

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 15<sup>th</sup> March, 2016

The House met at 2.30 p.m.

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

### PRAYERS

### ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member:-  
Mr. Mtengo William Baraka.

*(Applause)*

**Hon. Speaker:** Order, Hon. Members! I think it is fair that you congratulate Hon. Mtengo. While doing so, we must also observe decorum.

Allow me to recognise the following special guests who are seated in the Speaker's Row and the Speaker's Gallery: - Rt. Hon. Raila Amolo Odinga, former Prime Minister of the Republic of Kenya; Hon Amason J. Kingi, Governor of Kilifi County; Hon Ali Hassan Joho, Governor of Mombasa County; several Senators including Senators Moses Wetangula, George Khaniri, James Orengo, Johnson Muthama, Bonny Khalwale and Prof. Peter Anyang'-Nyong'o among others.

You agree with me that rarely do we, in the National Assembly, have governors visiting this side of the House. Please join me in welcoming them to the National Assembly.

Thank you.

### COMMUNICATION FROM THE CHAIR

#### DISORDERLY CONDUCT

*(Several Hon. Members walked into the Chamber)*

**Hon. Speaker:** Hon. Members making their way into the Chamber, please do so quickly.

Hon. Members, you will recall that on Tuesday, 1<sup>st</sup> March, 2016, the Member for Cherangany, Hon. Wesley Korir stood on a point of order during consideration of the Motion resolving to hold sittings on Thursday mornings for purposes of considering Bills that have constitutional timelines. In his discourse, the Hon. Member informed the House on the urgency of the anti-doping legislation which as per international accords with the World Anti-Doping Agency (WADA) ought to be passed by 5<sup>th</sup> April, 2016. On this account, I directed the Hon. Member to move with speed to have his legislative proposal prioritised.

You will likewise recall that on Tuesday, 8<sup>th</sup> March, 2016, Hon. Korir brought up the matter once more, this time bemoaning lack of quorum in three sittings of the Departmental Committee on Labour and Social Welfare that were ostensibly meant to deliberate on his legislative proposal on the anti-doping law. Upon the revelation of this matter, I directed the said Committee to meet on Thursday, 10<sup>th</sup> March, 2016 to consider this crucial legislative proposal for the sake of our Kenyan athletes who continue to bring great glory, honour and recognition to this county.

Hon. Members, during the Sitting of Wednesday, 9<sup>th</sup> March, 2016, the Vice-Chairperson of the Departmental Committee on Labour and Social Welfare, Hon. Tiyah Galgalo, tabled a report on the status of the anti-doping legislative proposal, in which she highlighted the progress the Committee had made on the matter. Hon. Galgalo cited the appearance of the Cabinet Secretary for Labour, Social Security and Services, and quorum as the challenges encountered in the abortive meetings of 1<sup>st</sup> and 3<sup>rd</sup> March, 2016. She further informed the House that the sponsor of the said draft law, Hon. Korir, had actually failed to turn up in the scheduled meetings of 3<sup>rd</sup> and 8<sup>th</sup> March, 2016. Concerning this latter statement, Hon. Korir maintained that he had not only appeared at the said meetings but alleged that he had seen fellow Members of the Committee appearing at the venues for the sole purpose of signing the attendance register after which they immediately left. He claimed:

“People came, signed and went away; then I am told that I have not been appearing before the Committee. That is a lie. The Vice-Chair must substantiate and say whether I have not been appearing because people come in, sign and go.”

Hon. Members, you will additionally recall that on account of the divergent views canvased by the Vice-Chairperson of the Committee and the sponsor of the legislative proposal on anti-doping law, I instructed the Director of Committee Services to provide me with a report of the work and activities undertaken by the Departmental Committee on Labour and Social Welfare. I have since received the report which, among other things, highlights the Committee’s activities and the progress made on Hon. Korir’s legislative proposal. As to the allegations made by Hon. Korir, the report states that the Hon. Member did not turn up at the appointed time for the scheduled meetings of 3<sup>rd</sup> and 8<sup>th</sup> March, 2016.

Indeed, the report from the Director of Committees goes on to affirm that apart from the quorum factor, Hon. Korir’s failure to turn up at the appointed time was the key reason that the two meetings were adjourned. The report further clarifies that no Member signed any attendance register since the two meetings had adjourned due to lack of quorum pursuant to Standing Order No.185, which states:-

“Unless quorum is achieved within thirty minutes of the appointed time, a meeting of a committee of the House shall stand adjourned to such further time or day as the chairperson of the committee may appoint.”

Hon. Members, you may, with understandable regret, recall the unfortunate incidents last year in which Members of two Committees openly accused their colleagues of various forms of impropriety which they sadly could not substantiate. As you are aware, some were reprimanded by this noble House in line with the recommendations of the Committee on Privileges.

I shall not bear any assumed culture of making unsubstantiated insinuations and more so when the allegations are made by a Member against other Members of this august House. Indeed, you will recall that before Hon. Korir made his allegations on the Floor on the afternoon of Wednesday, 9<sup>th</sup> March, 2016, I advised him against making unsubstantiated claims contrary to

Standing Order No.91 and the attendant consequences of Standing Order No.107. He, in spite of my warning, proceeded to make his allegations nevertheless which now stand unsubstantiated as the report from the Director of Committees shows.

In order not to belabour the issue further and for purposes of discouraging any similar unfounded allegations by any Member, I hereby rule as follows: That on account of making allegations that have neither been substantiated by the Member himself, the Departmental Committee on Labour and Social Welfare or the records available from the Directorate of Committee Services, Hon. Wesley Korir is in breach of Standing Order No.91(1); and, that the Member's conduct breached Standing Order No.107 on grossly disorderly conduct but, being an active athlete and Member of this House, I shall exercise my sympathy on the Member and hereby order, on this occasion only, that he withdraws his allegations against other Members having attended and signed attendance registers and give a suitable apology to this House in line with Standing Order No.91(2) within three sittings of this ruling. If the Member is present, he can proceed to withdraw and make the appropriate apology.

In concluding, I wish once again, to remind Members to desist from making unsubstantiated allegations against fellow Members which only serve to lower the dignity of this House and cast aspersions on its membership.

The Member and, indeed, the House stands accordingly guided.

I thank you

We can move to the next Order. If Hon. Korir attends, he will be informed accordingly. If he is not there today, he can do that tomorrow or any other subsequent sitting.

## MESSAGES

### PASSAGE OF BILLS BY THE SENATE

*(Several Hon. Members stood up in their places)*

**Hon. Speaker:** Take your seats, Hon. Members.

*(Hon. Onyonka shook hands with Hon. Arati)*

Hon. Onyonka, I am telling people to take their seats but now you want to start shaking hands with everybody including Simba Arati, whom I can see you are always laughing around with.

Hon. Members, this is a Message from the Senate being Message No.3 of 2016.

Standing Order No.41 relating to Messages requires the Speaker to expeditiously report to the House any messages received from the Senate. In this regard, I wish to report that on Friday, 11<sup>th</sup> March, 2016, I received three Messages from the Senate regarding the passage of the following Bills:-

- (i) The Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014);
- (ii) The HIV and AIDS Prevention and Control (Amendment) Bill (Senate Bill No.4 of 2015);
- (iii) The County Industrial Development Bill (Senate Bill No.7 of 2014).

Hon. Members, these Bills were passed by the Senate on 1<sup>st</sup> March, 2016 with amendments. The Senate now seeks the concurrence of the National Assembly to the said Bills in accordance with Article 110 of the Constitution.

I am aware that the Clerk of the National Assembly has since circulated copies of the said Bills. After being read the First Time, pursuant to Standing Order No.143, the Bills will stand committed to the following Departmental Committees for consideration:-

- (i) The Public Appointments (County Assembly Approval) Bill (Senate Bill No.20 of 2014) will be committed to the Departmental Committee on Administration and National Security;
- (ii) The HIV and AIDS Prevention and Control (Amendment) Bill (Senate Bill No.4 of 2015) will be committed to the Departmental Committee on Health; and,
- (iii) The County Industrial Development Bill (Senate Bill No.7 of 2014) will be committed to the Departmental Committee on Finance, Planning and Trade.

The Committees are expected to submit a report before the Bills are considered by the House for Second Reading.

I also direct that before the Bills are scheduled for First Reading, the Liaison Committee which is now performing the roles of the Budget and Appropriations Committee, submits to the House its recommendations pursuant to Article 114 of the Constitution relating to money Bills.

I thank you.

## PETITION

### IRREGULAR GAZETTEMENT OF BONI/IJARA FOREST

**Hon. Abass:** Thank you, Hon. Speaker for giving me this opportunity. Allow me to congratulate the newest Member of this House---

**Hon. Speaker:** Present the Petition now. There will be an opportunity for you to do that or are you also a new Member?

**Hon. Abass:** I stand guided, Hon. Speaker.

I, the undersigned, on behalf of the residents of Ijara Constituency, draw the attention of the House to the following:-

THAT, the Ministry of Environment, Water and Natural Resource, through its Cabinet Secretary, gazetted Boni/Ijara Forest by declaring it a State forest vide Gazette Notice No.943 of 2016 dated 3<sup>rd</sup> February, 2016, and published on 19<sup>th</sup> February, 2016.

THAT, despite the Gazette Notice referring to the said forest as Makutani Forest, the description contained therein confirms that the forest under reference is actually Boni/Ijara Forest within Garissa County.

THAT, the said gazettelement was done without consultation of the people and the leaders of the affected region contrary to Article 10(2)(a) of the Constitution that provides for public participation in making and implementing public policy and in applying the law and Article 69(1)(d) that requires the State to encourage public participation in environmental management.

THAT, the land in question is actually community land that the local people have been using as grazing land for their cattle since time immemorial and hence any gazettelement exercise shall lock the community out of their pasture lands thereby greatly inconveniencing them and endangering their key source of livelihood and economic sustenance.

THAT, the sustained efforts to solve the issue and attain a workable solution to this concern have not been successful; and,

THAT, the matter in respect of which this Petition is made is not pending before any court of law or constitutional body.

Therefore, your humble Petitioners pray that the National Assembly through the Departmental Committee on Environment and Natural Resources:-

- (i) investigates the matter and compels the Ministry of Environment, Water and Natural Resource to revoke Gazette Notice No.943 of 2016; and,
- (ii) makes any other order and/or direction that it deems fit in the circumstances of the matter.

Allow me to say this, Hon. Speaker. There seems to be a deliberate policy by this particular Ministry to gazette grazing land in pastoral areas. This started last year with the gazette of the entire Tana River Constituency. The Member here can attest to that fact. The entire Bura Constituency was gazetted as a forest, and in this particular notice it is Garissa, Lamu and Turkana. Therefore, there is need for this particular Cabinet Secretary (CS) to follow the law regarding this particular issue. The rate at which she is declaring State forests, I am afraid that if this House does not stop her, she could even declare this Parliament, and particularly this Chamber, a State forest! That may make it out of bounds even for you.

Thank you.

**Hon Speaker:** The Petition is committed to the Departmental Committee on Environment and Natural Resources for its consideration. I just want to point out that all Committees are asked to abide by the timelines of 60 days and if for any reason or another, a Committee is unable to deliver a report within those 60 days, it must report to the House for extension of the periods within which to consider any Petition. I am saying this because I have seen several Petitions, some dating as far back as 2013, 2014 and 2015. The Committees concerned know themselves.

Hon. Amina Abdalla, do you want to comment on this Petition?

**Hon (Ms.)Abdalla:** Thank you, Hon. Speaker. I want to comment on this Petition because it is the third of its kind to come to our Committee and it seems to have the same issues and yet we accepted the prayers that were presented by Hon. Ali Wario on the gazette of Bura Forest Reserve. We did the same for Hon Dukicha on Wayu Forest. The Forest Act, 2005 requires that the process be started by the Ministry; that is the process of degazette or changing the boundaries of the same. So whereas I welcome this Petition, it is the third of its kind. The other two are two years old and even after the Committee ruled, it is not being adhered to. In fact, the prayers having been agreed to by this House have not made any difference.

**Hon. Speaker:** Maybe it is work for the Departmental Committee on Implementation. Before we proceed, allow me to recognize the following students and pupils from the following institutions in the Speaker's Gallery: Bright Star High School in Kasarani Constituency, Nairobi County; Longisa Boys High School in Bomet East Constituency, Bomet County; and in the Public Gallery, Kasarani Victory Academy in Ruaraka Constituency, Nairobi County.

They are welcome to observe proceeding of the National Assembly

Next Order!

**Hon. Speaker:** The Leader of the Majority Party, you have the Floor.

**Hon. A.B. Duale:** Hon. Speaker, before I lay the Papers, the Member for Cherengany, the great runner, is in the House and I do not think he can sit comfortably without following your

directions. He is sitting between the Member for Gem and the Member for Kiminini. Hon. Speaker, I want you to give direction.

**Hon. Speaker:** Hon. Wesley Korir, have you been told about the Communication from the Chair? Can you proceed to do as instructed?

**Hon. Korir:** Thank you, Hon. Speaker, for your indulgence. Following your Communication, I would like to withdraw what I said last week and apologise.

Thank you, Hon. Speaker.

**Hon. Speaker:** Everybody seems to agree that that suffices. However, in future, it is good to be careful with what you say, especially regarding your colleagues. You are a marathoner and so you can run faster than other members.

Proceed, the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday, 15<sup>th</sup> March, 2016:-

The 2015/2016 Supplementary Estimates I – Programme-based Budget of the National Government of Kenya for the year ending 30<sup>th</sup> June, 2016.

The 2015/2016 Supplementary Estimates I – Recurrent Expenditure for the year ending 30<sup>th</sup> June, 2016.

The 2015/2016 Supplementary Estimates I – Development Expenditure for the year ending 30<sup>th</sup> June, 2016.

Thank you, Hon. Speaker.

*(Hon. A. B. Duale laid the documents on the Table)*

**Hon. Speaker:** Hon. Members, I hope Hon. Moses Cheboi---

*(An Hon. Member interjected)*

The other Chamber is called “the Senate”. Hon. Cheboi, the First Chairperson of the Chairman’s Panel, in the absence of the Deputy Speaker who is away on official duties, must convene a meeting of the Liaison Committee urgently and begin considering the Supplementary Estimates and file a report not later than Tuesday, next week. People must acquire more responsibilities. I am also informed that the membership of the Liaison Committee faces challenges because it is comprised of Chairpersons of Committees.

As Chairpersons, you have no option but to attend those meetings because these estimates have some deadlines. As your calendar shows, the House will be proceeding on a short recess on Thursday, next week. So, you have to get through this so that we get the Supplementary Appropriations Bill. The Liaison Committee should also be ready to begin considering the Division of Revenue Bill and the County Allocation of Revenue Bill, when it comes from the Senate. You have your work cut out. That is how we are going to proceed because we must have a Committee to deal with these issues.

