

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 8<sup>th</sup> February, 2017

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** We do not have a quorum. May the Quorum Bell be rung?

*(The Quorum Bell was rung)*

We now have quorum and can start.

### PAPERS LAID

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

The Agreement between the Government of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre and the Memorandum to the National Assembly. That is the famous San Marco Space Application Centre.

The Bi-Annual Report of the Commission on Administrative Justice for the period January-June 2016.

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

- (i) Kenya Power and Lighting Company Limited – Rural Electrification Scheme;
- (ii) Energy Regulatory Commission;
- (iii) Nepad Kenya Secretariat;
- (iv) Kenya Vision 2030 Delivery Secretariat; and,
- (v) Petroleum Development Levy Fund.

**Hon. Speaker:** Well, the Agreement between the Government of Kenya and the Government of the Republic of Italy on the Luigi Broglio - Malindi Space Center popularly known as the San Marco Space Application Centre is referred to the Departmental Committee on Defence and Foreign Relations and Departmental Committee on Energy, Communication and Information. I see Hon. Ottichilo. I know you have special interest on matters touching on that. We will benefit from your immense knowledge on that.

Next Order.

### NOTICE OF MOTION

INCORPORATION OF RUN-OFF WATER HARVESTING AND

## MANAGEMENT MECHANISMS IN ROAD DESIGNS AND CONSTRUCTION

**Hon. M'uthari:** Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that Article 43 of the Constitution provides that every person has the right to clean and safe water in adequate quantities; further aware that water harvesting is an important practice for water management; cognisant of the fact that earth dams and water pans play a key role in water harvesting especially in arid and semi-arid areas; noting that a large quantity of run-off water goes to waste in most parts of the country; further noting that, that run-off water, if properly harvested and managed, would be useful for domestic, livestock and irrigation purposes; appreciating that increased infrastructural development especially in roads has led to the mobilisation of machineries and human resources in most areas; further appreciating that those civil engineering machineries and personnel can be useful in the construction of earth dams and water pans; this House resolves that the Government, through the Ministry of Transport, Infrastructure, Housing and Urban Development, ensures that all road designs and constructions incorporate run-off water harvesting and management mechanisms.

That would improve or contribute to the increase in water available for those purposes.

**Hon. Speaker:** Very well. Next Order!

## MOTIONS

## REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

## THE PUBLIC SERVICE COMMISSION BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Public Service Commission Bill (National Assembly Bill No.36 of 2016)

*(Hon. Members walked into the Chamber)*

**Hon. Speaker:** Order, Members! Those of you who desire to sit down should take seats.

Hon. Members, debate on this Bill was concluded. What remains is for the Question to be put, which I hereby do.

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Speaker, I beg to move that the Public Service Commission (National Assembly Bill No.36 of 2016) be now read the Third Time.

I request Hon. Kamama, the Chair of Departmental Committee on Administration and National Security to second.

**Hon. Abongotum:** Thank you, Hon. Speaker. I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

### THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 64 of 2015)

**Hon. Speaker:** Again, Hon. Members, debate on this Bill was concluded yesterday and what remains is for the Question to be put.

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Speaker, I beg to move that the Proceeds of Crime and Anti-Money Laundering Bill be now read a Third Time. I request Hon. Cheptumo to second.

**Hon. Cheptumo:** I second, Hon. Speaker.

*(Question proposed)*

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

**Hon. Speaker:** Hon. Members, I confirm that we have quorum for purposes of making a decision. I, therefore, proceed to put the Question.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## BILL

### *Second Reading*

### THE PREVENTION OF TORTURE BILL

*(Hon. A.B. Duale on 7.2.2017)*

*(Resumption of Debate interrupted on 7.2.2017)*

**Hon. Speaker:** This is resumption of debate. Hon. Members, there is nobody who had a balance of time. Therefore, it is open for any Member. I note that a total of 13 Members had contributed to the Bill. The first Member on the block is the Member for Makueni.

**Hon. Maanzo:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this very important Bill. The Prevention of Torture Bill is being enacted in compliance with the

Constitution of Kenya and international conventions which Kenya has signed in the past, so that we could be working in unison with other countries in the world to deal with the issue of torture. In fact, this Bill also outlines the many crimes one could be extradited for, one of them being in the event that one has tortured or even when torture has occurred in a scenario where there is civil disobedience in a country or political situation. This law is going to be very useful in this country. Situations where torture, cruelty, inhuman or degrading treatment arise are punishable in the country. The offences are defined. I would like to support the Bill.

The victims could be compensated. In the previous years, there has not been a law of this nature. Ordinarily, people who had gone through torture or inhuman treatment would sue through the normal court systems. At times, enforcement against the State could be a challenge. In fact, some people would take a long time or a lifetime before they are compensated, or end up being beneficial to members of their family while those people have gone to rest. This is a very good law. It outlines what should happen in a situation like that, and what happens in the event somebody is tortured in a different country and they happen to have come back home, or if a person is tortured in a country and does not belong to that country, or if a foreigner tortures people in our own country and then disappears to their country. There are extradition processes which could follow and that person could come back to the country to stand trial. Mainly also, it is when the State has participated and that compensation is not given. Also, in the event somebody is prevented, without using existing law, from enjoying their liberty, unless there is a law which provides that somebody is detained without trial or prevented from moving or fails to have freedom because of a political situation---

Therefore, it covers part of our history. In the 1980s and 1990s, people went to detention without trial and there was no legal remedy for them. This law has covered that. I want to support it and urge Members to support it. It is very important for the country. It puts us into an international regime where we can co-operate with other nations.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Endebess.

**Hon. (Dr.) Pukose:** Ahsante Mhe. Spika kwa kunipa fursa hii ili niweze kuchangia Mswada huu ambao ni wa kuzuia watu kuteswa kwa njia ambazo hazifai. Tunajua kwamba miaka ya 1990, Wakenya wangukwa na Special Branch na kuhusishwa na mambo ya siasa. Walimu wa vyuo vikuu na wanafunzi pia walishikwa kwa tuhuma za kupindua Serikali. Waliitwa “Mwakenya”. Hayo mateso yaliendelea hata katika sehemu zingine. Ndiposa sisi kama Wakenya tunaleta sheria za kuangalia kwamba wale wanaoteswa kwa namna moja ama nyingine wanapata ridhaa.

Kwa mfano, kule Endebess, kuna jamii ambayo ilidhulumiwa miaka ya sabini na themanini. Ikiwa unatoka jamii ya Sabaot, wanasema wewe ni Mganda. Unashikwa, unawekwa kwa gari na unabebwa mpaka Malaba. Wanasema wewe ni mtu wa Uganda na unakosa namna ya kurudi nyumbani. Unaenda unapitishwa kule sehemu za Mbale, unarudishwa na wewe ni mtu wa kutoka Endebess. Ndiposa, ninaposikia viongozi wengine wakisema kuna jamii ambao siyo Wakenya inapewa vitambulisho, inatukumbusha kwamba tunarudi kwa yale mateso jamii ya Sabaot ilipata miaka ya sabini. Waliitwa Waganda na kupelekwa Uganda kwa mateso. Nafikiri kiongozi kama huyo hana kichwa sawasawa. Mateso yanapoingia katika jamii, inaendelea kwa vizazi vijavyo. Ni lazima tujaribu kuheshimu uongozi na raia ya Wakenya.

Huu Mswada unatupa nafasi ya kuangalia kwamba mtu anapoteswa kwa namna moja ama nyingine na apelekwe hata nchi nyingine, tunaweza kupata ridhaa. Huyo mtu anaweza kupata kwa njia gani wakati anaporudi hapa. Kwa hivyo, mimi niko tayari hii sheria

itakapokuwa tayari, wale watu wetu ambao waliteswa kwa namna moja au nyingine na kupelekwa sehemu zingine, tutakusanya majina yao ili walipwe ridhaa.

Tunapongea mambo ya mateso, kuna wale ambao wameteswa sana. Pengine ilikuwa jamii inayoishi sehemu fulani na ikahamishwa kwa lazima. Sisi kule Trans Nzoia, katika miaka ya sabini, katika sehemu moja ambayo inaitwa Kaptegat, na juzi juzi katika sehemu kama Timboroa, watu walifurushwa kutoka msituni, wakateswa, manyumba yao yakachomwa na wakapigwa na askari wa Serikali ya wakati huo.

Mhe. Spika, tutaiangalia kwa makini sheria hii ili tutakapoipitisha, tujue wale walioumia miaka iliyopita watafidiwa namna gani.

