put in place the legal framework for the establishment of the office of a deputy speaker of a county assembly;

Currently, we have two counties which do not have deputy governors; the county assemblies of Nyeri and Nairobi City. One of the objects of this Bill is to clarify the procedure of appointment of the bearers of those offices.

Madam Temporary Speaker, the Bill also seeks to:

(c) Clarify on the removal of the speaker of a county assembly;

In the last dispensation, 2013-2017, there were several attempts by MCAs to remove speakers of county assemblies. However, it was like groping in the darkness because the MCAs did not know the procedure. This Bill intends to clarify that position; to explain the circumstances under which a speaker of county assembly can be removed from office, the procedure to be followed and who moves the Motion. That way, this Bill is going to cure that lacuna.

Madam Temporary Speaker, the Bill seeks to:

(d) Clarify on recall of members of a county assembly.

(e) Ensure clarity as regards the powers of the governor to appoint and dismiss a county executive Committee member.

This matter has been litigated severally in courts. We have seen County Executive Committee (CEC) members going to court to stop the governor from dismissing them from office. However, from where I sit, we need to strengthen the governors and give them power so that those CEC members can serve at the mercy or discretion of the governors. This is so that where the governor feels that a CEC member did not perform his duties well, he can dismiss that CEC and appoint another one the way it happens at the national Government.

Madam Temporary Speaker, the other objective of the Bill is to:

(f) Provide for the legal framework for assumption of office of governor by the deputy governor and the appointment of a new deputy governor.

I do not want to belabour this point since it has been canvassed earlier, and I have mentioned about it severally.

The Bill also seeks to:-

(g) Ensure independence, professionalism, transparency and promotion of equity in the functioning of the county public service boards.

Madam Temporary Speaker, this is also another area we need to legislate so that we ensure there is professionalism and fairness in our employment procedures. That will help our country to progress without promotion of ethnicity.

Madam Temporary Speaker, Section 136(1) of the County Governments Act provides for where the first sitting of a county assembly shall be after the first election under the New Constitution. The provision gave the Independent Electoral and Boundaries Commission(IEBC) powers to set the place, time and date of the first--“

**The Temporary Speaker** (Sen. Nyamunga): Order. Sen. Kang'ata, you will have a balance of eight minutes.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Nyamunga): Honourable Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 20<sup>th</sup> March, 2018, at 2.30p.m.

The Senate rose at 6.30 p.m.