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

**Hon. Speaker:** What is your point of order, Hon. Midiwo?

*(Hon. (Ms.) Abdallah interjected)*

**Hon. Midiwo:** Hon. Speaker, protect me from Hon. Amina Abdallah. I thank you for guiding us. We have found ourselves in this quandary which she says I am the source. I have already ceded ground.

Hon. Speaker, having listened to many members, I request you Chair that even as the Liaison Committee proceeds in the manner that you have suggested, we retreat to a *Kamukunji* on Thursday and thrash out this matter so that we can have a substantive Budget and Appropriations Committee. That is if members agree. I know the Committee Chairs will obey you because they are your servants.

*(Hon. (Ms.) Abdallah interjected)*

Yes you are. He is the boss.

**Hon. Speaker:** Hon. Amina Abdallah, you are now almost on the verge of inviting Standing Order No.107 on gross disorderly on yourself.

**Hon. Midiwo:** Hon. Speaker, it will be nice to accord us a one hour *Kamukunji* just for that particular issue so that we can listen to the cries of the Chairs of Committees. This is because budget issues are also going to be in committees where Chairs will have to take charge. If we disagree, then we will proceed through your guidance. I request you, Hon. Speaker.

**Hon. Speaker:** Remember you resolved that you will be holding morning sittings on Thursdays. So, you will forgo your lunch on Thursday and do a one hour *Kamukunji*.

Hon. Westley Korir, is it also another area of your competence? Let us hear Hon. Korir.

**Hon. Korir:** Hon. Speaker, I am not going to talk about running and I am not going to run this time. However, because I have apologised on the Floor of the House, Hon. Jakoyo misled us, as Members of Parliament, to sign. He needs to apologise to this House and to these members for misleading this House about the Budget and Appropriations Committee. He needs to be man enough to do that.

**Hon. Speaker:** What? He said that you signed something. If you look at Article 99 of the Constitution, among other things, you will find that the qualifications of being a Member of Parliament are like moral turpitude and education standards. I believe everybody met those qualifications. Therefore, it is not fair for people to just sign documents.

On the other issue, of course, Hon. Midiwo is at liberty to raise any issue of concern to the members and it is up to the members to either agree or disagree with him. It looks like you agreed with him. Is it the feeling of the House?

**Hon. Members:** No.

**Hon. Speaker:** It is not the feeling of the House? There is no concurrence on that. Let us continue with the Liaison Committee. Hon. Cheboi will be informed that the responsibility is on him now to call for a meeting of the Liaison Committee to look at the Supplementary Estimates.

Hon. Members, you can discuss the issue of the *Kamukunji* or no *Kamukunji* in the House Business Committee. In any event, there is nothing wrong with having a meeting of that kind. You cannot say no to a proposal. You can have the *Kamukunji* and come and disagree with whatever is being proposed. So, there is no harm. It is still open to you to put your heads together. If you still feel that it is not necessary, we will keep looking for ways of moving forward.

Next Order!

**NOTICE OF MOTION****APPROVAL OF SUPPLEMENTARY ESTIMATES 1 OF 2016**

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

THAT, in accordance with the provisions of Article 223 of the Constitution of Kenya, this House approves the reduction of the approved withdrawal from the Consolidated Fund, a sum of Kenya Shillings Kshs41,015,599,827 representing the total net Estimates of the Recurrent and Development Expenditures of the national Government made up of the following:-

A sum not exceeding Kshs22,997,618,387 be granted from the Consolidated Fund to meet expenditure during the year ending 30<sup>th</sup> June, 2016 in respect of Supplementary Estimates 1 of 2015/2016 Financial Year (Recurrent) having regard to the proposed reduction of Ksh14,846,318,795 therein appearing; and a sum not exceeding Kshs1,064,903,308 be granted from the Consolidated Fund to meet expenditure during the year ending 30<sup>th</sup> June, 2016 in respect of Supplementary Estimates 1 of 2015/2016 Financial Year (Development) having regard to the proposed reduction of Ksh60,231,802,727 therein appearing.

Hon. Speaker, you have made a determination that this Motion has the effect of a Money Bill in accordance with Article 114 of the Constitution.

Thank you.

**Hon. Speaker:** Yes, Hon. Midiwo.

**NOTICE OF MOTION FOR ADJOURNMENT  
UNDER STANDING ORDER NO.33****INSECURITY ON MIGINGO ISLAND**

**Hon. Midiwo:** Hon. Speaker, I rise pursuant to Standing Order No.33 to seek leave of the House to move that it adjourns to discuss a definite matter of urgent national importance. This is the matter of Migingo Island.

Thank you.

*(Several Hon. Members stood up in their places)*

**Hon. Speaker:** Order, Members! Hon. Midiwo has the requisite numbers. The House will rise at 5.30 p.m. to discuss the matter of Migingo Island.

Next Order!

**MOTION****ADOPTION OF REPORT ON MEDIATED VERSION  
OF THE MINING BILL, 2014**



THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Mining Bill, 2014 laid on the Table of the House on Tuesday, 8th March, 2016, and approves the mediated version of the Mining Bill (National Assembly Bill No.9 of 2014).

*(Hon. (Ms.) Abdalla on 10.3.2016)*

*(Resumption of Debate interrupted on 10.3.2016)*

**Hon. Speaker:** Order, Hon. Members! Debate on this Motion was concluded. What remained was to put the Question.

*(Question put and agreed to)*

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Hon. Kajwang') took the Chair]*

#### THE PROTECTION OF THE TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS BILL

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order, Members! This is the Committee of the whole House convened to consider the Protection of the Traditional Knowledge and Traditional Cultural Expressions Bill, No.48 of 2015.

Let us proceed. Who is carrying this Bill? The Chairman of the Departmental Committee on Justice and Legal Affairs, you have the Floor.

**Hon. Chepkong'a:** Thank you. Of course, you know it was your Committee which was tasked with the responsibility of scrutinising this Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang'): What has the Departmental Committee on Justice and Legal Affairs have to do with the Protection of the Traditional Knowledge and Traditional Cultural Expressions Bill?

#### *Clause 2*

**Hon. Chepkong'a:** It has something to do with indigenous knowledge, one that is very traditional.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 2 of the Bill be amended—

(a) by deleting the definition of the term “artistic works”;

(b) by deleting paragraph (d) appearing in the definition of “traditional cultural expressions” and substituting therefor the following new paragraph—

“(d) tangible expressions, including productions of art, drawings, etchings, lithographs, engravings, prints, photographs, designs, paintings, including body-painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewellery, basketry, pictorial woven tissues, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments, maps, plans, diagrams architectural buildings, architectural models; and architectural forms;”

As you know, when this matter came before the Committee, it was felt that Clause 2 be amended by deleting the word “artistic works” because it does not appear anywhere in the Bill.

So, its interpretation does not make sense. Paragraph (d) appearing in the definition of “traditional cultural expressions” should be amended by inserting the new paragraph as---

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order! Where are we? Are we on Clause 2? I thought we are in Clause 3. So, you are addressing yourself to Clause 2? Where is paragraph (d)? Address yourself to Clause 3.

*Clause 3*

**Hon. Chepkong'a:** Thank you. The first Clause is 2. I forgot that this comes at the end. So, we are in Clause 3.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT Clause 3 of the Bill be amended by inserting the words “promote positive traditional culture that is not repugnant to justice and morality and” immediately after the words “cultural expressions shall”

That is intended to ensure that the Bill promotes traditional knowledge and traditional cultural expressions that is not repugnant to our sense of justice and morality. That is what was missing in the text of Clause 3.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Order, Members! I can see many requests but these could have been as a result of the debates that were before us. Can I have the Sergeant-at-Arms close that door? Members, if you are retreating please do not shake so many people's hands. Order, the Member for Tetu! Hon. Amina Abdalla, you are the next person that I will recognise to speak. However, I was going to ask those of you who are requesting to make contributions to this clause to put their interventions right now so that I am able to see you right away. I have seen that the veteran Member, Hon. Amina Abdalla has just withdrawn her request for intervention. So, let us hear from the Member for Shinyalu.

**Hon. Anami:** Hon. Temporary Deputy Chairman, this Bill is supposed to be one of those Bills foreseen by the Constitution and is alluded to in Article 11. In this Article the Constitution

recognises culture as the foundation of the nation and as the cumulative civilisation of the Kenyan people and nation. Sub-article 2(a) states:-

“The State shall-

- (a) promote all forms of national and cultural expressions through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;”

It is not talking about traditional expressions but national and cultural expressions.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Which article are you looking at?

**Hon. Anami:** Article 11.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Not Article 10? So which Sub-article is this?

**Hon. Anami:** Sub-section 2(a) which is talking about promotion of all forms of national and cultural expression. In this respect, the Constitution foresees our cultural diversity.

**The Temporary Deputy Chairman** (Hon. Kajwang'): What is the point of your argument?

**Hon. Anami:** The point of my argument is the usage of the term “traditional,” because it reduces this scope of cultural expressions to only traditions and yet traditions fall in the category of intangible culture. It means that we leave out the whole scope of tangible culture and we also leave out the whole scope of human creativity and cultural diversity which is the import of this article.

Whereas I am supporting the Committee’s proposal that we use the words “promote positive traditional culture”, especially the spirit of it, I would like to refer to Article 10 which already takes care of that under “sustainable development”. The substantive meaning of “sustainable development” takes care of repugnancy. It cannot be repugnant. If Article 10 refers to sustainable development, then we do not need to worry about promoting “positive”, because obviously that must be positive. If it is not positive it will not be sustainable. So, that is taken care of by the Constitution. However, it is harmless the way it is if it means just enlarging the meaning to the ordinary public.

**The Temporary Deputy Chairman** (Hon. Kajwang'): The Member for Shinyalu, I have a lot of respect for you and the contributions you are making. However, I am trying to catch up to understand the issue that you are raising because I am addressing myself to Clause 3. So, your point should be whether you are in objection or concurrence with that amendment. The Committee Chair is proposing to insert some words in Clause 3. Do I understand you to be saying that by including those words, the Bill will be in contravention of or inconsistent with the Constitution? If so, would you, please, come out clearly and make Members understand in what way the Bill will be inconsistent with the Constitution, if that is your point of debate? Remember you are not debating. Remember that this matter has come before the Assembly. So, hit it directly so that Members are able to follow your point.

**Hon. Anami:** Thank you, Hon. Temporary Deputy Chairman. I object to the proposal by the Chair and even the initial proposal, especially with the usage of the term “traditional”.

**The Temporary Deputy Chairman** (Hon. Kajwang'): You have not explained the unconstitutionality of that addition so that we understand your objection.

**Hon. Anami:** Thank you, Hon. Temporary Deputy Chairman. The unconstitutionality of this term is expressed under Article 11 of the Constitution where there is no reference to the

word “traditional”. However, reference is made to the word “indigenous”. So, I would rather we take “indigenous knowledge” rather than “traditional knowledge”.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Where is “indigenous knowledge”? I do not see it under Article 11 of the Constitution?

**Hon. Anami:** Article 11(2)(b) of the Constitution recognises the role of science and indigenous technologies in the development of the nation and promotion of intellectual property rights of the people of Kenya.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Why do you choose paragraph (b)? Why can you not look at paragraph (a)?

**Hon. Anami:** Hon. Temporary Deputy Chairman, I looked at paragraph (a) as well. My concern is the use of the word “traditional” because it is limited to celebrations.

**The Temporary Deputy Chairman** (Hon. Kajwang’): All right. I hope Members are following. I had requested Members who wish to speak to this amendment to press their intervention buttons.

The Member for Rarieda, you have the Floor.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I wish to request my friend, Hon. Chepkong’a, to withdraw this amendment. I do not see what this amendment adds to this clause. When you say “promote positive traditional culture and not repugnant to justice and morality” you are running into an unnecessary legal conundrum. How do you, for example, define “morality”? I am seeing a trend in this country where we are trying to be moral policemen and policewomen and we are trying to go after something that is completely indefinite. Where my good friend, Hon. Omulele, comes from, it is very normal for people to have breakfast with bare chests? Is that immoral? Where I come from, it is very normal to walk bare-chested in the village? How do you define “traditional”?

I request Hon. Chepkong’a to withdraw this amendment. I do not even know how you can enforce it. What is moral in one culture may be immoral in another culture. Let us make laws which apply to all parts of the country. When he says “promote positive tradition”, what is positive traditional culture? What is morality? We have to define what “morality” and “traditional” are. The way I know this country, we are running into unnecessary legal conundrum and this amendment is not necessary. I urge all Members that we remove this amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, the Member for Rarieda. I hear you. Your point is that this amendment leads to an ambiguity in law. It comes out clearly than the unconstitutionality argument which I heard earlier but I could not quite follow.

Let us have the Member for Ndhiwa.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairman. I would like to agree with Hon. Anami, the Member for Shinyalu. It is just that his argument - trying to tie this to constitutionality - does not add up. If you look at Clause 3 in total and you try to fix what the Chair of the Departmental Committee on Justice and Legal Affairs is trying to add, you will find that it does not add value. It sounds constitutionally romantic to use the words “not repugnant to justice and morality”, but in this instance, this amendment is misplaced. I would like to oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Sorry. Did you say it sounds romantic?

**Hon. Oyugi:** It sounds very nice, Hon. Temporary Deputy Chairman. The expression “promote positive traditional culture and not repugnant to justice and morality” sounds very nice, but in this context it is misplaced. I oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang'): The Member for Turkana Central, you have the Floor.

**Hon. Nakara:** Thank you, Hon. Temporary Deputy Chairman. I support this amendment because it is educative. When we have positive national culture, we educate our youth on the positive side that is acceptable globally. I support the amendment.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Yes, the Member for Luanda.

**Hon. Omulele:** Thank you, Hon. Temporary Deputy Chairman. My brother, Hon. (Eng.) Gumbo has alluded to the fact that the people of Luanda love to walk around bare-chested. I would like to dispute that because it is on the HANSARD.

Anyway, the most important thing is that when the laws of this country were imported from Britain around 1957, one of the things set out in those laws was that the Magistrate's Courts would apply African and traditional customary laws as far as those laws were not repugnant to justice and morality. One of the biggest conundrums in the courts was: Whose morality and whose justice? This is the same thing we are importing into this law. It is unnecessary.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Yes, the Member for Marakwet East.

**Hon. Bowen:** Thank you, Hon. Temporary Deputy Chairman. I support this amendment only if Hon. Chepkong'a can also define the word "morality" under the interpretation clause. It is a good amendment because we have seen some behaviour coming up. For example, the other day we heard something called "Project X Colour Festivals". Those are some of the things which this amendment is going to address. It is very important that definitions of words are given under the interpretation clause. If such words are defined well, the amendment is good.