Kwa hayo machache, naunga mkono.

**Hon. Speaker:** Member for Imenti North.

**Hon. Dawood:** Thank you, Hon. Speaker for giving me this chance to support the Prevention of Torture Bill. Previously in this country, we used to have a problem. People used to be taken to the torture chambers. There used to be a dreaded police unit known as “Special Branch”. Thankfully, that name has since been changed to National Intelligence Service (NIS). I hope they did not inherit the bad habits of the Special Branch.

Hon. Speaker, this Bill specifies what needs to be done. We do not have to go about meting out injustices or torturing suspects so that we can get information out of them. Many times, people have lost parts of their bodies like limbs and fingers. You know the way people get tortured is very inhumane. I believe that people who have gone through torture may not be able to sleep well. They may go into depression and experience all manner of bad things. This Bill goes very far in criminalising each and every kind of torture, be it physical or mental. We have incidences where people have been tortured mentally. You may be followed by State security agents everywhere you go merely because you are a suspect. That person will need to be hospitalised in an institution where he might not even come back. We need to see how we can go about it. When somebody is tortured by any agent of the State, the responsibility of compensating that person should not just fall on the State. It should be shared with the individuals responsible for the torture. Once the law against torture becomes operational, there should be no reason for the State to compensate victims of torture. The perpetrator of torture should be personally held responsible. His or her property should be attached for purposes of paying reparations to the persons whom he or she has tortured.

Hon. Speaker, previously, we had many cases even in Meru. Sometimes back, people used to be taken to the forest where they were made to confess to crimes that they did not commit. Because they would want to escape the torturers’ hands, they would accept that they were criminals and they would be sentenced for no reason at all. There was a time when the President talked about it and apologised for whatever had happened back then.

There were times when people would be taken from one town to another and they would be abandoned there. They would be tortured there. We have not been able to do much about it. I agree with the extradition of drug suspects. We need to get hold of all the drug lords in this country, if we are to set our country free from the menace of drug trafficking. I do not know if their rights were infringed or not but, apparently, they did bad things to other people. If they were tortured, it would not really matter because of what they did to other people.

As I support this Bill, we should have a way of calculating the amount payable to victims of every kind of torture. We should do our civic duty of informing the people that when they are arrested or taken into custody, they are not supposed to be tortured. Rather, they should be treated humanely. We should not interfere with the human dignity in everything we do.

With those few remarks, I support.

**Hon. Speaker:** Member for Nakuru Town East.

**Hon. Gikaria:** Thank you, Hon. Speaker for giving me this opportunity to contribute to this important Bill. It is true that torturing suspects in order to extract evidence or confession from them is not acceptable. As Hon. Kang'ata said yesterday, it is important for us to define persons to be tortured. Hon. Kang'ata said that terrorists kill innocent people on the streets, churches and everywhere else. Should they be treated like common criminals? We should try to come up with a way of distinguishing dangerous criminals from common criminals. If we leave it open like this, we will be encouraging robbers and other dangerous criminals to continue killing people knowing that, even if they are apprehended, they will just go through the normal court process. There must be a way of trying to ask them to give more information. Hon. Kang'ata said that even torture is not enough in itself. A firing squad is even more appropriate for that kind of offence. So many terrorists have come to this country and caused mayhem. When they were taken to court, they got away because our Constitution allows them to be set free on bail.

However, at the same time, this is a very good law for the ordinary people. Under the UN Convention against Torture, it is true that Kenya has domesticated those laws. Again, as a country, we want to be seen to be taking those laws seriously. Of course, Kenya is also a signatory to that Convention. Importantly, the law is clear that no criminal can be subjected to a person other than a public officer. It has been said here that in the past, people were victimised because of their political affiliation or because they never believed in certain ideologies or because they were against the Government.

I thank the Jubilee Government for taking positively all the criticism it has faced, unlike in the past when people who criticised the Government of the day faced the wrath of the leadership of the Government. I am happy that, under the Jubilee Government, with the support of a reformed Judiciary, the people who were tortured in the past are able to be compensated even though the compensation may not be enough. Again, this law needs to give clear guidelines as to how much money one person should be compensated for what kind of torture. We need to get the limits of the torture and humiliation that the person undergoes. In my county, there is the former Hon. Koigi wa Wamwere who was awarded Kshs2 million only just the other day. A year after another person may be awarded Kshs20 million. So we wonder, what is the criterion of accessing the compensation figures that are pronounced by different judges and magistrates?

It is important to agree that the penalties for any person who commits this offence is a bit on the higher side. Much as the penalty has been defined, the offences need to be defined as well. Much has been said and it is true that in Kenya we need to have a country where everybody has a democratic space. They can express their feelings and views anytime but we should take note of hardcore criminals who need to be convicted.

With those few remarks, I support.

**Hon. Speaker:** Let us have the Member for Kipipiri.

**Hon. Gichigi:** Thank you, Hon. Speaker. I support this Bill. In addition to the same being a constitutional requirement for its passage, we have seen many people going to court in the recent past seeking compensation for torture by the Government and Government agencies since Independence and prior to Independence.

The Judiciary has had a chequered history of dealing with these issues because on one hand, they appear to be afraid of indicating that there was a systematic conduct of torture by the Government or policy to torture the Opposition and on the other hand, the police had a policy of

getting evidence through torture. There has not been a law specifically dealing with this issue. The judges give all sorts of findings, some dismissing matters and others giving peanuts in terms of compensation. This law is good because it now creates the necessary provisions under which a person can be compensated.

Secondly, the person carrying out the torture can be sanctioned. Third, the victims of torture can be given protection as well as counselling. In any civilized society where people come together to form a Government, the cardinal ground for forming a government is security. If the people that are given authority to govern turn around and start torturing their governed, then the basis of having a Government and hence civilization is thrown out of the window.

So, with this sort of law, there will not be any doubt on the police and other bearers of arms and firearms on behalf of Government that torture is outlawed. It shall be punished and that the victims of torture have rights not only in the Constitution but even in statutes.

We have seen what is happening even in other neighbouring countries and in Africa where systematic acts of torture end up decimating population. The psychological suffering that these victims experience is something that lasts forever. At times it breaks matrimony and this is a Bill that we should all support.

I support.

**Hon. Speaker:** Let us have the Hon. Member for Westlands.

**Hon. Wetangula:** Thank you, Hon. Speaker for giving me a chance to contribute to this Bill. This is a good Bill and we all must support it.

In the past, there are Kenyans that have been tortured and some of them are a living evidence about the cruelty of the State. Some of the people include Hon. Raila Odinga, the late Hon. Martin Shikuku, Hon. Koigi wa Wamwere and Hon. Kenneth Matiba. These are people who have gone through cruelty and inhuman treatment by the State. This Bill addresses some of these things that we can use to prevent any person committing a crime of torture against another human being.

It is inhuman and degrading. Section (5) states that anybody who commits an offence shall be liable to conviction and imprisonment for a term not exceeding 25 years. This is a befitting punishment for such a person and it does not matter whether you received orders from your superior or you are being supervised by somebody else who commands you to commit torture. The moment you do it, you are personally and criminally liable for torturing somebody.

The other beauty about this Bill is the Kenya National Commission on Human Rights (KNCHR) being given power to investigate and on its own motion, monitor and investigate from the public and ensure that the perpetrators of this crime are brought to book. This is very important because the police sometimes tend to investigate themselves. When they are the ones who have committed this crime you find they keep on hiding some things and yet the torture goes through under their watch.

In Criminal Justice, we have seen people brought to court purportedly for confessing on a crime either committed or not committed. This information is procured by police officers when they subject the victims to torture and ensure that they get information from him, but sometimes they even give him an already made statement for him to just sign.

Sometimes they get away with it and the courts are duped to punish innocent people who have been brought to court by the police using shortcuts in their investigations. This Bill addresses the issue of any information procured through torture not being admissible as evidence. This is important because once this is established, then a person shall not be subjected to any criminal liability for a crime he purportedly committed. Also taking investigations away

from the police and giving them to an independent body, the Kenya National Commission on Human Rights (KNCHR) to undertake them since they will be given enough powers to deal with investigations is important.

Looking back in the past, we had people who were fighting for the second liberation. Many of them were arrested, detained, tortured and went through cruel treatment. We find that most of them cannot speak about the kind of things they went through because they are demeaning and improper. I believe it is the right time we addressed the issue of compensation to the victims who are either alive or dead for the degrading torture they went through.