**The Temporary Deputy Chairman** (Hon. Kajwang'): The Member for Ainabkoi, you have the Floor.

**Hon. Chepkong'a:** I thank you, Hon. Temporary Deputy Chairman. I have a lot of sympathies for my good friends. I know Hon. Anami has been the Director of Culture for 15 years and my very good friend, Hon. Gumbo, is a good technologist in terms of electrical work. But the terms we are importing into this amendment are everyday words that Hon. Omulele knows are used by courts. A matter should not be repugnant to morality and justice. These are precedents in court. You can do nothing about them. You can even refuse to legislate here, but you cannot remove it from the precedents of court except if you are going to legislate against it.

Secondly, with regard to the question of traditional knowledge, I have a lot of sympathy for Hon. Anami. I know the Constitution uses the word "indigenous" but it also uses the word "traditional" in another part. I have, in fact, agreed with him that the title of the Bill is tautological. There is repetition of the words "traditional" and "tradition". We can have only one of the words and not both. I agreed with him that when we get to the title, I will move an amendment with respect to that.

With regard to the proposal we have made, this is an amendment that the Committee considered well and found that it is the best way of dealing with cultures. We know cultures that are repugnant. I come from western Kenya. Some of our neighbours, some years before, used to eat people. Those are cultures that are repugnant to justice and morality. So, you cannot say that because it is your culture to eat people---

**Hon. Wakhungu:** On a point of order, Hon. Temporary Deputy Chairman.

**Hon. Chepkong'a:** Hon. Chris Wamalwa knows that the people who eat human beings do not live in Kenya but in Uganda.

**The Temporary Deputy Chairman** (Hon. Kajwang'): I am sure the Member for Kiminini has no reference to the great people he represents.

**Hon. Chepkong'a:** No, he does not.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Should you rise to defend them, you will just be confirming that he could have referred to your people.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, before you give him an opportunity, let me clarify. I said he knows the people who are his neighbours, who do not live in this country, but their sense of morality and culture is repugnant to ours and we will not accept those traditions to filter into this country. So, I urge that we adopt the amendment in the manner it is because it is a precedent which has already been set in court. There is nothing immoral or unconstitutional about it. It just enhances the text. Of course, I do not agree with Hon. Neto's claim, where he used a word that starts with letter "s".

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Before we get into other business, let us hear the Member for Kwanza, very quickly. We want to pass this because there is no hurdle here.

**Hon. F.K. Wanyonyi:** Hon. Speaker, I tend to agree with the Member for Shinyalu.

Bwana Chairman, may I make a quotation in Kiswahili? It says "*mkosa mila ni mtumwa*."

**The Temporary Deputy Chairman** (Hon. Kajwang'): You need to translate that quotation because you were speaking in English.

**Hon. F.K. Wanyonyi:** All I am saying is that---

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, translate the Kiswahili quotation.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairman, we are all Kenyans and we understand Kiswahili.

**The Temporary Deputy Chairman** (Hon. Kajwang'): No! It is about conducting business in an orderly manner. According to our Standing Orders, you need to translate when you digress into another language.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Chairman, the quotation translates to "He who is not able to follow traditions is a slave."

**The Temporary Deputy Chairman** (Hon. Kajwang'): Proceed.

**Hon. F.K. Wanyonyi:** All I am saying is that we should leave the Bill as it is. Introducing what the Departmental Committee is trying to introduce is not proper. I want to go by the original Bill as it is under Clause 3. We should maintain it rather than change it. Changing it would imply that we should be forced to change our culture. Our culture should die gradually rather than forcing ourselves into changing it.

I maintain that it is not necessary to have this clause changed.

*(Question, that the words to be inserted be inserted,  
put and negated)*

*(Clause 3 agreed to)*

*(Clause 4 agreed to)*

*Clause 5*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 5 of the Bill be amended in sub-clause (1)—

(a) by inserting the words “at the Kenya Copyright Board” immediately after the words “maintenance of the Repository.”

(b) by deleting the words “and conservation” appearing in paragraph (b);

(c) by deleting paragraph (d).

In part (a) of this amendment, we are seeking to insert the words “at the Kenya Copyright Board” immediately after the words “maintenance of the Repository”. In part (b), we are deleting the words “and conservation” appearing in paragraph (b) which, of course, was an unnecessary addition. It makes the sentence tautological. In part (c) we are deleting paragraph (d), which we consider unnecessary. It seeks to broaden the term.

*(Question of amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Shinyalu, take the Floor.

**Hon. Anami:** Hon. Temporary Deputy Chairman, the Kenya Copyright Board is established by an Act of Parliament. I do not understand why we should give such discretionary responsibilities to the Kenya Copyright Board instead of the Cabinet Secretary (CS) responsible for culture and national heritage for the time being.

I oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Are you on a point of order, the Member for Kiminini?

**Hon. Wakhungu:** Yes, Hon. Temporary Deputy Chairman. It is important that for any amendment that comes here, justification is given. I listened very carefully as Hon. Chepkong'a moved these amendments. He mentioned that he is deleting paragraph (d) because it is unnecessary. However, he did not explain the import of the amendments proposed under parts (a) and (b). We did not hear anything. Is he in order to only give justification for part (c) of the amendment and assume that he had given justification for all parts of the amendment?

**The Temporary Deputy Chairman** (Hon. Kajwang'): The Member for Kiminini, that is not a point of order. A point of order, as stipulated under Standing Order No.107, should be something which creates disorder in the House.

**Hon. Wakhungu:** Not necessarily, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is neither misleading nor causing disorder. Yours is on unsatisfactory debate, which is all right. We will come to the Chairman of the Departmental Committee to explain himself but let us, first, hear Hon. Sunjeev Kaur Birdi.

**Hon. (Ms.) Sunjeev:** Thank you, Hon. Temporary Deputy Chairman. Considering Clause 5, I oppose the deletion of the words “and conservation.” In my opinion, it is very

important for culture to be conserved in the long term. Promotion goes along with conservation. It is very important that culture and tradition is conserved.

I oppose the deletion of the words “and conservation.”

**The Temporary Deputy Chairman** (Hon. Kajwang): Your objection is on part (b) of the amendment?

**Hon. (Ms.) Sunjeev:** Yes. That is right.

**The Temporary Deputy Chairman** (Hon. Kajwang): Many Members have spoken on this amendment. Do you want to repeat yourselves?

Proceed, the Member for Ndhiwa?

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Chairman. I would like to support the Chairman of the Departmental Committee on the fact that the repository should lie with the Kenya Copyright Board. That is in order. However, I oppose part (b) of the amendment and I agree with Hon. Sunjeev that conservation and promotion go together. Deletion of the words “and conservation”, as proposed in part (b) of the amendment, is uncalled for.

Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang): The last one on this amendment is the Member for Kakamega.

**Hon. (Ms.) Amolo:** Thank you, Hon. Temporary Deputy Chairman.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Kajwang): The Member for Mbita, I realise that you are raising your voice for my attention but can I hear you after I have heard the Member for Kakamega.

**Hon. (Ms.) Amolo:** Thank you, Hon. Temporary Deputy Chairman. I stand to oppose the deletion of paragraph (d) because we have not been given any justification for deleting it. It is very important for us to know why we should remove paragraph (d). As it is, I support it.

I oppose the deletion of paragraph (d).

**The Temporary Deputy Chairman** (Hon. Kajwang): The Departmental Committee Chairman, can you supply more information about paragraph (d)? Hon. Members would like to have more justification for the proposed deletions.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. If you look at the interpretation of a “repository”, you will see that it means traditional knowledge and digital repository established---

**The Temporary Deputy Chairman** (Hon. Kajwang): The Member for Kiminini, I have done this because you requested.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, “repository” means the traditional knowledge and digital repository established and maintained by the national Government under paragraph (a)(iii). The idea is to make it clear who in the national Government will be responsible for the maintenance of that repository. It has to be a certain body or agency within the Government.

**The Temporary Deputy Chairman** (Hon. Kajwang): What about paragraph (d)?

**Hon. Chepkong'a:** With regard to paragraph (b), we propose that the words “and conservation” be deleted so that we maintain “promotion”, the reason being that the national Government should only be responsible for promotion of traditional knowledge and cultural expressions. It should not be the responsibility of the Government to conserve cultural expressions and traditions. It is not the responsibility of the Government to conserve but to



promote. My very good friend, the Director of Social Services for 15 years, knows that he used to promote and not conserve. For 15 years, he was only promoting. It is in the spirit of ensuring that the Government does what is right.

Then with regard to 5(d) of the Bill, it is proposed that it be deleted because it contradicts the purpose of the Bill, which is to protect the information and data relating to traditional knowledge and cultural expression. Therefore, we decided it was not necessary.

Thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right. With that information, Member for Mbita, was that an intervention?

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, Hon. Temporary Deputy Chairman. I feel like a Johnny-come-lately, in relation to this Bill. I had hoped to contribute when we were doing the Second Reading. I think we are doing a lot of disservice to this Bill. We do not even understand its contents. I am saying that very respectfully. I oppose the deletion of the word "conservation". If you look at the Bill, the issue of conservation is at the heart of it. The issue of culture is a very minor aspect.

I am speaking as one of the drafters of this Constitution and, coincidentally, my thesis was on this issue. What we are speaking to here--- I know when we were doing the Second Reading, the House did not have time. So, I was not able to speak to it. What we are trying to conserve is knowledge on, for instance, medicinal values on our plants. That is a role of the national Government. If, for instance, an international pharmaceutical company comes to this country and takes *Mwarubaini* and patents it outside the country and then they come back and sell it to Kenya, the country cannot be told that, that is something to leave with a villager. That is a resource which is as important as gold. It is like telling Kenyans that gold will be preserved.

**The Temporary Deputy Chairman** (Hon. Kajwang'): As an intellectual property.

**Hon. (Ms.) Odhiambo-Mabona:** Yes, as an intellectual property. That cannot be a preserve of ordinary folk in the village. I am sure - and I must say this with a lot of respect - that I highly suspect we will have to relook at many Bills that we have done. This is one of the Bills we have done a lot of disservice. Having said that, I oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Just a minute, Member for Marakwet East.

**Hon. Bowen:** Thank you, Hon. Temporary Deputy Chairman. I want to support the sentiments by hon. Milly. You cannot talk about culture without talking about conservation. On the issue of Kenya Copyright Board (KECOBO), apart from being included in this Bill, we have not seen much about it. We have so many musicians and other Kenyans who have come up with their own knowledge and skills and they are not protected. We have so many musicians who have lost their livelihood because of copyright issues. They do not have any protection from that Board. If, again, KECOBO is re-routed here, we need to give them prosecution powers.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Now that there are many of you who oppose or concur, we want to go paragraph by paragraph.

**Hon. Chepkong'a:** On a point of order.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Are you on a point of order, Member for Anaibkhai? Make it an issue of order!

**Hon. Chepkong'a:** On a point of order, Hon. Temporary Deputy Chairman. It is important when Members contribute they also take into account the Constitution. It is unfair when a Committee has considered the Bill and the Constitution and then Members here wish

away what it considered. We do not just sit in an idle manner. The Constitution is very clear in Article 11(2)(c). It says:-

“(2) The State shall-

(c) promote the intellectual property rights of the people of Kenya.”

It is not “conserve”. I am not saying things that we have not considered. We are looking at what the Constitution states. I like what hon. Millie has just said - that she is a drafter of this Constitution. If you read the Constitution, there is nowhere it says “the State shall conserve”. It says “the State shall promote”. Those are the constitutional provisions that are contained in this Constitution.

**The Temporary Deputy Chairman** (Hon. Kajwang'): All right. Thank you. You were supplying more information. It turned out not to be a point of order though.

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

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is a point of order on what?

**Hon. Wakhungu**: On a point of order, Hon. Temporary Deputy Chairman. I require clarification because we are talking about KECOBO and I am aware of Kenya Industrial Property Institute (KIPI), which is there. It is the one which is responsible for patency protection. We need clarification from the Chair because we are mixing the two of them and they are both Government agencies. Which one should be given preference as far as the matter is concerned? When you look at the import of this, it looks like KIPI is more appropriate as opposed to KECOBO. I need a further clarification on the mix-up of those two agencies.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Thank you very much. Before we proceed with the discussion, let me recognize the young people who are in the Speaker's Gallery. There is Christ the King High School – Kemeliet from Moiben Constituency, Uasin Gishu Country. They may have left the Chamber. Tumu Tumu Girls High School, could you just rise where you are? Those are the beautiful girls from that school in Mathira Constituency, Nyeri County. You are welcome.

*(Applause)*

Members, you see, there are two things here. If the Committee looked at a Bill, I suppose there is a Committee Report which is accessible to Members and they should have had an opportunity to interact with it somewhere. It is in the Table Office. So, when I hear Members discussing this Bill from a point of no information, I can only tell that either they did not do their research properly, or it was a little bit too technical for them. I have to move on and the way to do so is by putting the Question. Member for Luanda, what is it?

**Hon. Omulele**: Thank you, Hon. Temporary Deputy Chairman. I have listened to my brother, hon. Chris, speaking to the issue of KIPI and KECOBO. The matters which are preserved in KIPI are intellectual property matters that accrue to individuals. They accrue by the fact that they are formalized and are applied and preserved in a formal format. The preservation there only confers private rights to people who then become intellectual property owners, either by trade mark, industrial design or patent. Those are private rights.

Under KECOBO, knowledge and intellectual property that accrue as a matter of course are preserved here. This is the right body that should be contemplated under this Act.

**The Temporary Deputy Chairman** (Hon. Kajwang'): I am sure Member for Luanda is addressing you from a point of authority, having served in the legislative chambers of the Attorney-General related to copyrights and intellectual property for quite sometime. You would rather understand him as a man of authority.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Question, that the words to be left out  
be left out, put and negatived)*

*(Clause 5 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): I will give the Member for Rarieda an opportunity on a point of order.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, this is something that I have noticed in this House for a long time. We introduce sub-clauses to clauses that have one clause. By giving the impression that there is a sub-clause (1), one would expect that there is also a sub-clause (2). But Clause 5 is a single clause with no sub-clauses. You also find the same in some Acts of Parliament.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Rarieda, when you look at the Vellum copy, the Legislative Drafting Department corrects it by---

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, I raised this matter in the 10<sup>th</sup> Parliament. I raised the same issue with regard to the National Construction Authority Act which also has clauses that have one sub-clause.

**The Temporary Deputy Chairman** (Hon. Kajwang'): That is taken with a lot of faith. The technical people that deal with this Bill will take that into consideration. Thank you for bringing it to our attention.

*(Clause 6 agreed to)*

#### *Clause 7*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 7 of the Bill be amended in sub-clause (6) by deleting the words "national government" and substituting therefor the words "Kenya Copyright Board"

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 7 as amended agreed to)*

*Clause 8*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 8 of the Bill be amended in sub-clause (3) by inserting the words “in consultation with the relevant county government” immediately after the words “national government shall.”

The Constitution provides that the protection of intellectual property rights is an obligation of the national Government under Part 1 and Section 12 of the Fourth Schedule. However, the Fourth Schedule of the Constitution also devolves certain aspects of culture to county governments, specifically cultural activities, facilities and museums as contained in Parts 2 and 4. It is necessary that the county governments be consulted.

*(Question of the amendment proposed)*

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman. I do not agree with the Chair. I oppose this amendment. This has been an issue before. I wish instead of it being “in consultation with”, it should instead have been “in consultation and concurrence”. Consultation can just mean informing and not necessarily agreeing. The word “consultation” is misleading. Unless the Chairman amends it to read “consultation and concurrence”, leaving it in those terms does not mean the same.

I oppose the amendment unless we agree to improve on it so that it becomes “consultation and concurrence”.

**The Temporary Deputy Chairman** (Hon. Kajwang'): What do you do when there is no concurrence? What mechanisms would you apply when there is no concurrence?

**Hon. Wakhungu:** You move on. If there is no concurrence, you can move on at the expense of the county government.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Are you not creating a dispute that, that legislation should solve rather than create?

**Hon. Wakhungu:** Pardon?

**The Temporary Deputy Chairman** (Hon. Kajwang'): If, for example, there is no concurrence, would you not be creating a problem that should be resolved by the same legislation?

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, if concurrence is there, it would put in place a framework of negotiation as opposed to dictatorship when we just leave it as “consultation”.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Budalang'i, are you not in the Chamber? Let us have the Member for Kaiti.

**Hon. Makenga:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment by the Chair of the Committee. With consultation, there has to be some concurrence. When there are consultations between two parties, there has to be some “fruit” or outcome in terms of the parties concurring or not.

**The Temporary Deputy Chairman** (Hon. Kajwang'): That is okay. Members, you have had this information. If you want other words to be added to the amendment, they should come by way of further amendments, which should be on the Order Paper. However, urging that certain words be added to the amendment on the Floor of the House when you have had this information puts us in a position of not knowing what to do with your suggestions.

**Hon. Makenga:** I support the amendment by the Committee.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kitui South.

**Hon. (Ms.) R. K. Nyamai:** Thank you, Hon. Temporary Deputy Chairman. I support the amendment by the Chairperson that there should be consultations with the relevant county governments. I oppose the insertion of a new word because this may create more barriers in the implementation of the law.

I support the Chair's amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Shall I put the Question now? Let us have the Member for Westlands.

**Hon. Wetangula:** Hon. Temporary Deputy Chairman, I support the amendment by the Chair. Consultation with the county government in the new constitutional dispensation is just because the county government plays a certain role in the Constitution. Addition of those other words will just complicate the Bill.

I support the amendment.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 8 as amended agreed to)*

*(Clause 9 agreed to)*

#### *Clause 10*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 10 of the Bill be amended in sub-clause (3) by deleting the words "which shall provide for such matters as the Cabinet Secretary may prescribe" and substituting therefor the words "prescribing the procedures for the authorization of the exploitation of their traditional knowledge".

This is legal. It is a requirement that, if you prescribe procedures that are in the same category as regulations, they must be brought to this House to ensure that they are in consonance with the main Act.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Narok North.

**Hon. ole Kenta:** Hon. Temporary Deputy Chairman, I wanted to contribute to something else.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Thank you. Member for Kanduyi.

**Hon. Wamunyinyi:** Thank you, Hon. Temporary Deputy Chairman. This is a fairly straight-forward amendment. If it seeks to take away the aspect of the Cabinet Secretary (CS), then it makes it very clear, removes ambiguity and provides clear procedures to be followed. I support the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Rarieda.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairman, this amendment is good. I have seen a tendency in the laws that we have been making lately of trying to give CSs too many powers when, in effect, it is not in keeping with the spirit of the new Constitution. By having “prescribing the procedures for the authorization of the exploitation of their traditional knowledge” and deleting “which shall provide for such matters as the Cabinet Secretary may prescribe”, we are making the process more consultative. I, therefore, support.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 10 as amended agreed to)*

*(Clauses 11, 12, 13, 14, 15, 16 and 17 agreed to)*

#### *Clause 18*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 18 of the Bill be amended—

(a) in sub-clause (4) by inserting the words “in consultation with county governments” immediately after the words “The national government.”

(b) in sub-clause (6) by inserting the words “in consultation with county governments” immediately after the words “The Cabinet Secretary.”

(c) in sub-clause (7) by inserting the words “in consultation with county governments” immediately after the words “The Cabinet Secretary.”

Hon. Temporary Deputy Chairman, we have already made an amendment which requires that the national Government consults with the county government. For clarity, the courts already held that consultation means that there must be agreement. You saw that in the Grand Coalition Government. The President was required to agree with the Prime Minister. The words used “to consult the Prime Minister” were read out by the court to mean that there must be concurrence agreement between the two principals. That is the legal interpretation as held by the court.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kaiti.

**Hon. Makenga:** Hon. Temporary Deputy Chairman, I support the amendment proposed by the Chairman of the Departmental Committee on Justice and Legal Affairs.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kakamega.

**Hon. (Ms.) Amolo:** Hon. Temporary Deputy Chairman, I support the amendment proposed by the Chairman of the Departmental Committee on Justice and Legal Affairs.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Mavoko.

**Hon. King'ola:** Hon. Temporary Deputy Chairman, given that most functions like heritage and culture are taken care of in the Traditional Knowledge and Cultural Expressions Bill, I support the proposed amendment by the Chairman of the Committee.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kaloleni.

**Hon. Chea:** Hon. Temporary Deputy Chairman, I support the proposed amendment because it seeks to promote consultations. Secondly, with consultations, we are likely to sort out many issues. We will not be taking matters to court all the time.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Shinyalu.

**Hon. Anami:** Hon. Temporary Deputy Chairman, I support consultations, but we should recognise that we have other intermediary stakeholders who may come in like the Music Copyright Society of Kenya (MCSK) and other collecting societies. We should also be clear whether it is the CS or MCSK who will be consulting with the county governments. That is not clear. Otherwise, I support the whole principle of consultations.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 18 as amended agreed to)*

*(Clauses 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 agreed to)*

*(Clauses 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 agreed to)*

*(Clauses 41, 42, 43 and 44 agreed to)*

## *Clause 2*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of the term “artistic works”;

(b) by deleting Paragraph (d) appearing in the definition of “traditional cultural expressions” and substituting therefor the following new paragraph—

“(d) tangible expressions, including productions of art, drawings, etchings, lithographs, engravings, prints, photographs, designs, paintings, including body-painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewellery, basketry, pictorial woven tissues, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments, maps, plans, diagrams architectural buildings, architectural models; and architectural forms;”

We are seeking to delete the words “artistic works” because it does not exist anywhere in the Bill and yet, it is defined. It is, therefore, obsolete.

With regard to Paragraph (d) in the definition of “traditional cultural expressions” we are seeking that it is amended to include the new paragraph because it was missed out.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Turkana Central.

**Hon. Nakara:** I support, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Westlands.

**Hon. Wetangula:** Hon. Temporary Deputy Chairman, I wanted to contribute to the earlier clause and not on this one.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kiminini.

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, we were just consulting here because the amendments by Hon. Chepkong'a are not in the Order Paper. We are finding it difficult to follow through.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Are we looking at Page 160?

**Hon. Wakhungu:** The amendments are up to Clause 18.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Luanda.

**Hon. Omulele:** I support the proposed amendment because it creates order in the flow of the whole Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kanduyi.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Chairman, I was wondering where this amendment is in the Order Paper because you realize I came in late as I was involved elsewhere on important national duties. I support the proposed amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Nominated Member Sunjeev Birdi.

**Hon. (Ms.) Sunjeev:** Hon. Temporary Deputy Chairman, I do not support the deletion. The Chairman of the Departmental Committee on Justice and Legal Affairs has proposed that the definition of the term "artistic works" should be deleted because it is unconstitutional. But in my opinion, artistic works bring in a modern element into this Bill. If we keep the modern artistic values into this Bill, then it will look into the modern aspects which are important for the future. I oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Mwingi West.

**Hon. Kitungi:** Thank you, Hon. Temporary Deputy Chairman. I support the proposed amendment by the Chairman of the Departmental Committee on Justice and Legal Affairs.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Kaiti.

**Hon. Makenga:** Hon. Temporary Deputy Chairman, I support the amendment as proposed by the Chairman of the Departmental Committee on Justice and Legal Affairs. It is clear because the insertion of the words "traditional cultural expressions" was missing out in the Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Let us have the Member for Kitui.

**Hon. (Ms.) Mwendwa:** Hon. Temporary Deputy Chairman, I support the amendment based on the justification that has been given by the Committee Chair, that the words "artistic works" do not feature anywhere in the Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang'): I beg your pardon.

**Hon. (Ms.) Mwendwa:** I support the amendment based on the justification that has been given by the Committee Chair that the words "artistic works" do not feature in the Bill. So, that means that they should be deleted.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Shinyalu.



**Hon. Anami:** Hon. Temporary Deputy Chairman, we have a raft of artistic works listed in the substitution, only that they have not found their place anywhere in the Bill. I suspect it is because of this business of “cut and paste”. That is why we really needed to look at this Bill carefully at the drafting time. This is a “cut and paste” business which we should not entertain. It is just embarrassing us. So, we need to find out where it came from. Where did those artistic works come from?

**The Temporary Deputy Chairman** (Hon. Kajwang'): I have no problem with the expression “cut and paste” if it means copied. However, if there is an insinuation that the Assembly is guilty of plagiarism, then I may want to ask the Member for Shinyalu if he is in order.

**Hon. Anami:** That can only be found in the motive of the person who brought the terminology here in this text. We cannot tell whether he or she was copying or plagiarising.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Shinyalu, I am serious about that because this Bill has travelled through all the stages and we now have it here. It belongs to the National Assembly. It is out of the hands of whoever sponsored it. It is now in our hands. So, I am just worried that your reference would, therefore, insinuate or impute improper motive on the part of the National Assembly. That is all I am careful about – that the National Assembly is an agent of plagiarism.

**Hon. Anami:** Hon. Temporary Deputy Chairman, in good faith, I want to imagine that it was copying because even in copying, you can cut and paste.

**The Temporary Deputy Chairman** (Hon. Kajwang'): I will drop that. Are you through with your contribution?

**Hon. Anami:** I wanted to suggest that we remove the words “artistic works” because they do not apply.

**The Temporary Deputy Chairman** (Hon. Kajwang'): So, are you in support of it?

**Hon. Anami:** Yes.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 2 as amended agreed to)*

*Title*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Chair, do you have an amendment to this?

**Hon. Chepkong'a:** Yes, I have a Floor amendment. Hon. Temporary Deputy Chairman. I beg to move:-

THAT, the title be amended by deleting the second “traditional” so that it reads: “The Protection of Traditional Knowledge and Cultural Expressions Bill, 2015.”

This is because the word “traditional” is a repetition. It does not make sense. You can only use one.

**The Temporary Deputy Chairman** (Hon. Kajwang'): So that I properly get you in the HANSARD, express yourself on the HANSARD. Instead of referring to second traditional, delete the entire title and read the words you want to substitute thereof.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the title be deleted and be replaced with the words “The Protection of Traditional Knowledge and Cultural Expressions Bill 2015.”

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang'): Member for Shinyalu.

**Hon. Anami:** That sounds better than the previous one. However, I plead with the Committee Chair to change the word “traditional” with “indigenous” so that it reads “Protection of Indigenous Knowledge and the Diversity of Cultural Expressions.”

**The Temporary Deputy Chairman** (Hon. Kajwang'): I would have allowed your Floor amendment were it only restricted to “traditional” or that other word “indigenous.” However, when you insert those other words---

**Hon. Anami:** Okay, I withdraw those ones.

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is up to you to express what you want.

**Hon. Anami:** I want the title to read “The Protection of Indigenous Knowledge and Cultural Expressions.”

**The Temporary Deputy Chairman** (Hon. Kajwang'): That is now a further amendment. Let us see how it works.

If you look at Clause 2, when you are further amending a title, you should be very careful because if you introduce a word which has not been defined in the body of the Bill, then the effect is that you have negated that Bill. You have actually killed the Bill. So, one stroke on the title only changes the character of the Bill. Because of that, I will disallow your further amendment. So, what we have is the proposition from the Committee Chair.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Title as amended agreed to)*

*Long Title*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Long Title be deleted and be replaced with the following:-  
“The Protection of Traditional Knowledge and Cultural Expressions Bill 2015”

**The Temporary Deputy Chairman** (Hon. Kajwang'): I beg your pardon.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Long Title be deleted and be replaced as follows:-

“The Protection---”

**The Temporary Deputy Chairman** (Hon. Kajwang'): No! You have to express yourself to the entire Long Title. You should start from “A Bill for an Act of Parliament.” This is because you are removing everything. Start from the enactment formula. You have to express yourself on all the words that you are seeking to delete because the whole expression “An Act of Parliament to provide a framework for the protection and promotion of traditional knowledge and traditional cultural expressions; to give effect to Articles 11, 40 and 69(1)(c) of the Constitution and for connected purposes” is part of the Long Title.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the word “traditional”---

**The Temporary Deputy Chairman** (Hon. Kajwang'): That is not very expressive. I need it to be clearer.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Long Title be deleted and replaced with the following words:

“The protection---”

**The Temporary Deputy Chairman** (Hon. Kajwang'): Begin from “An Act of Parliament---” Chair. What I am trying to drive you at is that if you delete the whole of the Long Title, you should delete all the words appearing therein. You should then replace those words with an entire set of words including “An Act of Parliament---”

Do you understand what I mean, Departmental Committee Chairman?

**Hon. Chepkong'a:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Okay, do it again.

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, we are on the same page. I beg to move:-

THAT, the Long Title of the Bill be deleted and replaced with the following words:-

“An Act of Parliament to provide for a framework for the protection and promotion of traditional knowledge and cultural expressions to give effect to Article 11, 40 and 69(1)(c) of the Constitution and for connected purposes.”

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Long Title as amended agreed to)*

*Clause 1*

**Hon. Chepkong'a:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 1 be deleted in its entirety and be replaced with the following:-  
“This Act may be cited as the Protection of Traditional Knowledge and Cultural Expressions Act, 2015.”

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 1 as amended agreed to)*

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No. 48 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS BILL

**Hon. Kajwang’:** Hon. Temporary Deputy Chairman, I beg to report that the Committee of the whole House has considered the Protection of Traditional Knowledge and Cultural Expressions Bill, (National Assembly Bill No. 48 of 2015), and approved the same with amendments.

**Hon. Chepkong’a:** Hon. Temporary Deputy Chairman, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Katoo ole Metito, the Chief Whip, to second.