The KNCHR is also given powers to monitor the compliance by the state with international treaty obligations relating to torture, cruel or inhuman degrading treatment or punishment. This is important because sometimes the state has got the monopoly to violence and they sometimes end up committing crimes against the citizens and nobody has the powers to investigate or the state cannot investigate itself. This is something which will go a long way in addressing the issues of preventing torture to our citizens.

I have heard Hon. Gikaria double speaking. On one hand, he said he opposes this and on the other he said some people should be subjected to torture. Nobody should be subjected to torture. When somebody is apprehended or arrested, the police have the power to investigate and establish the crime committed by this person so as to be punished. But, they cannot use shortcuts or any other means to get information from a person however bad he is. Whether he is a terrorist or a person who has committed a heinous crime, he must be subjected to investigation and given due process so that he can be adequately punished for whatever he has committed but not being subject to torture.

Hon. Speaker, thank you for giving me a chance. I support this Bill and believe it will go a long way in promoting the issues of human rights which our country has suffered quite a great deal. In the past political detainees and other people were not taken through the due process of law but were punished and shortcuts were used through police custody to procure information from them.

**Hon. Speaker:** The Member for Kapenguria.

**Hon. Chumel:** Thank you, Hon. Speaker. I stand to support this Bill. In fact, mine is just to urge this House to be careful in the Third Reading when making amendments or passing the Bill as it is. This is because Kenya is not where it was before when people were tortured at Nyayo House and other places. It comes at a time when this torture has stopped and Kenyans passed the new Constitution.

It is clear when you read the Constitution on how arrests and other issues should be tackled. Of late, I have seen like we are almost going back to where we were. In fact, the earlier torture was better because it only targeted the senior people who tried to interfere with Government systems. Now, it is going to the people down there. In the daily newspapers you will read about three young brothers who were tortured to death and their bodies dumped in the forest. Who did this? Investigations say that these people were arrested by the police and this is not a new thing. It is not only the three who have been tortured to death by the police but there are others.

My Committee is following up on an issue. Last week, there were some farmers who were protesting against their land being taken by a senior person somewhere. They protested in front of the Ministry of Interior and Coordination of National Government and were not given attention but at night they were picked by the police and arrested. In the morning they were found in the forest alive although with some injuries.



Mine is just to caution this House because things will be happening slowly like this. We are not different from other countries like Somalia. We should not allow some things to go beyond our hands because we will not defend ourselves at all. In the new Constitution there is freedom of expression, assembly and association. When people air their grievances or what they want to improve this country and others come in and stop them in a funny way, and they end up losing their lives, this is not good for our country.

As we continue discussing this issue, we need proper protection for office holders. You can remember what happened to the former head of National Intelligence Service (NIS) *Bwana Gichangi*. He did well and once raised some issues but later he was forced to resign. Should we allow the good people who are serving Kenya to be removed in such an ugly way? No! We have to stand and protect them and the law is there to protect them. The Constitution is there to stand with them. We need to see to it that the officers in authority discharge their duties without interference. Let them serve Kenyans well and unite us.

I come from an area with a lot of insecurity because it was left behind and people fight to defend themselves left and right. It has nothing to do with cattle rustling but it is because of lack of protection of their property that they defend themselves and look for ways to secure what they have. If they do not do that, after struggling for a long time to increase their stock then one day some people just come and take away their animals, then that is bad.

We should not allow this to happen in our cities. Right now in Nairobi, one cannot move freely because we are almost going back to where we were. I want to support the CS in charge of Interior and Coordination of National Government for having started well but I think he is now going overboard. He is only after the politicians instead of looking at the general crimes which are happening around. I support this Bill and urge my colleagues to be serious on this. Kenyans did their part when they voted for the Constitution and here we are now. We have to better it and ensure that whatever we pass in this House will protect Kenyans for a hundred years to come.

**Hon. Speaker:** Let us have the Member for Kwanza.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Speaker, for giving me this chance.

From the outset, I think the Bill is right. I have experienced cases where I have seen people who have been forced to give false evidence. Torture has always been there and as my friend, Hon. Moroto, has said, we are almost going back to where we were, when one was forced to give false information to get back one's freedom. I am old enough and I saw what happened. I witnessed the so-called Nyayo House chamber where people were forced to give testimony. If you sit and listen to what they went through - that law has not been removed - you will cry. There were cases where people were put in a place where there were snakes---

**Hon. Speaker:** Just a minute, Hon. Wanyonyi. You have said that the law has not been removed. On 27<sup>th</sup> August 2010, this country promulgated a new Constitution in which Article 29, all forms of torture are forbidden and clearly outlawed as unconstitutional. This Bill proposes to actualise that. There is no way you can say that the law has not been removed when you have a Constitution. The Constitution is the supreme law of the land. I am sure you may have wanted to relate it to the history but torture is not permitted.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Speaker, for your wisdom and kindness. All I am saying is that any form of torture is not permitted. As somebody said, you better even face the firing squad rather than go through the torture that had been witnessed in the past.

We are faced with the problem of terrorists in this country. I do not know how we will get information from them but it is better for our State agents to be trained to get information through a thorough investigation rather than torturing the victim to the extent that when they

come out of whatever place they were in--- I have heard of cases where some of them were paralysed and some were made impotent. We should pass this Bill so as not to experience this kind of torture that the victims have gone through.

The other thing is that once it is proved that a victim has been tortured, we should have mechanisms for compensation and I think it is suggested in this Bill. In cases where somebody loses almost all his property and time because of detention, that person should be compensated once it is proved that he has been a victim of torture.

Much as I support this, I do not think hardcore criminals care whether they will die. We have had cases where hardcore criminals have been difficult to rehabilitate. Even when you take them to a place where they are supposed to go through the psychological change of mind, it becomes very difficult and sometimes they do not even change. They change their ways for two or three years and when a crime is committed somewhere else, you find that the same people are mentioned or arrested.

This Bill should be supported and I hope that we will train our State agents to extract information in a more humane way than through torture.

With those few remarks, I support the Bill.

**Hon. Speaker:** Let us have the Member for Saku.

**Hon. Dido:** Thank you very much, Hon. Speaker. I rise to support this Bill.

I agree with you, Hon. Speaker, that this operationalises the Bill of Rights. It gives effect to the important things that, maybe for many years, our society has taken for granted. There is nothing to guide even judges in courts in terms of how to pass sentences. The acts of torture that are degrading, inhumane, cruel or forms of punishment that cannot be humanely done is what this Bill attempts to identify.

This country is not alone in this matter. Recently, in the United States of America (USA), there was a discussion about waterboarding which is part of torture and yet some Americans agree that waterboarding is good. For that reason, the progression in the Kenyan law and, society must be considered particularly in the light of this Bill because when we say that victims or individuals who are arrested by police or any law enforcement agencies must not be tortured, it is important and true. This is because today, we have forensic scientific discoveries such as DNA in terms of finding out if an individual has been involved in a particular act. All these are available tools that were not there before, that law enforcement agencies can use to determine if a particular individual can be brought before court with adequate material evidence.

In recent times, we have seen the disappearance of victims who were arrested. Sometimes we ask ourselves whether it is because the law enforcement agents are unable to extract evidence or information from these individuals that they feel they are discouraged. For that reason, I believe that this is a very important Bill that both the citizenry and law enforcement agencies must clearly understand. For example, in the area of aiding and abetting, the first call of contact is normally the law enforcement agency or a police station, for that matter. Normally, if a police officer is involved in a particular situation of dealing with a victim in an inhumane or degrading manner, the first people to say that it did not happen or who try to bury the evidence are the police. For that reason, this law must attempt to identify some of the areas individuals can resort to if the first point of call is a police station and they do not get a fair hearing because one of the law enforcement agencies is involved.

Hon. Speaker, this Bill also attempts to look at those who may torture like the regular police or the Administration Police. We must go beyond that because there are many law enforcement agencies or other institutions where individuals are working where an individual

can be tortured to adduce evidence. So, this Bill must be wider and more encompassing rather than looking from a narrow prism of just the police.

Through this Bill, the Kenya National Commission on Human Rights' job is cut out. This Commission is the weakest link in terms of supporting, protecting, identifying and also taking the necessary action to support the civil society when such things happen.

The other progressive part of this Bill is the support for and assistance, medical treatment and counselling of the victims. More often than not, the people who are caught in these situations happen to be of low means. Not many times do you see well-endowed people being victims. For that reason, the law must clearly come out to support victims of torture and degrading acts.

Finally, let me comment on the offence of using information obtained through torture. For many years or for a long time, law enforcement agencies in this country in terms of dragging a victim before justice have always resorted to using torture. With this law, once it is proved beyond doubt that a particular individual has been brought before a court and evidence has been acquired through torture, then that particular evidence will not be admissible before a court of law. That is very important.

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

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Speaker for giving me the opportunity to contribute to this Bill. It is very refreshing that we have this Bill with us. We have had a dark history in relation to torture in this country. Unfortunately, for a long time, it related to officials of the State. Thanks to the UN Convention and our Constitution particularly Chapter 4, the Bill of Rights, which I consider the most important Chapter of our Constitution after devolution. We are now putting forward a Bill that prevents torture.

I support this Bill because it defines torture, cruel and inhuman and degrading treatment. It seeks to prevent all that. It establishes mechanisms for redress, support and assistance. It defines clearly what that is. It is also refreshing that it actually gives an opportunity for an intermediary to act or talk on behalf of the affected person.

Part II of the Bill defines what crimes are and prohibits any justification whatsoever for committing these acts on a person. It further defines aiding and abetting and it gives powers to our courts to specifically act on these crimes. More importantly is the power it gives to the Kenya National Commission on Human Rights and that perhaps is the most important part I see in this Bill. The Commission has all the powers from investigations, promoting rights of the individual, freedom of the individual, getting all the information, monitoring that there is compliance to the law and to issue summons and orders and to recommend effective measures. All these are things that were unthinkable in the past. Now that we are putting structures in place for them is extremely important. That gives us reason to support. I ask all my colleagues to support this Bill

This Bill clearly states that there is no justification whatsoever for any form of torture, be it mental or physical. Regardless of what purpose that may be put forward for committing what is now definitely a crime, whether it is for obtaining information or it is for meting out punishment for suspected or alleged crimes, there are procedures for doing that. This law now states that you can only go through the legal process and not use torture to get information.

This Bill also says that there are no circumstances whatsoever under which you can insist that there is need for torture, whether it is in a state of war, state of internal instability or whatever situation we are in the country. I find it also important that officers are protected. They cannot be forced to mete out acts that will be against this law when it comes into place. It has

always been known that under other jurisdictions an officer cannot say that he or she was ordered. The officers are only entitled to only follow lawful orders. This further reinforces that. For a long time, torture has been used to obtain evidence. It is now clear that evidence that is obtained in that manner is completely useless. So, in a way, that will reduce the desire of officers, even those wayward ones, who may want to use it. It will not take them anywhere.

Under Clause 4, there is provision for remedies and trials of offenders even those who are abetting and aiding torture. It is quite clear that if someone involves himself in this, they will be imprisoned for as long as 25 years. If someone dies in the process of being tortured, it goes for life. I would have thought, and we may amend it to make it murder, because if one sets out to get information in an illegal way, if death occurs, you cannot say that this is manslaughter. You cannot say that you did not mean to kill this person and that you just wanted to get information knowing that, that process in itself is wrong. We can maybe look at that.

It also provides for assistance of victims and that is extremely important. In the past, we have known people who even when after they have gone to court and have actually been provided with redress to get payment or to get any form of restitution, have gone to the streets actually looking miserable while they have been awarded fairly reasonable compensation. With this Bill, we will look at it in new light and those victims will be supported.

With those remarks, I support this Bill. Thank you.

**Hon. Speaker:** Member for Matuga! He made a request and decided to go and relax. Member for Nambale!

**Hon. Bunyasi:** Hon. Speaker, I rise to contribute to this Bill. It is an important one in any society that is aspiring to become civilised. I have one fundamental worry about the general thrust of the Bill. We live in a society in which the law enforcement agencies do not respect even their own citizens. They usually handle ordinary people in a very intimidating way. They do so in a way that shows no respect, especially when people go to report crimes. It is full of threats and so on. Here we get a Bill that is saying that when you have a suspect in your custody, you should handle that suspect in a humane way; a way that is not degrading. However, that is not the nature of their business. The nature of their business is to dehumanise, degrade, threaten and intimidate. When you see people who are, perhaps, serious suspects or potential criminals being handled in a way that is even better than the ordinary persons they meet on the street, I think this is going to be a tall order. I see that as an inherent contradiction. Here, we are seeking good things but in a society in which those responsible do not act that way, I see a real cause for worry.

Two, in respect of Clause 4 that prohibits extradition, this is a reason to believe that a person being extradited to some place would face humane treatment and all those good things. There is a risk there, which is being a haven for people who have actually committed those crimes. This will be allowing such people to play around with the law of the host country, say, Kenya, which would be unwilling to return them. The way this is worded - I hope that in the Committee stage we will have some proposed amendments - I advocate that Kenya needs to be a civilised nation by returning those kind of criminals to where they committed the crimes. It happens too often. We have had these issues even within our region. People who have committed crimes in neighbouring countries come to Kenya and we do not ask them to go back. There is a big risk there that this proposed law would be used as a cover.

I also think it is important that alternative ways of finding information be used as is done in other countries. The law enforcement agencies have to become more sophisticated in the way they gather information. You cannot have somebody who, say, is a murderer refusing to co-

operate knowing that you cannot do anything to them. You would be unable to extract information. I think we need a balance. These people must be separated from society if they are going to become wilful criminals all the time. If we go this way, we run the risk of doing what we did some few years ago when our prisoners had three square meals and clean, washed uniforms. They had access to television and yet the societies which they come from do not have any of those. In a sense you can almost say that there is an incentive to be taken in because when you go in you will be fed, clothed and even allowed to follow the news globally. We need a balance. I do not see that balance here; I see a strong attempt to catch up with others. However, we are catching up with people who are in societies where there are alternative ways of finding out what those people are doing. In those countries, criminals' records can be accessed easily. Those countries have better surveillance and tracking systems. We do not have those. So, we run the risk of legalising the protection of criminals. We must think seriously about that.

Hon. Speaker, I am concerned about a trend that we have seen lately. I have not looked at the crime statistics to be sufficiently quantitative, but we have seen this in Busia County, in Butula to be specific. The Administration Police – they are not the only ones – handle suspects in a bad way and these leads to deaths of the suspects. If you watched television last week, there were a number of cases like that. I know that this is excessive abuse of power and there is need for some protection. I think that we still need to sit back a little bit, as we go through these stages, and determine whether we have the right balance. We are supposed to protect society from harmful people. We are supposed to protect that society in a way that those who do harm can be identified and incarcerated if it is so decided by the court process. So, it is that lack of balance that bothers me. Whereas on one hand we have to restrain police from torture, on the other hand, we do not want to cover criminals who would otherwise be in the judicial system.

I think we ought to have better use of resources. I do not know if we need to increase the amount of money allocated for this purpose. This will ensure that there is sufficient training, upgrading and teaching of police officers so that they are in a position to evaluate how they should react. You find cases - I call them simple cases - of illegal brewers being arrested in the villages, but when they are freed you realize they are missing their teeth. It is because of the poor way they are handled. They are beaten when they do not part with some money. I think we have a serious problem there. I think that better training will equip these people both mentally and in capacity. That way, they would be able to know how to extract information without resorting to crude means.

All in all, I think it is a Bill that is needed. I just think that we need to make amendments to improve that balance.

**Hon. Speaker:** Mover to reply.

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I want to thank all Members who contributed to this very important Bill. The principal object of this Bill is to implement Kenya's obligation under the UN Convention and, of course, within the reading of Article 29 of the Constitution. We must get rid of people whether they torture, whether they give drugs, whether they do money laundering, or whether they do terrorism financing. We must clean this country. Last night, I was shocked. The President does not arrest drug dealers. Hon. Joho should relax. There were many people who were mentioned. Why is he panicking? Uhuru Kenyatta and William Ruto do not arrest drug dealers. State agencies will come for you when the evidence is found. Those who torture, those who give drugs to our children, those who engage in money laundering, those who even deal with the Bill Hon. Jakoyo---

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

**Hon. Speaker:** What is out of order, Member for Kibra?

**Hon. Okoth:** Is the Leader of the Majority Party, who we worked with closely to move this Bill, in order to bring in issues that have nothing to do with the substance of the Bill? We are talking about the crime of torture and its prevention. It has nothing to do with the fight against illegal drugs in this country. We are talking seriously about it.