**Hon. Katoo:** Hon. Temporary Deputy Chairman, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us hear the Member for Kiharu, who is said to be of limited means.

**Hon. Kang'ata:** Thank you, Hon. Temporary Deputy Chairman. Allow me to urge Members to reject this Bill. My reasons are very clear. Once we pass this Bill, we shall be condemning our people to poverty. Why? This is one of the Bills that have been crafted to do a reverse gear back to the 18<sup>th</sup> Century. It is purporting to give intellectual property on forms of associations which are very amorphous. If we give powers to the Kikuyu community to claim intellectual property over the *kiondo*, for example; who will enforce that law? Who will take it to the bank? Who is the leader of the Kikuyu community? The same applies to all the other communities. There is no way you can bestow upon a non-legal entity any form of property. This is what is being purported by this Bill. I urge Members to be very cautious in passing this Bill. I understand that it is a constitutional requirement for us to pass this Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Do not take too much time. Give a brief comment.

**Hon. Kang'ata:** Hon. Temporary Deputy Chairman, finally, we have various forms of business entities, including businesses owned by individuals, companies and co-operatives. A tribe cannot be any form of business associations. Once we pass this Bill, we shall be bestowing legal responsibility upon amorphous entities.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us hear the Member for Mavoko.

**Hon. King'ola:** Thank you, Hon. Temporary Deputy Chairman. I would like to shed some light on this Bill. It is a good Bill, but it will be implemented in consultation with the county governments. My concern is that a county can have many cultures. For example, a county can have more than four cultures. Some cultural practices can be stepped on or put down.

I wish this could remain a national function because some county governors are moronic and idiotic. We cannot entrust them with the cultures of our people even though the people live in those counties. I come from Machakos County. When we have an arrogant governor, there is no way he can respect the Maasai, Kikuyu and Luo communities living in Machakos County. With due respect to the Chairman, I would like some of the clauses urging that the Bill be implemented, in consultation with the county governments, amended. I will bring further amendments to the same Bill.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us hear a Member from the other side of the House.

Proceed, Member for Ol Jorok.

**Hon. Waiganjo:** Thank you, Hon. Temporary Deputy Chairman. Legislation on our heritage and culture is long overdue. This is one of the best Bills that we have had in terms of complying with the Constitution of Kenya, 2010. I urge hon. Members to support this very important Bill, which will forever give a settlement to our cultural practices.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Lastly, let us hear the Member for Kanduyi.

**Hon. Wamunyinyi:** Thank you, Hon. Temporary Deputy Chairman. I sympathise with some hon. Members. We have passed the stage of moving amendments.

Hon. Temporary Deputy Speaker, I have already gone on record as having supported this Bill. I just want to thank Members who have given their input. It is important that we protect our

traditions and cultures. We all belong to different cultures. I wish Hon. Kang'ata knew that, sometimes, our strength is derived from our different diversities in cultures and traditions. So, it is how we are going to implement this law if it is passed. It is not just being aligned to the Constitution, but the way it is implemented and translated to the lives of the people daily is what matters. Thank you, Hon Temporary Deputy Speaker for giving me the opportunity to express my support once again.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will give to two Members with very brief comments. I will make the decision myself but it is definitely not those who are shouting. I will start with the Hon. Member for Turkana Central.

**Hon. Nakara:** Thank you. This Bill promotes positive traditional culture. This will educate our youth, especially those who have grown up in urban centers. This Bill will engage them on their culture and traditions.

We have a global village where we share our culture globally. Whenever you are, I encourage you to promote your culture, 1 whether you are in Siaya or Turkana. Finally, having the Kenya Industrial Property Institute (KIPI) will protect our culture from imitated cultures. We need to arrest those people who purport to be Turkana or Maasai and yet they are not.

**The Temporary Deputy Speaker** (Hon. Cheboi): All right. Let us have Hon. Rachael Amolo.

**Hon. (Ms.) Amolo:** Thank you, Hon Temporary Deputy Speaker. I support this Bill. It is well specified that it will provide a framework on protection and promotion of traditional knowledge. It will be important because we have many children born in Kenya and some outside Kenya. By having this Bill, they will be referring to most of the issues so that we may not leave our culture and follow other people's culture. So, I support this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Hon. Members, the rest who have not had the opportunity will have it later. I will not put the Question for obvious reasons. Order, Members! I have made a decision to put the Question.

*(Question put and agreed to)*

Let us have the Mover to move Third Reading.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Speaker. Although I did not have an opportunity to say something with regard to my good friend and energetic Member of Parliament (MP) for Kiharu, Hon. Kang'ata, he knows that he voted "yes" for the new Constitution. He is bound by the words of the Constitution which clearly state that Parliament shall enact legislation. This man is bound. In fact, he should---

**Hon. Kang'ata:** On a point of information.

**Hon. Chepkong'a:** There is nobody to be informed.

**The Temporary Deputy Speaker** (Hon. Cheboi): You are moving that--- It is not necessary.

**Hon. Chepkong'a:** I just wanted to clarify for him to know what is in the Constitution because he is a member of the Departmental Committee on Justice and Legal Affairs. It is just that he missed the meeting. He was in Kiharu showing off his small limousine when he knows that he has a big one in Nairobi.

Hon. Temporary Deputy Speaker, I beg to move that the Protection of Traditional Knowledge and Cultural Expressions Bill, (National Assembly Bill No. 48 of 2015) be now read a Third Time. I also request Hon. Katoo ole Metito, the Chief whip, to second. Thank you.

**Hon. Katoo:** I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have two Members, starting with Hon. Makali Mulu. I can see Hon. Kenta has just removed his card.

**Hon. Mulu:** Thank you. I take this opportunity to thank Hon. Members for passing this important legislation which is a requirement by the new Constitution. This Bill is going to help us, as a country, to ensure that we protect our traditions in terms of knowledge and traditional cultural expressions. There is a Kiswahili saying that: “*Muacha mila ni mtumwa*”. It says, “He who forsakes his culture is in bondage”. I support that saying. This Bill is going to ensure that, that saying makes sense and is important to Kenya.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have Hon. Sunjeev Kour Birdi.

**Hon. Sunjeev:** Thank you. At the outset, I support this Bill because I support the promotion of cultural and traditional values. A country without tradition is totally dead. If we support our culture and traditional values, we support our country for what it is. Just for the record, my name is pronounced as Sunjeev Kour Birdi and not Kaur. This is because I am also protecting my cultural heritage.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Kour, am I pronouncing it better now?

**Hon. Sunjeev:** Yes.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. I also know how to pronounce the last one, but I will not pronounce it here now. Let us have Hon. Chrisantus Wamalwa. Have I pronounced that one better?

**Hon. Wakhungu:** You got it right, Hon. Temporary Deputy Speaker. I thank the Hon. Members for contributing to this Bill, which is very critical. It is one of the constitutional time-frame Bills and, more importantly, there is a section that stipulates that there will be consultations with the county governments. To me, that is very critical. At least, we are assured of aspects of concurrence. Traditions are very critical. They are the foundations of values in every society and when we talk of traditions, we are talking about the “dos and don’ts” which have helped us to co-exist in a peaceful manner. Mine is on the issue of Kenya Industrial Property Institute (KIPI) and the Kenya Copyright Board (KECOBO). There is a convergence somewhere. So, as we move on and with the guidance of the Chair, we need to see those bodies not acting in vain, so that we have value added to patency protection.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Lastly, let us have Hon. Savula, the Member for Lugari.

**Hon. Savula:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this important Bill. The issue of protection of traditional knowledge

and culture in our society is important. I am talking from a point of experience. I am a member of the Banyore Community from Emuhaya, but settled in the County of Kakamega. There are cultural activities in our communities--- Last year, Hon, Wangwe hosted a cultural event for the Batsostso people. The Maragoli people have a culture called the Maragoli Cultural Organization. The Bukusu people also have their own. If those organizations are regulated by the law, we will have ways and means of enhancing cultural integration among the communities in the society. But if those organizations are not recognized in the law, what we will be doing is just an event. After that event, we will not be promoting the culture because it is not legally recognised in law. But if we recognize those issues in law---

**The Temporary Deputy Speaker** (Hon. Cheboi): Do not take too much time on it, Hon. Savula. You have actually made your point.

**Hon. Savula:** Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will not put the Question, as I had indicated earlier, because of obvious reasons. I can see there are quite a number of Members who would have wanted to contribute, but it is not possible. We will proceed to the next Order.

Hon. Members, you may be aware that the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) has been deferred. Therefore, we will go to Order No. 10.

## BILL

### *Second Reading*

#### THE LAND LAWS (AMENDMENT) BILL

*(Hon. A.B. Duale on 9.3.2016)*

*(Resumption of Debate interrupted on 10.3.2016)*

**The Temporary Deputy Speaker** (Hon. Cheboi): We will resume debate which was adjourned on Thursday, March 10, 2016. I do not see who was last to speak. We will proceed and have the Member for Narok North.

**Hon. ole Kenta:** Thank you, Hon. Temporary Deputy Speaker. I should say, at the outset, that I oppose the Bill because of the fact that it is unconstitutional. Most of the provisions that have been introduced in the Bill are unconstitutional. Land is a very emotive issue and we have had a very rough time as a country.

The Land Laws (Amendment) Bill, 2015 purports to amend the Land Registration Act, 2012, the National Land Commission Act, 2012 and the Land Act, 2012. In fact, what flows through the whole Bill is actually the undermining of the National Land Commission (NLC) from carrying out its constitutional mandate.

Registration is supposed to be the work of NLC as per Article 67(2)(c) of the Constitution, but they are trying to amend it to ensure that it is the Cabinet Secretary (CS) who will do that. So, the Bill is actually bringing back the concentration of powers in the hands of the CS, which was removed by the Constitution.



The other pertinent issue is with regard to the registries. The dangerous thing about that amendment is that it purports to say that the Registrar may, at any time, open a new edition of a register showing only the subsisting registries and omitting therefrom all entries that have ceased to have effect. What this means is that the Registrar can, either on his own motion or on the instructions of the CS, interfere with the records of any land register. That is a very dangerous provision because it means you will disinherit people. You will remove the records that are supposed to ensure that people maintain those rights. So, it is something that should not be done because it is going to undo what the Constitution protects - the interests of the Kenyan citizens.

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

*[The Temporary Deputy Speaker  
(Hon. Kajwang') took the Chair]*

The other issue is with the amendment to Section 12 of the Land Registration Act. This amendment gives the powers of registration to the CS. That should not be the case because it is supposed to be done by NLC. So, the whole Bill is meant to undermine the work of NLC.

Worst of them all is the issue of certificate and registration. The Land Registration Act is very clear that there are circumstances when you can cancel or challenge a title. There are three circumstances, fraud or misrepresentation, or where the rights of the proprietor have been acquired illegally. But what has been removed - and which is a very dangerous thing - is the provision that says: "Un-procedurally and through corrupt schemes." They have removed that; which means that they are preparing to ensure that if you grab land through unprocedural manner or through corrupt ways, you go scot-free. That is a very dangerous amendment. We are rolling back the gains we have made in this country.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Do you have in mind, for example, that, that section seems to be reflecting what Section 23 of the Registration of Titles Act used to say; that the first registration would not be challenged in any court of law? Many court cases surrounded that issue. Many people felt that they lost cases unfairly to the extent that you cannot impeach a title on any other ground because it is first registration. Is that the point you are making?

**Hon. ole Kenta:** In fact, that was supposed to cure that anomaly. During that time, you could not challenge the first registration. The only thing was that the Government was the one which was supposed to compensate, and that caused a lot of harm to people's rights to property. This time, they have removed this third ground, which is very crucial. If you procure a title unprocedurally or through corrupt schemes, it cannot be challenged if at all this Bill passes. So, it is a very dangerous provision to introduce.

This Bill negates the provisions on matrimonial property and customary trusts. This is something that should not be entertained. The Bill purports to amend Section 28 of the Land Registration Act which protects those interests. This is totally unconstitutional.

The other issue is on leases. The Bill says sub-leases should not be registered or may not---

**The Temporary Deputy Speaker** (Hon. Kajwang'): Just a minute, I am thinking around what you have just said. You see we are in the Second Reading. Chances are that the Committee

will embrace your amendments or not. I am supposed not to give opinions, but I have to point out something that I think can be dangerous. Assuming that the Committee does not proffer amendments, are you willing to bring amendments to fine-tune that provision?

**Hon. ole Kenta:** I shall. But what I am saying is that the intention of the whole Bill is to roll back the constitutional benefits that we have acquired since the year 2010.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You know one way or the other, we have to continue with this Bill because it is a constitutional requirement. Is that correct?

**Hon. ole Kenta:** I do not think this is a constitutional Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Under Articles 61, 62 and 63 of the Constitution, one way or the other, we have to pass legislation around it. Is that not so?

**Hon. ole Kenta:** This Bill seeks to amend laws that are already there. It is not a constitutional Bill. The argument that I heard the other day is that those laws were rushed through Parliament and so, they have errors. I believe this is something that should be looked at before being brought to this House. These provisions are unconstitutional and they are going to negate the progress this country has made. When you say you cannot register sub-leases, it is very dangerous because somebody can benefit from it. It should be for the benefit of the county governments. In fact, leases, especially on public land, should be a preserve of NLC. To give the CS those powers undermines the roles that have been given to NLC by the Constitution.

The other issue is on the National Land Commission Act, 2012. There is the issue of historical land injustices. As a person from a community that has lost a lot of land through manipulation--- I believe in 1904 and 1911, there was no Maasai who would have understood the meaning of a formal written agreement on land or any agreement for that matter. I believe nobody in Kenya, especially the indigenous people, had the ability to understand an agreement. So, I believe when you talk about historical injustices, you are trying to bring it in one paragraph or clause of a Bill. I believe that it should have been a stand-alone Bill. Talking about incorporating it in the National Land Commission (NLC) is not fair to the people who have lost land. In fact, it even removes the issue of present land injustices. There are present and ongoing land injustices. Removing them is not good. It is circumventing the protection given to Kenyans by the supreme law. We should have it intact. From research, I understand that there was a Bill that was taken to the Cabinet for approval but it, somehow, got lost along the way.

We should look at this Bill critically even though I personally oppose it. We should enact laws for the benefit of Kenyans. There is even the issue of removing a very integral part of the National Land Commission Act. The NLC is supposed to take care of public land not only for the current generation, but also for future generations. They have delayed that provision, effectively undermining the benefits that we are supposed to enjoy. So, whether there are changes or not, this Bill has been brought here for purposes of undermining land ownership, especially for marginalised communities.

I have justifiable grounds for opposing this Bill. I urge my colleagues to critically look at it during the Committee of the whole House to ensure that we do not negate the benefits given to us by the Community Land Bill. If we are not careful, this Bill will negate everything given to us by the Community Land Bill.