**Hon. Speaker:** You know your reply should be confined to the issues raised by Members when they were contributing.

**Hon. A.B. Duale:** Yes, Hon. Speaker. In fact, after this, Hon. Jakoyo will be bringing another very good Bill, which is similar to this one. It is about people who are making Kenyans very poor through another business. This week is a good week and I thank Members. Everybody will be dealt with by the State agencies. People should not panic and should not raise issues.

I beg to reply.

**Hon. Speaker:** Very well. For obvious reasons, I will not put the Question for Second Reading. So, we move to the next Order.

## MOTION

### ADOPTION OF REPORT ON RATIFICATION OF AGREEMENT BETWEEN GOVERNMENTS OF KENYA AND USA

**Hon. (Dr.) Pukose:** Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Health on the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Cooperation in Threat Reduction Biological Engagement Programmes, laid on the Table of the House on Tuesday, November 22, 2016, and pursuant to the provisions of section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Co-operation in Threat Reduction Biological Engagement Programmes.

Hon. Speaker, the Cabinet Memorandum on the ratification of this Agreement was laid on the Table of the House on 19<sup>th</sup> July 2016. Subsequently, it was committed to the Departmental Committee on Health for consideration, pursuant to Section 8 of the Treaty Making and Ratification Act 2012, and to report back to this House. Once ratified, this Agreement becomes part of the laws of Kenya as provided for in Article 2(6) of our Constitution, which provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

In considering this Agreement, the Committee held a total of five sittings. We also had a comprehensive brief on the matter from the Departmental Committee on Justice and Legal Affairs and the Parliamentary Budget Office. Pursuant to Article 118(1)(b) of the Constitution on public participation and Section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed an advertisement in two dailies on Thursday, 4<sup>th</sup> August 2016 requesting for submission of memoranda on the subject matter. The Committee did not receive any submission from the public. The Committee also invited the Cabinet Secretaries (CSs) for Health, National Treasury, Foreign Affairs, Defence, Interior and Coordination of National Government, and the

Attorney General on 18<sup>th</sup> August 2016 to deliberate on the Agreement. The CS for Health, a key stakeholder in the matter attended the sitting while the Principal Secretary (PS) for Defence represented the CS. The Attorney-General and the CS for National Treasury were also represented in the sittings on 14<sup>th</sup> September 2016.

Hon. Speaker, the Agreement desires to establish a cooperative programme to facilitate mutual beneficial efforts to reduce biological threats of common concern between the two countries. The purpose of the cooperation programme is to facilitate efforts to reduce the threats from naturally occurring diseases, biological attacks or unintentional release of biological pathogens and toxins, and the risks caused by non-state actors or bioterrorism. The objectives of the agreement are twofold:

- (i) To enhance the Government of Kenya's capability to identify, consolidate, store and secure collection of pathogens and diseases of security concern in order to prevent the sale, theft, diversion or accidental release of such pathogens.
- (ii) To enhance the Government of Kenya's capability to rapidly and accurately survey, detect, diagnose and report biological terrorism and outbreaks of pathogens and diseases of security concern in accordance with international reporting requirements.

Hon. Speaker, the application of this Agreement does not envisage amendments to the Constitution of Kenya. In terms of the scope, Article 2 of the Agreement outlines in details a wide range of issues related to reducing threats from naturally occurring diseases, biological attacks or unintentional releases of biological pathogens and toxins, and bioterrorism risks posed by non-state actors. The areas of cooperation under the Agreement may include, but not limited to, the following:

- (i) Implementation of a comprehensive, sustainable and legally embedded national programmes for biosafety and biosecurity;
- (ii) supporting the implementation of an effective nationwide laboratory system within Kenya;
- (iii) implementation of a functioning surveillance system within Kenya capable of identifying and responding to potential events of concern to health security from biological pathogens and toxins;
- (iv) implementation of policies and practices to minimise the spillover and spread of emerging diseases; and,
- (v) Supporting collaborative research programmes in biosurveillance, biosecurity and biosafety.

Hon. Speaker, in regard to the Executive agents and implementers of the Agreement, Article 3 designates the Ministry of Health, in collaboration with the Ministry of Defence, and the Ministry of Interior and Coordination of National Government as Executive agents for the Government of Kenya. The planned activities under the Agreement will be mutually agreed upon by the two Governments based on the scope of the cooperation. The present activities planned under this Agreement are:

- (i) infrastructure upgrades and construction at Isiolo and Kajiado Level 5 Hospitals laboratories;
- (ii) construction of sample management facilities and other infrastructure upgrades at Central Veterinary Laboratory, State Department of Livestock and the Kenya Medical Research Institute; and,
- (iii) infrastructure upgrades at the Kenya Veterinary Vaccines Production Institute at Embakasi in Nairobi.

There are other activities and projects that are envisaged based on the Agreement's scope of cooperation.

Hon. Speaker, this Agreement provides a monitoring framework and timelines in Article 8(3) requiring parties to the Agreement to establish a Committee to monitor the implementation of the activities. However, structure and composition of the monitoring committee shall be agreed upon during its implementation.

Hon. Speaker, further deliberations by the Committee observed that there is need to set up an implementing review committee following the ratification of the Agreement, which will be multi-agency. The Committee will comprise of representation from the Ministries of Health, Defence, Interior and Coordination of National Government, Foreign Affairs, National Treasury, Agriculture, Livestock and Fisheries, State Department of Livestock, State Law Office, Council of Governors, National Commission for Science, Technology and Innovation, among others.

In consideration of the Agreement, the Committee took note of the fact that while the United States has designated the Department of Defence as the Executive agent for the Government of the United States, the Executive agent for the Kenyan Government is the Ministry of Health, in collaboration with the Ministries of Defence and Interior and Coordination of National Government.

Regarding taxation, imports and exports, the Committee observed that Article 5 of the Agreement provides for waiver in Income Tax, allowances and other emoluments for parties working in the country where the activity is being implemented. The Article allows for the importation or exportation of goods and services under the Agreement.

The Committee raised concerns on the Article on liability, where except for contractual claims parties were not expected to bring legal proceedings against each other's personnel contractors and damage to each other's properties. However, it was noted that the Article provides for third party discussions on liabilities, including possible compensation.

From the foregoing, the Committee recommends as follows:

1. The National Assembly approves the ratification of this Agreement as it is in the interest of the country in line with the World Health Organisation (WHO) international health regulations in addressing biological threats and pathogens.
2. The Multi-Agency Implementing Committee envisaged in Article 7(3) should be established immediately after the ratification of this Agreement to facilitate effective implementation as envisaged in Article 2.
3. The implementing committee shall develop a mechanism for reporting back to Parliament on the status of the implementation of the Agreement.
4. The agencies involved in the implementation should develop the requisite capacity to effectively implement this agreement.
5. All laws on waiver of taxes be taken into consideration when implementing the agreement.
6. The Ministry of Health, together with the other State agencies charged with handling pathogens, should develop the standard national list of pathogens and this should be made public and stored in a place where we can access that information.
7. The Ministry of Health should provide a list of specific goods and services under this agreement to be exempt from taxes, duties and levies.
8. The State Law Office should fast-track the draft Bio-security Bill to be passed by Parliament, so as to provide a legal framework on which to anchor issues of bio-safety and bio-security.



With those remarks, I beg to move and request Hon. (Dr.) Nyikal to second.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Speaker. I rise to support the Motion on the Agreement between the two governments.

The issue here is very basic. There is need for cooperation of all countries across the world, particularly those who ascribe to the World Health Organisation (WHO) public health regulations that are worldwide. In this particular instance, the issue is between the Government of the United States of America (USA) and the Government of Kenya. The issue that we are concerned about is that of threat to human health through biological agents and these include germs that can be used in warfare such as Anthrax and Small Pox and also chemicals of radiation that can be used in warfare or by terrorists. All these can have mass effects on human health. As you have indicated, these may, in acts of terrorism, be released on purpose by terrorist agents or they can be released by error in labs that are utilising or holding these agents.

Therefore, there is need to be prepared for this, whether the release is by error or it is purposeful as in the case of terrorism. Once the release has occurred, the effect and the preparedness is the same except in the case of terrorism where there is need to have much more massive preventive measures that will include all other arms of the Government. In this case, the need for the Government to be involved is to acquire the capacity and this capacity is required for surveillance so as to be always careful across the country, particularly at areas of entry if you are thinking of terrorism.