With those remarks, I oppose.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Kajiado South Constituency.

**Hon. Katoo:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

I somehow agree with the Member for Narok North on some of the issues he has raised. In its Memorandum and Objects, this Bill says that it is amending several Bills that were passed by the last Parliament, including the Land Registration Act, the National Land Commission Act, and the Land Act. The three Acts of Parliament were passed in 2012. All of them had constitutional timelines. They were passed in a hurry because those were the sunset days of the Tenth Parliament. It was later on realised that there were some inconsistencies in those Bills, including over-lapping mandates. The Bill before us has no constitutional timeline. It is just trying to rectify the inconsistencies contained in those three Bills. Let us support the Bill at its current legislative stage. I am sure that the Departmental Committee on Lands as well as individual Hon. Members will come up with more amendments to refine it.

Hon. Temporary Deputy Speaker, I would like to mention some of the inconsistencies that are contained in the three Acts of Parliament. Hon. Members will remember the National Land Commission (NLC) at one time had a lot of clashes with the Ministry responsible for land matters. At one point in time, they had to go to the highest court in the land – the Supreme Court – to seek an advisory opinion on the mandates of each of the two offices. The Supreme Court so advised. This shows that there is need for trying to come up with a cleaner and a consistent law in accordance with Articles 60-68 of the Constitution - save for Article 63. This House passed the Community Land Bill last week to address it.

The three Acts mostly talk of establishment of land registries at both the national and county government levels. We modernise and automate our land registries using state-of-the-art technology to avoid cases of files getting lost. Sometimes, there is mis-match of information even in the same files. This is the right time for the Ministry, the NLC and the county governments to modernise their land registries for effective and efficient running of land matters.

I am happy about the amendment to Section 6 of the Land Registration Act to squarely put the function of land registration under the Ministry. Even the Community Land Bill that was passed last week clearly gives this role to the Ministry, as opposed to the NLC especially in terms of community land, unregistered land and trust land. These amendments are cleaning up those inconsistencies by making land registration a national Government function under the Ministry of Lands.

There is a proposal for insertion of Section 6(a) in the Land Registration Act, pursuant to Article 67(2) of the Constitution. The insertion is trying to address the issue of involvement, engagement and awareness-creation amongst all stakeholders of land matters, before calling for adjudication or registration of any piece of land. These amendments are good because they are trying to ensure that everybody who has an interest in a piece of land is made aware before that piece of land is registered. Sometimes, people find that their parcels of land have been transferred to other people without their knowledge. This insertion will ensure that every stakeholder in a piece of land is made aware before registration of such land is done.

There is also an amendment which seeks to remove the Public Service Commission (PSC) from staffing the registries at both the national or county government levels. The PSC is not involved directly. It is the role of the relevant Ministry to oversee deployment of staff and management of resources within their devolved units. The Ministry will be deploying registrars to the county governments or to any of their devolved units. The officers are already in their

database. It is just a matter of re-organisation. This amendment is removing that role from the PSC and giving it to the Ministry responsible for land matters.

There is a very good amendment that has been proposed in Section 12 of the Land Registration Act. The amendment is good because there is need to specify with finality. Section 12 says that there shall be appointed, by the PSC, a Chief Land Registrar and such other officers who shall be public officers. The proposed amendment says that there will be a Deputy Chief Land Registrar, County Land Registrar and Land Registrars. This is very good because it specifies the officers as opposed to giving the PSC a blank cheque to appoint “other officers.” They are very important for overseeing the functions provided in this Act. The proposed insertion of Section 13(a)(i)-(iv) specifies the qualifications of the occupants of the new offices being created.

It provides that one should be an advocate of the High Court with not less than five years standing or even 10 years in some cases. Clause 13(a)(iv) provides that upon the commencement of this Act, any person holding the position of Chief Land Registrar and Land Registrars who does not meet the qualifications prescribed in this Act shall be deployed to other positions and duties within the public service. That is okay, but my concern is about those who qualify. It is important for them to also undergo vetting even if they have been occupying the positions not necessarily by the approval of this House, but by other relevant agencies. Section 5 of the NLC Act, amendment 43, is also good. It seeks to delete the sections which are giving a deadline of 10 years for Registrars to unregister land, which is not realistic and feasible.

Finally, the issue of minimum and maximum acreage which has been introduced in Clause 159(c) has taken into account good things. Cattle ranches in arid lands and wildlife and nature conservation agencies need to be addressed.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I will give you some more time.

**Hon. Katoo:** Thank you, Hon. Temporary Deputy Speaker, I appreciate. With regard to the New Clause 159(b), the Constitution talks of minimum and maximum acreage of land. This new inclusion gives exceptions and consideration on how to decide the issue of the minimum and maximum land acreage. They have to take into consideration the ecological zones, demographic factors, land use and land tenure system.

Finally, still on that, it says there will be public participation to make observation and representation in accordance with the principle of participation of the people, good governance, transparency and accountability. More importantly, it talks of the final report being tabled before Parliament for debate and approval. When that comes to this House, as representatives of the people, we will take into consideration all these factors when deciding on the minimum and maximum acreage.

Thank you, Hon. Temporary Deputy Speaker, for adding me those few minutes. I support and appreciate.

**The Temporary Deputy Speaker** (Hon. Kajwang'): May I ask from the Chair, is the Committee Report ready in respect to this Bill?

**Hon. Mwiru:** Yes, indeed, Hon. Temporary Deputy Speaker. The Report on this Bill is ready.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Is it accessible from the Table Office?

**Hon. Mwiru:** Yes, it is accessible. It was tabled before the House.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I am asking for the benefit of Members. You know, Hon. Members, when you take direction from the Committee Report, you are in a position of information. It sometimes becomes very difficult for you to debate Bills without following what the Committee has said in the Report. So, I urge you to pass by the Table Office and avail yourself a Report on this, so that this document can then have meaning to you.

Member for Mount Elgon, in your other life, this was your work, if I remember very well. I must have interacted with you in that other life.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Speaker, for having recognised me as having worked in the Ministry of Land, Housing and Urban Development. I want to start with an area which I have a lot of interest in, which is the Land Registration Division.

I went through the Land Act, 2012, and surprising, if you look at it very closely, you will be shocked and anybody who deals with land like a Land Registrar, land owners and developers, will tell you that the Act did not recognise title deeds issued under Cap. 280. This is the Government Lands Act. It can only do so on validation, which takes a long time.

I do not know whether the persons who passed the Act asked themselves if titles given as collaterals in banks would be invalid if they were found not recognisable. I believe this amendment will cure that. If not, I urge the Chair of the Departmental Committee on Lands to ensure that titles issued during that time, most of which I know are freehold titles of 1909 and 1927, are recognised, so that money that is given by financial institutions is safe and secure and the people can pay their mortgages.

Another interesting issue is the one raised by the Chief Whip on minimum and maximum acreage. I know this is on private land, but I am a bit skeptical about it. Land is a very emotive issue. Kenyans fought because of land. In Africa, the resource that is valued most is land. If we are going to set minimum and maximum acreage, what will happen to surplus land, if any? What will happen to those who do not have land? Kenya is a capitalist economy and we should let the pockets of Kenyans to dictate how much land they can own instead of deciding for them how much they should own and what they should not own. The issue of maximum and minimum land should not be set by legislation, but by the pockets of Kenyans.

I am happy the new amendment is curing the issue of appointment of the Chief Land Registrar and other registrars, both at the national and county level. The Registry Division has been brought under the Ministry. The division being under the Ministry, the Cabinet Secretary, Ministry of Land, Housing and Urban Development will be fully accountable. We had a lot of problems during the stand-off between the Ministry and the NLC. Most Kenyans suffered because they could not get their land registered.

I want to speak to the issue of historical injustices. This amendment is not clear as to how that issue will be addressed. I want to request that in the Report from the Departmental Committee on Lands, a clear process be set out on how those who lost their land through historical injustices are going to be resettled including the most vulnerable in the society. Another issue which has not been touched is the issue of allocation of land by Ministries. We have seen land being allocated to individuals, but there are no proper guidelines as to how this legislation is going to address that. I urge the House to look at this law and ensure that this is spelt out to avoid any future conflicts amongst families and Kenyans.

The last thing that I want to speak about is overriding interests. In the current omnibus, which is the Bill, overriding interests have been reduced from 15 to seven. I am still concerned about the spouses' interest. The spouses' interest should be retained, so that our beautiful ladies

can enjoy their rights. My friend, Dr. Wamalwa, should not dispose of land without consulting his wife.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Member for Kanduyi.

**Hon. Wamunyinyi:** Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. This is a very important Bill, which seeks to introduce various amendments to the NLC Act, the Land Registration Act and the Land Act. These Acts were established to ensure the implementation of Articles 67 and 68 of the Constitution. The Bill also intends to remove ambiguities and confusion that has been caused between Government offices and departments like the NLC on one hand and the Ministry of Land, Housing and Urban Development on the other. The public has been a victim. Therefore, it is important to harmonise these laws to ensure their effective implementation and proper land administration, so that the offices can implement their mandate without fighting each other. In the process, this Bill creates offices and functions. At the county level, registration of units and the procedures of establishing them are clearly provided for in the Act through the Ministry.

The worry is that more functions are being taken away from the NLC and given to the Cabinet Secretary. Kenyans who penned the Constitution understood the problems that we had in the past. The purpose of vesting more powers in the NLC was to deal with past problems. The Commission would have operated independently without undue interference. It is worrying that more of its powers are being taken away.

We have problems in land administration in terms of land grabbing, corruption in the Ministries, hunger for land and quick money, derived from the sale of grabbed land. This cannot only be dealt with by making good laws, but also by addressing the culture of corruption. There have to be strong mechanisms to deal with these issues in the offices that are being established by this law.

I have noted what Hon. John Serut alluded to in Clause 108, which seeks to amend Section 159 of the Land Act. It states that the Cabinet Secretary shall issue guidelines, not consistent with the Act, on his determination of land holding among married couples and family members. Some of these aspects have been covered under the Matrimonial Act, which has already been enacted. Determination of land holding by non-citizens is clear. In some countries, non-citizens are not allowed to own land. In fact, in some countries, even citizens themselves do not own land. It belongs to the State. The State leases it out to its citizens for whatever purposes they want to use it for. I am looking at the provision for minimum and maximum land holding. People already own chunks of land in this country that they do not even use. This Bill is likely to address this, but how is the Cabinet Secretary going to go about it? Some people in this country own land as big as a district or a province which they do not even use. The Bill states that the minimum and maximum land holding acreages shall be as prescribed by the Cabinet Secretary. Experts and the public will be looking at how best to go about this. The Cabinet Secretary has vested powers to deal with this issue. This is important and we must give it some attention. We have to make sure that Kenyans who do not own land are given land.

We have public land in this country. There is land that can be given out to people who are encroaching on forests. Available land as well as landless people should be determined. Let us know who the landless people in this country are. Where is public land or land owned by the State? This should not be forests, which have been encroached into by some people. It should be

available land that should be given to citizens who do not own any land. Above all, the issue of those who have too much land must be addressed.

The issue of zoning is provided in the Bill. This provides for agricultural land which shall be clearly categorised for both cash crops and food crops. It goes ahead to provide for livestock and pastoral land for our brothers in Turkana and Maasai land, who move with their animals from one place to another looking for grazing land for their cattle. There has been an issue of group ranches in Kajiado and an issue of the Turkana people taking other people's animals, particularly when they move to the lower part of Pokot. The Pokots also take other people's animals. There has to be a way of dealing with these issues. They are all Kenyans and members of our community. I am addressing this issue because eventually it is going to be very important. There is going to be so much land for grazing and livestock. This land must be clearly provided for livestock. There is also land for urban areas such as towns and cities. It is clearly spelt out that there will be low, medium, mixed-user and high density residential areas within urban areas. There will also be light, medium and heavy industrial areas. This is also a pointer to the issues which must be addressed. For instance, industrial areas must be separated from residential areas. There should be good planning before any area is determined as industrial or residential.

In conclusion, as we endeavour to pass this Bill, strong measures must be taken to ensure that grabbed land reverts to the public. If it is public land, then, it has to revert to the public. There should be clear powers given to the officers in those offices to ensure that land reverts to the public even if they have title deeds.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You are now speaking to yourself and I allowed you to do so because of your seniority. Member for Gem, can I hear you?

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, as approved by you, I rise to raise the issue of insecurity along our borders with our neighbour Uganda on the issue of Migingo. It is not the first time we are raising this issue. Something is amiss.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Gem, before you go to the thrust of your debate, can you just move the Motion in a formal way as it appears?

### MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33

#### INSECURITY ON MIGINGO ISLAND

**Hon. Midiwo:** Hon. Temporary Deputy Speaker, I beg to move that the House do now adjourn for the purpose of discussing a definite matter of urgent national importance on Migingo Island.

This is not the first time we are raising this issue as Members of Parliament. It is amazing what our 'friendly neighbour' keeps doing to our country along our shared borders. Two days ago, there were military incursions in Busia by the Ugandan forces along markets on the Kenyan side. They come into our country and confiscate our ware or money by force and nothing happens. An act of aggression cannot be better defined than what Uganda is doing to Kenya. Our Government cannot sit and wait for us to shout from the rooftops. I was in Muhuru Bay on Saturday and the Ugandan forces shot a Kenyan policeman. Over 100 hours later, why do we not have a statement from the Government of Kenya? This is an act of external aggression.

The Ugandan President is on record saying that the rock belongs to Kenyans and the water belongs to him. Whatever that means, why is he shooting Kenyans on the rock? A few days ago, the Independent Electoral and Boundaries Commission (IEBC) officials who went there to register voters were arrested by Uganda policemen. The nation should know that the nearest landmass to Migingo in Uganda takes eight hours to reach on a motorboat. For Ugandans to reach Migingo, which is just offshore from Muhuru Bay, they have to come through Busia. You realise this happens in these areas every time we are counting down to our general elections.

I was here during the Post-Election Violence (PEV) and in Mathare, we picked up spent cartridges with imprints of the Ugandan Government. Until today, nobody has said anything. My constituency is near the Ugandan border and in Yala, Madeya and northern part of Gem, Ugandan soldiers participated in killing my people during the PEV. What else do we have to do for Kenya Government to protect the Luhyas and Luos sharing a border with Ugandans? In Bondo Constituency, over the last few years, Ugandan soldiers used to come at night by boat and raid shops. At first, they were only interested in cigarettes, but they became more corrupt and started taking money and robbing people on the streets. Because they are armed, we do not have a way of guarding ourselves against them.

The Government of Kenya cannot just sit and watch an external aggressor, a neighbour, whose appetite for war we cannot control. What is the role of the Kenyan military? Why did we go to Somalia? We went to Somalia to safeguard our frontiers. Why is Lake Victoria not part of our frontiers? In the last 10 days or so, I said that we have misplaced priorities.

I was in Malindi last week and many Members were also there. What is the military doing in internal affairs? Why would you deploy the Kenya Army in a by-election in Malindi yet people are being killed in Migingo? Why would you violate your own Constitution in so many ways that you let foreigners kill your people and have your own people fight your people? This is how governments get impeached. As a leader from that region, I have no choice, but to tell my people to defend themselves. We are taxpayers. The six per cent of Lake Victoria that we own, as Kenya, is the third largest taxpayer to the Exchequer. My people must enjoy it in peace. The Chief of General Staff, the Cabinet Secretary for the Ministry of Interior and Coordination of National Government and the President, who is the Commander-In-Chief, cannot sit back and ignore this aggression. In the last couple of days, we have heard noise about a gun owned by Hon. Joho. I thought the Government only owns the licence and people buy guns from licensed shops. Is that to divert attention as our people are being killed? What is the Government doing? They are killing people from within our borders. Hon. Nkaissery is saying Joho is mentally unfit. In my view, he sounds more mentally unfit than Joho. This is because people are dying. When your own police officer is shot by somebody eight hours away from their country, the least you can do is to apprehend the aggressor. What are we doing? Uganda needs Kenya. If this Government does not want to deal with Uganda, we are going to question the free passage of their goods to Uganda. There is no way we can have their lorries spoil our roads and get fuel from Kisumu and our people are dying. I can tell you for free that we would rather die than be killed by a neighbour. We would rather let them finish us. It cannot keep on happening. If the Government of Kenya cannot protect us, we are going to protect ourselves. I encourage the Government of Kenya to diplomatically tell Uganda or go to war like in Somalia. Instead of the Army fighting in Somalia, they are just selling charcoal. The military is trading in charcoal and sugar, which is still affecting the same people. If they cannot do it, we have no choice as the people's leaders, but to tell our people to get ready.



**The Temporary Deputy Speaker** (Hon. Kajwang'): I will give you 30 more seconds.

**Hon. Midiwo:** We will have no choice, but to tell our people that, as a people, we will not be the first ones to fight for our own liberation. It is so bad to be colonised especially by a neighbour who cannot even conduct elections in his own country. If you read the newspapers today, you will see the kind of war and killing going on in Uganda. Is the issue of Migingo Island meant to divert attention or is somebody preparing Uganda to interfere in the upcoming elections in Kenya? The Government must act. It must do something or the consequences will be on the Government. We will not let Uganda keep trading with us. They cannot have free passage of goods and kill our people at the same time.

I beg to move and ask Hon. Wamunyinyi to second.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Gem, being a ranking Member, you know that in an Adjournment Motion, such as this, there is no seconder. Of course, Hon. Athanas knows. That is why he is smiling next to you. Now that you are on your feet, I will allow you to contribute.

**Hon. Wamunyinyi:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me the chance to contribute. This is very important. Ugandans and Kenyans are brothers and sisters, but what is happening is very unfortunate. As the people in the region, we have been striving to deepen and widen our relationship to enhance trade between us. We even want to remove borders, so that we can move freely in the region. We want to be real brothers and sisters, but what is happening in Migingo Island is a shame.

As Members of the National Assembly, we cannot sit and watch. I read a story that a chief and an Administration Police officer were beaten up by Ugandan forces. Another story said that the IEBC registration clerks were kicked out by Ugandan forces. This is happening consistently. This is not a new matter. What is more disturbing is that it is not starting today or this year. It has been going on for years and we have continued to tolerate it. Where I come from, it is believed that if you do not remove a small insect moving around your body, it will bite you and it can be poisonous. We must address the issue of Migingo Island once and for all.

More disturbing is that while it has been going on like this, our Government has been quiet about it, particularly in the recent past. There has been no statement. Nobody from the Ministry of Foreign Affairs and the Ministry of Interior and Coordination of National Government has said anything. The Ministries are just quiet.

We pretend that nothing is happening. It is this issue that we are silent about that is going to cause problems. The Government must speak out and tell us what it is planning to do because we are getting to an extent where we want to prepare people to get ready to defend themselves. Do we not have a Government? Why should leaders ask people to get ready? Should we acquire guns? Guns are being taken away from licensed holders. What are people in Migingo Island going to do? Are they going to get illegal firearms, so that they can defend themselves because the Government is not doing anything? Are we going to sit and watch our daily lives being disrupted by forces from Uganda and nothing is being done?

The water may belong to Uganda. I do not know how that happened. I was not there, but I heard a statement from President Museveni that the water belongs to Uganda, but the land belongs to Kenya. We have to resolve this issue because we cannot go on like this. As I said in my opening remarks, we are striving to solve this. As Parliamentarians from the region, we met our colleagues from Rwanda, Tanzania and all over. We want to fast-track the process of integrating the East African Community. How are we going to work towards fast-racking the

process of integration when we have a brother who is fighting and killing your people every day? Is it going to be acceptable?

This is not accepted. Something has to be done urgently. I am calling on the Government of Kenya, which has very able forces, to do something. Otherwise, this is a very worrying situation.

With those few remarks, I thank you and call for action.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Athanas Wafula Wamunyinyi, you know the Speaker does not have answers, but I know that you are sending those questions somewhere and somebody will have to answer them. In the course of this debate, the interesting thing is that all the debaters are from the left of the Speaker. It happens that this is what I see.

Let us have the Member for Turkana Central.

*(Hon. Nakara consulted loudly)*

Order! Order! Order!

**Hon. Nakara:** I am sorry, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Mt.Elgon.

**Hon. Serut:** Thank you, Hon. Temporary Deputy Speaker, for recognising me. As you know, I come from the western region. We border Uganda. Hon. Wamunyinyi and I are brothers who border Uganda. There was a survey in the 10<sup>th</sup> Parliament that was done by both parties to determine the boundary between Kenya and Uganda for Migingo Island. It beats logic that up to now, we have not been told who owns this rock or waters in Migingo Island.

The onus lies with the Kenyan Government to tell its people why it has taken too long to make a pronouncement as to who owns Migingo Island. That is the bone of contention. As Kenyans, we have heard all manner of voices about Migingo Island. We have heard from the Members what happened during the voter registration exercise. The Kenyan Government is not on leave, it is running. It is high time it woke up from its slumber and protected its people. A Government that does not protect its people has no business being in power. My people were slaughtered in 2006/2007. I stood in this House and raised the red flag that people were being slaughtered. It took six to seven months for the Government to respond. I hope the same is not going to happen for the people of Migingo Island.

It is high time the county commissioners ensured there is security in this country. They are not provided for in the Constitution. They were sneaked in through the back door on grounds that they ensure that there is security. They have to take security seriously. They should not be there to earn salaries. I do not see why Members of Parliament should be debating this issue. We have no choice other than to ask the county commissioners, on behalf of Harambee House, to protect our people. They are in charge of security in the counties. Otherwise, we should send them packing.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Nominated Member, Hon. Oburu Oginga! Your name on my list is Hon. Oburu Odinga. You need to consult the Information Technology (IT) people to correct it.

**Hon. (Dr.) Oginga:** Hon. Temporary Deputy Speaker, I have done that so many times, but I do not know why Parliament keeps on confusing my name. This is not the first time they are doing it.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Owing to the fact that you are a ranking Member, I order the Clerks-at-the Table to make sure that that is done with immediate effect. It should be done before the next sitting of the House.

Proceed, Hon. Oburu.

**Hon. (Dr.) Oginga:** Thank you, Hon. Temporary Deputy Speaker. The issue we are debating is very serious. I have been a Member of Parliament for that area for very many years. Every time we bring up the issue, few measures are taken, but nothing conclusive is done.

I was an Assistant Minister for Finance and we travelled to Uganda with a team of Ministers headed by the then Foreign Affairs Minister, Hon. Wetangula. It was agreed in our discussion with the Ugandan Government that a technical team would be formed to establish the border between Kenya and Uganda, so that a conclusive statement could be made. This was done. However, the Ugandan team refused to sign because it was conclusively agreed that Migingo Island belongs to Kenya. The waters of Lake Victoria have been used by Ugandans and Kenyans from time immemorial. There had been no conflict. The conflicts that we are witnessing are artificial. They are being created by the two Governments and not the people. These are common waters which have been used as a resource for the livelihood of both Ugandans and Kenyans without any conflict.

The boundaries have been slowly adjusted without the knowledge of the people. During the colonial time and even after Independence, the Wayasi and Hama Islands were on the Kenyan side. A chief was stationed there during that time, but he died recently. We went with him there and people recognised him. He was a Kenyan chief who was in charge of those islands. The islands are now being ruled from Uganda in the same way the Ugandan authorities want to take over Migingo Island. The other islands were taken quietly. The Migingo Island issue is now coming up very loudly. We are all talking about it. This matter has not been resolved because the people who have been leading these Governments are from far away from the lake and do not know the value of the lake to our people.

Some of the islands are being given away quietly for political gains. The Ugandan Government takes the waters of Lake Victoria very seriously. In fact, the Ugandan Army guards the lake. The Kenyan Government does not have police officers guarding the lake. We have been urging the Government to send the Kenya Navy to protect our people. Our people are arrested and taken to some Bugiri courts in Uganda where they are charged and fined heavily. We pay the fines, but the expensive fishing gear and boat engines are never returned. Many fishermen have gone bankrupt because of this insurgency by the Ugandan Government. We urge the Kenyan Government to either take action or tell us that Nyanza and Western regions, which share the lake, are not part of Kenya, so that we can take action. If we are not going to be protected, the Government should let us know, so that we can take action. If the Government is incapable of defending us, we can defend ourselves. However, we want to know it officially from the Government.

We also want the guns of Governor Joho to be taken away because the issue is being used as a diversionary tactic from the issues afflicting the country.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Mbita.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Speaker, for indulging me. I am very happy that the issue of Migingo Island is before the House this evening. We have been discussing this issue right from the last Parliament. For a very long time, I have not been able to travel to Uganda because in the last Parliament, I waged a personal verbal war

against the President of Uganda in relation to Mizingo Island. I gave him a special name “*musenjini*”. I had withdrawn that name, but if he continues, I will have no choice, but to continue giving him that name because of the acts of atrocities that he is committing.

Because we are not taking action as a country, the issue of Mizingo Island has made the Ugandan Government even braver. They are now moving beyond Mizingo Island to occupy other islands. A week hardly passes before I get a call from the residents of Remba Island in my constituency telling me that they are being harassed by Ugandans. They are arrested and taken to Uganda and all their fish is taken away. They are made to pay fines and taxes to the Ugandan authorities. I have raised this matter on the Floor of this House. It does not matter how much we speak in anger. If the Government does not take action, we will be forced, as Kenyans, at one point, to take action to defend ourselves.

Recently, I watched a video that had gone viral in Uganda. Because Ugandans were so annoyed with their Government for being shot at, they were hitting the police with stones. It reminded me of the *Maji Maji* Rebellion. If it reaches a point where people from the lake region feel that they are not being protected adequately, they will wage a *Maji Maji* type of rebellion against the Ugandans. We are capable of taking care of ourselves.

I do not want to go at length because I know that the issue of Mizingo Island has a lot of interest. I urge this House to do only three things. During the last Parliament, a similar Motion was brought to this House and passed. I remember introducing an amendment to it. Let the Committee on Implementation take up the matter and let the matter be referred to the United Nations (UN). If the Government is not able to deal with it, we have another Government which is the UN. Let it deal with it as a threat to international peace and security.

Secondly, this House needs to form a select committee to look into other ways to deal with issues such as Mizingo and other islands that are under threat. I urge Hon. Jakoyo Midiwo to go beyond today and come up with a select committee that will be looking at issues of security along the islands.

Thirdly, I have a suggestion which I hope the select committee will pick up. Recently, the police have been speaking from different angles. I would not want to say that the Kenyan police are stupid because they are not. It is just that they are challenged when it comes to thinking. Because of the challenges in relation to their thinking, I urge that if it is true that they have declared that every governor’s gun be confiscated, let them hand over those guns to Mizingo, so that our locals can defend themselves.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Member for Mbita does the challenge make it better? If someone is challenged in thinking, is there any other way of that imputation because I am looking at some imputation that is behind that sentence?

**Hon. (Ms.) Odhiambo-Mabona:** The ones who have been speaking are not stupid. It is just that they are unfortunate when it comes to thinking. Sometimes the police are unfortunate when it comes to thinking, but they are not stupid.

**The Temporary Deputy Speaker** (Hon. Kajwang’): On that re-worded phrase, I will let it go.

**Hon. (Ms.) Odhiambo-Mabona:** Yes. They are just unfortunate when it comes to thinking and based on that, with regard to the guns they are taking from governors, they should give them to the people of Mizingo, Remba and Ringiti to defend themselves because we can also shoot.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Member for Wundanyi.

**Hon. Mwadeghu:** Nashukuru Mheshimiwa Naibu Spika wa Muda kwa nafasi hii umenipatia nami nitoe mchango wangu.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Sorry Members, I have had to mix a few things. The Member who has just spoken is a Member coming from where this issue seems to have erupted. The Member who is speaking is speaking because of the position that he holds. So, just hold your horses.

*(Loud consultations)*

That office is in the Constitution. So, there is no other way I can do it.

**Hon. Mwadeghu:** Mhe. Spika Naibu wa Muda, Migingo ni sehemu ya Kenya.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I do not see requests for those on my right. Three of you have come and yet you do not have your cards. So, just hold on. You will have time.

**Hon. Mwadeghu:** Natumaini muda wangu unaangaliwa usije ukaisha kwa sababu ya shughuli za kuangalia nani amezungumza na nani hajazungumza. Kisiwa cha Migingo ni sehemu ya Kenya. Mimi ni Mkenya na nawakilisha sehemu ya Wundanyi ya Taita Taveta ambayo ni sehemu ya Kenya. Sehemu yoyote ya Kenya ikiguswa na mtu yeyote, nina haki ya kuzungumza kuhusu jambo hilo na kutoa mchango wangu.

La pili, tumesikia na tumeelezwa kuwa mara nyingi Hoja zimeletwa hapa Bungeni kuhusu Kisiwa cha Migingo lakini hakuna lolote linalofanywa. Watu wanaumia, wanauawa, wananyang'anywa mali yao na Serikali yetu inaangalia.

Kulingana na maoni ambayo yametolewa hapa leo, tumeelezwa kuwa kulikuwa na tume ambayo ilienda Uganda, ikajadiliana na Serikali ya Uganda na wakakubaliana kuwa masoroveya wapime, waangalie, wafuate utaratibu na wajue hii sehemu ya Migingo iko sehemu gani. Walikubaliana baadaye kuwa Migingo iko upande wa Kenya.