Therefore, we need a surveillance mechanism that will consist of laboratories across the country that can pick these early enough, make a diagnosis and pass the information. Further, sometimes, even in the course of normal research, errors can occur. Again, it is important that this may not be picked by the lab where this has occurred, but it may be picked elsewhere. That information needs to be relayed across the country and also internationally. For that, we need the capacity of laboratory and human personnel who can handle this.

The best way to do this is to work together with people who have this expertise. In fact, a simple thing as how a laboratory is structured is important in preventing this. Definitely, there is danger when you are cooperating with other governments in this. These dangers are the materials that are being exported out of the country or imported into the country and the access other government have to our system. We need the capacity. It is only with human capacity that we can prevent and protect ourselves. If we do not have people and systems that know this, then people can walk in, do things and walk out. We have cooperation in many other areas, for example, during disease outbreaks. We call people from other countries to support us. We need people who can understand what is brought in, taken out and how we can protect ourselves. So, in the initial stages, we are duty bound to cooperate with people with that capacity.

It has been indicated by the Mover that in the US, it is with the Ministry of Health. That raised an issue during the discussion, but the reality is that in the US, they have a military department that is dealing with health like the Walter Reed Research that we cooperate a lot with in the Kenya Medical Research Institute (KEMRI). That is why it is coming through health. Therefore, we have recommended that our Defence Department needs to develop a research department that is related to health that can deal with these matters.

As it is now, their dealing is through the Ministry of Health and basically KEMRI, the veterinary laboratory that we are dealing with and even the Ministry of Agriculture, Livestock and Fisheries because these are biological agents. This Report proposes a team that takes into consideration all these. I particularly would say that our military must take real interest, put

money and develop this capacity because that is the best way to deal with this. There are military considerations that medical people may miss. So, our military will be involved.

During the discussions, we asked ourselves how we will track this. We proposed what initially was not in the agreement that we need a regular report to Parliament, particularly to the Departmental Committee on Health. I think the Departmental Committee on Defence and Foreign Relations should also be involved in that. We also recommended that we must abide very strictly to the WHO regulations because that will be our protection should there be a problem.

Lastly, across the world in developed countries, there is a list of pathogens that are known. Pathogens are those things that cause disease, particularly diseases that can spread very rapidly. Therefore, there is need to develop a list of those diseases, so that people can know about them. It came to our realisation that we do not have that list. I think this process will help us, so that that is one of the capacities we develop.

With that, I second the Bill.

*(Question proposed)*

**Hon. Speaker:** Hon. Members, I am assuming that those whose names appear here have interest to contribute. I will follow the list. The first one on the list is the Member for Njoro.

**Hon. J.K. Ng'ang'a:** Thank you, Hon. Speaker. I rise to support this Motion. As we sign any treaty with any nation, we should consider our interest as Kenyans. We have signed treaties and later on we came to regret it.

Hon. Speaker, you remember the Egyptian Treaty with the East African Community (EAC), which was in favour of the Egyptian nation, but the whole of East Africa did not benefit. So, it is very important for all of us to ensure that any treaty that we sign with any nation takes care of our interests.

With those remarks, I support.

**Hon. Speaker:** Yes. One minute, Member for Kibra?

**Hon. Okoth:** Thank you, Hon. Speaker. I rise to support this treaty and to contribute to the debate about it.

The Agreement between the Government of the Republic of Kenya and the Government of the USA on threat and harm reduction on the issue of biological threat is important. It is timely. We are living in a world that has very quickly changing security issues.

In the last century, the 20<sup>th</sup> Century, most of the concerns were about nation to nation warfare. Today, conventional warfare between nations with armies lined up along clear battle lines is almost a thing of the past. What we are facing is threats from groups such as terrorist organisations and emerging security threats that were not necessarily military threats. For instance, there are threats of new epidemics spreading very fast.

As the Hon. Member for Njoro has said, let us make sure this agreement is an agreement that works in favour of Kenya. Any research carried out under the auspices of this agreement should benefit Kenya.

In the power dynamics between the US and Kenyans, even if we use the diplomatic terms as “partners,” the reality is that the US is a more powerful nation that has more tools and resources of leverage in that discussion. Kenya must ask very seriously what is in for us and what we are going to get out of it.

As I speak about this, Hon. Nyikal mentioned the Walter Reed Project for Clinical Research Centre and the research carried around in partnership with KEMRI. Kibra Constituency has hosted research that is being done by KEMRI/WRP and the Centre for Disease Control (CDC) Kenya at KEMRI Headquarters and also in the field within Kibra Constituency within the Kibera slum area for over 10 years.

It begs the question of what type of research has been done. What types of samples have been collected from our people? What type of consent and participation in that research has taken place? What are the findings? The data and the statistics is going out of our country yet we are told our military does not have this capacity and our Ministry of Health is signing in as a junior partner to this agreement. What type of information will be going out? When we have a military agreement, it is a national security issue. What will the US military know about our vulnerabilities and susceptibilities to different diseases and pathogens? All this information can actually leave Kenya at a disadvantage.

So, we need to start engaging in a very serious manner in these treaties and ask: On the flipside, what does Kenya get out of it? My suggestion will be that people who make our treaties must insist on knowledge sharing and retention of data. For any research done out of Kenya, that data should remain property of joint parties including the Kenya Government, so that our researchers can use it in our universities. If we are talking about building this capacity, we can call on it. If any treatments patents come out of these medical treatments, research, threat reduction agreements or preparations and contingency planning, and it is going to be commercialised, they should be of equal benefit to the people of Kenya.

Again, I tell you the CDCs have been doing studies and work in Kibra. If there is any intelligence and work that will be commercialised later on, on issues they have researched in Kibra with my people, let those drugs not be drugs that are expensively patented by American multinational corporations yet the people on whom or among whom - within the community with clear and informed or not - the research was done and who contributed greatly to its success through their cooperation and participation cannot afford those drugs. We have seen these things happen before.

Last but not least, in terms of treaty making step by step, we really need to engage the Departmental Committee on Administration and National Security of this House as well as the Departmental Committee on Defence and Foreign Relations to look as a package, maybe on a yearly or a two year basis to see what types of agreements are being proposed to our different Ministries. These include the Ministry of Health, Ministry of Defence and Ministry of Trade. They should look at what approach we can take to go to these engagements with our international partners.

Here, I am thinking of a situation whereby, here we are passing the threat reduction agreement. A few months ago, we were ratifying the agreement between Kenya and British forces in Laikipia. We have talked about human rights violations up north. What is the role of the British? What are the compensations to the local community? What is the right rate to pay for their occupation of that land? What are their environmental obligations to clean up things like depleted uranium that is used in their practice and war games? This is the same thing we need to do here.

We know that the US has a new President, Donald Trump, whose approach and priorities definitely, will not be about Africa. But under Presidents Bush, Clinton and Obama, Kenya enjoyed a very good relationship with the US. Many of us are friends of the US. I got my undergraduate degree and Master's degree in the US. I appreciate all the great things that a

partnership with the US can do, but we should not take it for granted. This is for our leaders within the Ministry of Foreign Affairs and all branches of the Executive that things will be the same.

The posture of the US and priorities will change under President Trump. We need to understand proactively how we can position ourselves to make sure that the partnership between Kenya and the US does not suffer and that when we are asking for agreements like this: Do we just rubberstamp and pass them through the House or do we leverage them in request for something else?

Hon. Pukose comes from an area of this country where sugarcane farmers are suffering and they cannot export their sugar to the US. We should be asking for tit for tat. If this is an agreement that is important, that we are going to work on as partners, do not forget about the interests of our farmers and their access to the American market. Do not forget about young people from Kenya who might want to do business, study and travel to the US. We may think we are sitting pretty because the first seven countries of the Muslim travel ban that was placed by President Trump's Executive Order includes countries like Sudan, Libya and Somalia. Very soon, we will have a sports tournament for International Association of Athletics Federations (IAAF) for Under 18 and the US has just refused to send their team saying the threat level, terror level and security of Kenya are critical. By denying their under 18 team to come for the Junior Athletics Championship, which was to be hosted in the City of Nairobi, the US is telling us they are not really partners with us in hard times and good times. They will pursue their interests.

If their interests are to think our country is a critical security threat, at risk and they do not want to expose their athletes to participate in those games, it is a loss of revenue for us. It diminishes the profile of that athletics event. So, we need to engage the US and tell them: "You cannot say on the one hand you are our partner and we will just pass things to push that partnership, but when you feel like pulling the rug from underneath our feet and leave us hanging, you do it very easily". We need to come to an approach where we are using the Treaty Making and Ratification Act and a comprehensive approach where we are asking for a set of treaties, upcoming treaties and knowing where we are getting the tradeoffs from, especially when we talk about trade and employment opportunities.

In this country of ours, we know an emerging issue that so many young people do not have jobs and they want jobs. They want a growing economy that is creating jobs for them. That will include exporting things, whether it is in the agriculture sector or other sectors. This morning, we talked about the Livestock and Livestock Products Development and Marketing Bill. It will also include exporting meat from Kenya, from camels reared by the Leader of the Majority Party and cheese from camel milk to the US. Those things are still close to the market and so, the standards and the non-tariff barriers make sure that great camel cheese from Garissa County cannot reach the shelves in Minnesota where there are Kenyans or Americans of Kenyan origin who want to consume it.

We really must make these treaties, negotiate and see where we are doing the give and where we are doing the take in the whole scheme of things and whether we are protecting the interest of Kenyans as well as we enhance our partnerships.

With those few remarks, I beg to support. I pray that we will continue to engage well and protect our rights to travel even to the US, so that Kenyans are not blacklisted and Kenya considered one of those countries that should not be sending people to the US.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Nambale.

**Hon. Bunyasi:** Thank you, Hon. Speaker. I rise to support this Motion on the adoption of the ratification of the Agreement between the Governments of Kenya and the USA on threat reduction biological engagement programmes. It is very important, indeed, that we are able to hook onto the capacity like that of larger countries like the US. In the entire world, the custodians of these most dangerous pathogens are countries like the US, Russia and China. They have the will to destroy the entire world if they so choose. I guess it is in our interest that we have some cooperation.

One of the things we must look at is how to enhance our capacity, not just to protect, but to produce and protect. These pathogens are useful in scientific research. They can also be used as biological weapons, but they are also inherently useful in scientific research that improves human condition. So, we must become pretty selfish in seeking to extract out of it the most that we can get to support our countries.

Two, I think one of the things we need to gain from this kind of agreement is to be able to develop centres of excellence in the research, management and many aspects of these dangerous pathogens, so that we do not inherently rely on what the US Government will do or give us. What happens in this unequal arrangement between powerful countries and poorer countries is that you become data generators of the richer countries and they carry all the information. You do not see the analysis except what they want you to see. So, we should use these kinds of facilities in accessing higher level training in the US and building capacity here for higher level training and learning by using resources that we gain from the Treaty. It is extremely important that we think ahead and say, “What if it comes a time when we stand on our own?” What will happen if we have to identify these problems, perhaps imposed by rogue groups? And we are at risk from rogue groups.

The third area that I am concerned about and I would urge the implementers of the Agreement to look into, is that we should expand the capacity in the country. We need this capacity within our universities through a centre of excellence. We also need it in law enforcement and in research establishments, and not concentrated in one corner of Nairobi or some forest station somewhere alone. For example, the law enforcement agencies in the counties can recognise these kinds of threats and can become first responders. The capacity building we are going to do will also enhance the capacity within our counties, particularly in law enforcement. Now that Kenya is blessed with multiple universities in various areas, we can get those that can provide support on some aspects of this threat chain that we are talking about. Most importantly, I would like to see our police officers one day, with these kinds of threats, standing up and speaking knowledgeably, not in the way we have seen them react. In some cases, before they look at something they make a judgment which can compromise investigations.

*(Hon. Okoth consulted loudly)*

Hon. Speaker, you will have to protect me from the Member for Kibra. The point I was making was that we want to be sure that our first responders, who are distributed across the country, from Mandera to Busia, are able to recognise when such problems occur and they know what they could possibly do about it. They know whom they could call to come and do it. They know how they should manage the population in case of these kinds of threat and not to be part of the panicking crowd. We have seen many cases when we have had crises and senior officers come out and what they say is not thought through and not based on facts. They feel they must

say something. They may get it all wrong. Frequently, they do. They correct themselves later, of course. This is not an area in which you can afford to have any kind of mistakes being made.

Fourthly, I think it is important that there is increased awareness among the population as well because they are going to be the first victims; the most unsuspecting victims. There needs to be a higher degree of awareness on what these kinds of things involve. That way, the synergy between an informed population, trained law enforcement and centres of excellence within our universities will create a body of knowledge and capacity that over the years will help to propel us forward.

I want to echo one point that was made by an earlier speaker that in the beginning, this will appear to benefit more the rich countries than ourselves. As I said, we are also at risk. We need scientific advances. But in that process, let us find out what else we can extract from these kinds of institutionalised friendships. This is saying we are friends. Let us become partners. In the process of becoming partners, let us see what else we can open doors for. We certainly should open doors for our young talent to go out there; our young biologists and various chemical experts to benefit from the best that there is in training. Can we open up opportunities for those? And can we open up opportunities for them when they come back to this country, so that they can build this expertise? We must indigenise capacity because that is the only way it is sustainable. The days when we relied on others because of the colour of their skin or their nationality must be receding rapidly because we have proven that it is possible to produce some of the best minds as well globally. We should use opportunities of this nature to expand that space as we want.

I think this is a very timely process, as was described by the Mover, that Kenyans have taken in getting this to Parliament. I think we have a great tradition that we are building now in which governments are obliged to bring these kinds of treaties before the representatives of the people to ratify them and through that process, to get others to learn what it is we are committing ourselves to. This should be true across all sectors and all such agreements without exception. It is a good way in which we can jointly develop responsibility towards the implementation of these kinds of programmes.

With those few remarks, I support.

**Hon. Speaker:** The Member for Kiharu.

**Hon. Kang'ata:** Thank you. I take this opportunity to first and foremost congratulate the new President of America, Mr. Donald Trump. I wish him well in his new job. I strongly believe he is the right leader for America at this stage.

I have a copy of the Agreement between the Governments of Kenya and the US concerning threat reduction biological engagement programme. I think it is a good Agreement. The object of this Agreement is to come up with a mechanism that is going to ensure that we reduce the threat that can be posed by naturally-occurring or manufactured biological beings.

I want to congratulate the teams that were negotiating this Agreement. Also, I take into account that the Constitution is now very clear under Article 2(6) that any Agreement that is ratified in Parliament becomes part of the Kenyan law. Members of this plenary need to know what they are doing. They are making law. Therefore, this is quite a crucial document taking into account the provisions of Article 2(6) of the Constitution.

Hon. Speaker, I looked at Page 18 of the Agreement and the obligations imposed on Kenya by the Agreement are captured. I only note that there are no details on Page 18. I would have thought probably they would have included details to clearly show what they are. I would

imagine that Kenya may have to provide land and staffing, but on Page 18, there is only one paragraph, which does not provide any details.

- (i) infrastructural upgrades and construction at Isiolo and Kajiado Level 5 hospital laboratories;
- (ii) construction of sample management facilities and other infrastructural upgrades at the Central Veterinary Laboratory, State Department of Livestock and Kenya Medical Research Institute (KEMRI); and,
- (iii) infrastructure upgrades at the Kenya Veterinary Vaccine Production Institute at Embakasi.

Hon. Speaker, it would have been good and prudent on the part of the framers of this Agreement to have clearly indicated that the person who is going to fund this programme is the USA. I say so because that paragraph says that the activities to be undertaken under the Agreement will be mutually agreed upon by the two Governments based on the scope of cooperation. It is not clear who is going to pay the money, at least, based on this paragraph.

I have seen in other parts of this Agreement that support will come from the USA. If you look at the introductory part on Page 11 of the Agreement, you get the impression that the USA will pay. However, the operative parts of this Agreement are not clear as to whether it is the Government of Kenya or the US Government that will be providing the funds for the upgrade.

Hon. Speaker, I would have also thought that this is an area that requires expertise. You need people who are learned in the field of biology and very good in chemistry.

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

**Hon. (Dr.) Purkose:** Thank you, Hon. Speaker. I would not want to interrupt my colleague, but I have to let him know that what he is reading is the Report of the Committee and not the Agreement. In the Agreement, it is stated very clearly that it is the Government of the USA that will pay for all the infrastructural development. Money is already within the Ministry. It has been banked with the Government of Kenya. It is just waiting for the ratification of this treaty. Once the treaty is ratified, the programme will be implemented. Is the Member in order to mislead the House and the public by saying that he does not know who is going to pay the money?