Serikali ya Uganda ikakataa kuweka sahihi makubaliano hayo. Baadaye, Serikali ya Kenya ikaanza kuongeza biashara na wao. Ni kwa nini tunabembeleza Uganda? Ni nini wanachotupatia ambacho kinatufanya tubembeleze Serikali ya Uganda? Hata wakati wa hayati Rais Amin, mnakumbuka vitisho alivyotupatia lakini Serikali ya Kenya ilitoa ukali ikiambia kuwa "hebu jaribu na tutaona ni nini kitafanyika".

Walipojaribu kuvamia Tanzania, Mhe. Mwalimu Kabarage Nyerere alitoa jeshi lake likienda likakomesha Uganda. Sisi watu wa Kenya tunaendelea kulalia masikio. Hata hivi tulivyo, si Migingo peke yake. Hata Somalia imeanza kusema ufuo wa bahari upande wa Lamu kuenda ndani mpaka kilomita 200 ni sehemu yake. Kenya bado inatapatapa. Hatujui kama kesho sehemu ya Tanga, upande wa chini wa Mombasa, itapeanwa nchi nyingine.

Wakati umefika wa Serikali ya Kenya kuamka na kusema waziwazi kuwa hatutavumilia watu wetu waendele kuteswa, kunyanyaswa na kudhulumiwa katika Kenya. Tukiwa na shida kama hizo, na Majeshi yanatakiwa yalinde mipaka yetu, tunashangaa ni kwa nini tusishugulikie mambo kama hayo ya mipaka badala ya kutuma magari na Wanajeshi kwa uchaguzi mdogo wa Malindi. Hata haya hatuna. Tuko tayari kuzozana sisi wenyewe na kunyang'anya magavana wetu silaha zao ambazo wanazitumia kwa ulinzi wao. Ndio maana tunasema haki ifanyike. Tufanyie watu wa Migingo haki na watu wetu hapa nchini tuwafanyie haki. Mambo kama haya tunayaona

ya kina Joho hayaturidhishi yakifanywa humu nchini kwa Wakenya. Kwa hivyo naweka mkazo na nasisitiza kuwa wakati umefika Serikali ichukue hatua kuwalinda watu wa Migingo.

Asante, Mhe. Naibu Spika wa Muda.

**The Temporary Deputy Speaker** (Hon. Kajwang'): This Member here does not have his card, but I will all the same give him an opportunity.

**Hon. Nooru:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. The matter before this House is very serious because it touches the lives of Kenyans. What touches the lives of Kenyans is not an issue of politicking. It is not business as usual. It is a matter of life and death. Life is very precious. We cannot afford to lose even one individual in this country. Kenya used to take human life very precious, but of late, it has become normal that people are killed daily. It has become a habit as if there is no Government, like in our neighbouring country Somalia.

I do not want to go into the details to provoke the diplomatic relations between Kenya and Uganda because this has been a friendly country for a long time in so many issues. At the same time, we cannot have double standards. We cannot say we are trying to unify East Africa as one state and at the same time we are killing our own people. I do not know what the role of the East African Legislative Assembly (EALA) is when we have to discuss this issue in a select committee the way Hon. Millie Odhiambo has suggested. These are the issues that should have been discussed at EALA and resolved a long time ago. It has taken too long. Very small issues in this country take too long and we continue losing lives and it becomes a culture. It is high time the Government took a decisive step and moved with speed to stop the killings.

On the issue of our border with Somalia along the Indian Ocean, which has been mentioned by the Member for Wundanyi, our waters are under threat from left and right. I do not know what the role of the Kenya Navy is supposed to be. It is supposed to guard Kenyan waters. If you say there is no single Kenya Navy officer in Lake Victoria after 52 years of Independence, it is very unfortunate. We do not know why we should fund the KDF if they cannot defend our borders. The issue of boundaries is a different matter that can be determined by a civilised society. It cannot be solved by going to war, that every time, we just take guns, illegal or legal, to fight.

Issues of boundaries can be resolved by civilised societies or countries. People need not look for guns, legal or illegal, to fight as a way of resolving such issues. These are very minor issues. The Head of States of the two countries are always at regional summits discussing issues of much lesser importance than this one. They discuss matters of bilateral trade and other matters when people are dying. When people become hostile to each other, they cannot engage in trade. They cannot cross borders without documentation like passports. We are trying to unify these countries and make them one nation. At the same time, we are arguing about border lines and killing each other. It will be an issue. Civilians fishing in Lake Victoria could have killed each other.

When a foreign nation's security agencies harass the ordinary people of another nation whenever they come across them, and when the matters are brought to the attention of the Government nothing is done about it, then there is something wrong. This matter must be addressed. It has been coming to this House time and again. It should be resolved once and for all because it is not an issue that cannot be solved if addressed diplomatically. It must be given the attention it deserves.

On the other hand, I want to thank the security forces in Mandera and the North Eastern region as a whole for containing the situation of insecurity in that area. Of late, the Government has taken a lot of actions. Parliament has voted a lot of money for investment in security in terms of procurement of equipment and firearms. We need to continue with that spirit.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Kiminini.

**Hon. Wakhungu:** Hon. Temporary Deputy Speaker, it is, indeed, embarrassing for this country that we are still discussing the issue of Migingo Island. This issue has been there for so long. What happened during the voter registration exercise is unacceptable. It is within the constitutional rights of the people of Migingo to register as voters. That right is outlined in Article 38 of the Constitution. The incident that happened is bad. Kenya is a sovereign State. I do not see why the Government of Kenya has been very magnanimous to the Government of Uganda. I know that Uganda is our leading trading partner. However, they have gone beyond reasonable limits and this is not acceptable.

The people of Migingo are registered Kenyans. They also pay taxes. Therefore, they deserve security. Article 29 of the Constitution is very clear that every citizen has a right to security. Why the Government is dilly-dallying is not known. Does it mean that the people of Migingo are not Kenyans? Does it mean that the people of Migingo Island do not pay taxes? Why have the people of Migingo Island been discriminated against for so long? We need answers to these questions.

I am aware of a petition that has been brought to this House by someone from Migingo Island. It is directed at the Departmental Committee on Defence and Foreign Relations. One of the prayers of the petitioner is that the security forces and the military be deployed in Migingo. I do not see why this has not happened and yet we have our security forces in Somalia.

Uganda has gone beyond the limit. It is high time we said "no" to what they are doing to us. Even in Trans-Nzoia County, we have problems with the same Ugandans who have been crossing over to register as voters. They are being issued with national identity cards yet they are not Kenyans. Does it mean that the Government knows what is going on? We have raised this matter with local administration and the police, but nothing is being done. Ugandans have been crossing over to Saboti and Endebess constituencies where they have been registering as voters. These are some of the issues that we must address. It is time Parliament spoke.

We are aware of a survey that was done during the 10<sup>th</sup> Parliament where coordinates were established. It was, indeed, established, and it is on record, that Migingo Island is in Kenya. President Museveni once said that the rocks in Migingo belong to Kenya, but the waters surrounding them were in Uganda. That does not make sense. It is very unreasonable and we have had a lot of respect for the President, but it is becoming too much. It is high time the Cabinet Secretaries, Ministry of Interior and Coordination of National Government, Ministry of Defence and the Ministry of Foreign Affairs listened. It is time they woke up to defend the people of Migingo. It has taken forever. We should not accept discrimination any more.

As we move on, Hon. Midiwo and many Members who are here, it is important for us to form an *ad hoc* committee if these people are not getting committed, especially Members who come from that region. The *ad hoc* committee should be in place to investigate and inquire into and come up with recommendations that will safeguard the interests of the people of Migingo.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Homa Bay, I understand that your county borders this place. We do not want these people to be listening

through these devices. You are Members of the National Assembly and you can do something that makes them do what they must. Seeing yourselves on national television may not be enough. Come up with Motions that will make them do what they are supposed to.

Yes please.

**Hon. (Ms.) Nyasuna:** Thank you, Hon. Temporary Deputy Speaker. Let me first thank Hon. Jakoyo Midiwo for bringing this very important Motion for Adjournment. Homa Bay County, which I represent in this National Assembly, borders Migori Country on which Migingo falls. In fact, at the end of Homa Bay County are the islands of Remba and Ringiti, which are very near Migingo. Migingo presents very serious questions of international law, citizenship and regional integration.

Quite a bit of this matter has been discussed in this Parliament and outside. Migingo is in Kenya and has Kenyan citizens on it. It has Kenyan Luo living on it. Some very serious questions arise. What we want to ask the Government of Kenya is whether the Kenyan Luos on Migingo Island are Kenyans? Can they be counted as Kenyans or are they Kenyan refugees in Uganda? These are questions that need to be answered. Are these Kenyans entitled to rights under the Kenyan Constitution? Are they entitled to be registered as Kenyans and voters? Somebody needs to tell us.

Why is the Kenyan Government tight lipped, saying nothing, doing nothing and hearing nothing on this matter of Migingo? Yet, on a slight matter such as withdrawing a firearm from Governor Joho, the Cabinet Secretary, Maj-Gen. Nkaissery, can call a whole Press conference on a single matter such as that. Kenyans continue to be harassed, killed, maimed, beaten and business opportunities taken away from them. It is a very serious matter.

Our fishermen come from Rusinga, Mfangano, Ringiti and Remba. First of all, huge fines and penalties are imposed on them for mistakes that sometimes they do not even know under Ugandan laws. Many times, they are taken away to Uganda as has been said by other Members. A lot of times, they are harassed and can no longer do free business. Who will protect our territorial integrity because the Government is quiet? Who is going to do this for us? Is the Government still in control or have they lost complete control? As a Member has said, is it because Migingo is far away from Nairobi and from their powers?

Why is friendship with Uganda much more important than our territorial integrity or the interest of Kenyan businessmen, women and citizens? Is it because Uganda is buying Kenyan milk? Why are we even importing their sugar at the cost of our sugar industry here? Why is it so important to be friends with Uganda even at the cost of our country and people? These are the questions that as you correctly put, somebody must come here to answer. We will not keep quiet. Should we ready ourselves for war as the people living along the shores of Lake Victoria? Should we roll up our sleeves? Should we rally our people to defend themselves because we have a Government that cannot defend its people or that only defends some people and not others? Are we living on an animal farm? Are some people in this country more important or more equal than others? These are the very serious questions that we need answers to.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Let us have the Member for Turkana North.

**Hon. Nakuleu:** Thank you, Hon. Temporary Deputy Speaker. First, I wish to take this opportunity to congratulate Hon. Jakoyo Midiwo for moving this Motion.

The issue of Migingo has been with us since the 10<sup>th</sup> Parliament. When I was in the East African Legislative Assembly in 2010, the issue came up. We urged the Head of States from the



EAC to constitute a technical force to conduct a survey and later submit the results to the EAC Secretariat as well as to parliaments of the respective states. The 11<sup>th</sup> Parliament ought to request for the report of that survey. We will argue properly if a proper survey was done and if part of Kenyan land was negotiated as has been alleged.

From my experience, Kenya has to conduct a comprehensive survey and demarcation of all her boundaries. Kenyan boundaries are contested all over. We have a problem with Somalia with regard to the maritime waters. We have a problem with South Sudan and Ethiopia with regard to the northern part. Conducting surveys in piecemeal could be an expensive affair for a country. As a Parliament, we need to urge the Government to conduct a comprehensive survey of the entire country, so that we secure our land properly.

Uganda is a member of the EAC. The treaty establishing the EAC envisages amicable dispute resolution mechanisms. Therefore, Kenya, as a member of EAC, must explore that avenue. I am against the use of force. Our Government might have failed in some ways, but Uganda is a strategic trading partner to Kenya in the EAC. Any attempt that strains our relationship has an economic bearing on the trading pattern of these countries. I request this Parliament to constitute a small technical team to pursue that matter and also find out if the demarcation exercise, which was sanctioned by the 10<sup>th</sup> Parliament, was properly done. If it was not properly done, why has the report not yet been brought back to this House?

There are also sentiments by His Excellency President Museveni that the water on the other side of Lake Victoria belongs to Uganda and the road belongs to Kenya. That is conventional logic. The President knows very well that water is a fluid. Fluids have the ability to move freely. There could be some water from the Kenyan side which also flows to the Ugandan side. Why has he not questioned that logic of fluid movement? We need to take a stand and reclaim our lost land. Molestation of Kenyan citizens at Lake Victoria is an affront to justice and the sovereignty of Kenya. It cannot be condoned and Uganda must stop any act of violence against Kenyans.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member of Rangwe.

**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Speaker. The survey my colleague keeps referring to was concluded in 2009 subsequent to the constant conflicts in 2008/2009. It is clear from that survey that the nearest point of Migingo to the border is 510 metres. The entire Migingo Island is in Kenya. Article 241(3)(a) of the Constitution, gives the KDF the first responsibility of defending territorial integrity of the Republic of Kenya. For this House to be discussing this matter means that the KDF has failed in ensuring territorial integrity of the Republic of Kenya. There is no business for Kenya, an economy controlling over 60 per cent of the East African economy, to be kowtowing to a small economy like Uganda, with an economy the size of a quarter of the economy of Nairobi. We cannot be begging them as if we are second class African citizens asking them to be lenient with our citizens.

**Hon. Oyoo:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Muhoroni, what is your point of order?

**Hon. Oyoo:** On a point of order, Hon. Temporary Deputy Speaker. It will be sensible for us to know that Uganda is now an economic powerhouse. We are even importing sugar from Uganda.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Is that a point of information or a point of order, Member for Rangwe? I apologise for that interruption.

**Hon. Ogalo:** We cannot beg Uganda for our own safety. Uganda is disturbing the Karamojong, Turkana at Suam, Mt. Elgon, Busia and Migingo. How can one small country be disturbing Kenya all over as if we do not have a Defence Force? This House cannot continue discussing the issue of Migingo Island. In my view, the issue of people from that region getting armed to protect themselves is neither here nor there. The Government has a duty to protect the people because we are citizens who have obligations and rights which include protection from aggressors across the border.

This House must give the KDF money in the Budget to set up military bases in Suam, Mount Elgon and a Navy Base in Migingo. That will be the only way to deal with Ugandans. We must give them money in this Budget to do that. We must be practical.

This House must require that the Ministry of Foreign Affairs threatens diplomatic showdown with Uganda if they continue harassing Kenyans. We cannot beg Uganda anymore. This House must limit any contact between the President of Kenya and the President of Uganda because it can easily be declared a hostile state to the Republic of Kenya. We should not be discussing such a straightforward matter provided for in the Constitution in this House. If the KDF has failed to ensure territorial integrity, then it is the Commander-in-Chief of the KDF who has failed. If he fails to fulfill his duties in accordance with the Constitution, he should be prepared to be impeached. The President should ensure the security of our country.

Thank you, Hon. Temporary Deputy Speaker.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Wednesday, 16<sup>th</sup> March 2016 at 9.30 a.m.

The House rose at 6.30 p.m.