**Hon. Speaker:** Maybe, he is misleading himself. Hon. Kang'ata, do not mislead yourself.

**Hon. Kang'ata:** Hon. Speaker, I am looking at this document. I know it is divided in three parts. We have the Committee Report, which has an annexure and it is the one I am referring to. You can clearly see that I am also reading the annexure, part of which is the Agreement. Therefore, I am trying to critique all parts. I am critiquing the entire document.

**Hon. Speaker:** You are perfectly at liberty to critique the document, including the Agreement.

**Hon. Kang'ata:** Thank you, Hon. Speaker. I have the Agreement as part of the annexure to this Report. I am trying to look at whether all the issues pertaining to what I am raising have been captured in this Agreement. For instance, Article 4 of the Agreement says:

“Expenditures by the Government of the United States of America pursuant to this Agreement, including associated expenses and transportation costs, shall be subject to the availability of appropriated funds available to the United States of America Executive agent or responsible implementing agency for these purpose.”

My point is, probably, this Article could have been clearer that the funds are available as the Member has alluded. Those are the issues I am raising. There should be clarity of the Agreement

itself. In any event, I am also alarmed. My colleague is telling us that the money is already with us. The best scenario would have been that we debate this Report first. Once we approve it, the money can be disbursed. What if Parliament declines to ratify the Agreement? It would mean that Kenya has to reimburse the money back to the USA.

Be that as it may, if the money is here, I am happy. In fact, I support this Report. I am just trying to give more ideas on how to improve the Agreement. My argument is that what we are doing here by implication is that we are making law. If you look at Article 2(6) of the Constitution, this is like a law-making process. A treaty that is ratified by Parliament becomes part of the Kenyan law. Therefore, I would have urged to have better details. I think the Executive should not always have the notion that everything they bring to Parliament will be passed as it is. They may bring something here for ratification and the House may refuse to support it.

I want to reiterate the point I was making on education. Most of the students who graduate with Bachelor of Science in Chemistry and Biology at Chiromo Campus of the University of Nairobi, for instance, do not get employment as opposed to those who pursue professional courses like Accounting and Medicine. I strongly believe that these people can be well utilised by our society, if they can be trained more in cogent areas. The Government should take the opportunity to utilise people who have graduated with Bachelor of Science in Biology and Chemistry. We can send our children to the USA to be trained in this area now that we have this kind of funding. We will not only benefit from the funds, but also get trained experts in this area. This is not an area that should just depend on the Government to detect.

**Hon. Speaker:** Member for Bondo.

**Hon. Ogolla:** Thank you, Hon. Speaker. I rise to support the ratification of the treaty that we are supposed to have with the USA.

The world is moving fairly fast. It is true that we are getting more of biological related arrangements. We are not just getting biotechnology, but also technology in the form of computer software. This is the direction in which the world is moving. We are getting more in terms of technology of biology, particularly when we talk about concerns of spreading diseases. We are talking about pathogens and biology. There are things that are not practical and you cannot see constantly. However, according to where we are at the moment with regard to research and issues mentioned in this treaty, it is important that we look at them particularly in terms of the benefits that we derive from them as a nation. We need to look at how we benefit from them in terms of innovations and how we relate in our partnerships. Look at some of the things happening in this country. How do we own results of research and innovation, particularly where some of our scientists partner with external scientists? For example, with regard to HIV/AIDS, a lot of research has been going on at KEMRI over the years, but at the end of the day, only one or two scientists get acclaimed of certain efforts minus the institution, the Government and other players that were involved. When we talk about agreements, in as much as we support them, there are certain things that, in my view, must be considered.

There has been this big debate by the Catholics about vaccines which are brought into the country. People are not sure where they come from and what they are. We have had so many rumours around them and the church even complained that some of the vaccines were laced with family planning hormones. It is important to note that some of these things could be avoided when we get into partnerships such as the one we are talking about here. The results that come out of those innovations should be clearly known, so that we do not just come up with ideas and



get into expensive exercises of denying what is right or coming up with findings that we think are right and yet they are wrong.

At the stage where we have reached with this arrangement, it is important that we constantly check those benefits that we are likely to derive as a country and as individuals involved as researchers and scientists. As we do this, one gets scared about these things that have to do with the USA at the moment. There are many other things that are emerging in terms of how we are viewed by the American Executive. So, when we get into this type of arrangement, one would want to look at it very keenly. Are they things that are likely to stand the times of how that Government is going to be relating with us? We could be getting into arrangements – even though they are treaties - that are not going to be regarded easily by the incumbent administration. There are already scary indications pointing to the fact that we might not relate well with the USA Government following what happened during the last elections.

It is also very funny or almost sad that an American investor, who has been in this country for over 14 years, instead of engaging in partnering with the people in a proper manner as per the agreement that he has signed with the locals and local institutions, is now coming up with insinuations. I will present the matter to the House tomorrow because it is related to a House Petition. He has gone ahead to write all manner of things that at the end of the day bring the House to disrepute. I will bring that tomorrow for the House to look at keenly.

However, we need to be very clear in terms of the benefits that we are going to derive out of these things, so that we do not end up being an inferior partner.

I beg to support.

**Hon. Speaker:** There being no other Member to contribute, I call upon Hon. (Dr.) Pukose, the Mover, to reply.

**Hon. (Dr.) Pukose:** Hon. Speaker, I thank my colleagues who have contributed to the ratification of this Agreement, which is very important. I know that Hon. Okoth has left. He had initially said that I come from a place where sugarcane is grown. I think when you live in Kibra, at times you do not know these things.

*(Laughter)*

Maize is grown in Trans Nzoia. I come from the great constituency of Endebess, which is in the beautiful county of Trans-Nzoia, the granary of this country. One of the things that had been raised by Hon. Okoth was intellectual property. I want to let him know that there is a clause that protects intellectual property.

Hon. Kang'ata has raised the issue as to whether the money is available. I want to let him know that money has been set aside awaiting ratification. It is not yet here with us, but the US Government has already appropriated and set the money aside which is awaiting the ratification. As soon as we ratify this Agreement, the money will be released to fund the various infrastructural projects that we envision in this Agreement.

This Agreement is very key to the issues pertaining bio-terrorism, pathogens and other things that are a real threat in our country. It will be important that we support this, so that we protect our country and determine what pathogens are. We also need to list them accordingly.

I beg to reply.

**Hon. Speaker:** Hon. Members for obvious reasons, we will not put the Question, but move to the next Order.

## BILLS

*Second Reading*

## THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL

**Hon. Speaker:** I can see two Members up. One is Hon. David Were of Matungu Constituency.

**Hon. Were:** Hon. Speaker, this Bill was read the First Time the very week we were proceeding on recess and it was committed to our Committee. During that period, you issued instructions that no Committee should hold meetings until 23<sup>rd</sup> January 2017. Due to that, we could not hold any meeting to look at this Bill. We only resumed two weeks ago and the Committee has already met Hon. Jakoyo Midiwo, the author of the Bill, but we have not met other stakeholders, especially officers from the Ministry of Interior and Co-ordination of National Government who were supposed to appear before us last week on Tuesday. They requested that they come this week on Thursday.

Similarly, the Kenya Revenue Authority (KRA) and the National Treasury were supposed to appear before us yesterday, but they are appearing before the Budget and Appropriations Committee and have requested to appear next week on Tuesday. So, Hon. Speaker, we have not moved a great deal in looking at this Bill and that is why I have stood to request that debate on this be moved forward to enable us look at this Bill critically. There is a lot of interest on this considering the number of memoranda that we have received. It is also a very emotive topic and I am requesting that you give us three more weeks, so that we can do justice to this Bill.

Hon. Speaker, you also know that we might need to visit some countries of similar jurisdictions, so that we can know how they handle betting in their countries. So, I request that you allow us more time, so that we can do justice to this Bill and submit our report.

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

**Hon. Speaker:** No! There is nothing out of order. Let us have the Mover of the Bill to react first, Hon. Midiwo.

**Hon. Midiwo:** Hon. Speaker, I agree there is nothing out of order, but the Committee may be out of order. The Chair of the Committee knows that we do not need a report to debate. I would have understood if Hon. David Were asked for up to tomorrow morning. That is all you can give him. Two weeks ago, the Leader of the Majority Party stood before this House and prioritised this Bill because it is about a serious problem.

By his own admission, he says that he needs to talk to the KRA, CBK and Ministry of Interior and Coordination of National Government and you know what that means. This is what we are trying to cure. We must help the Government. Hon. Duale had earlier alluded to the problems of drugs. This is a worse drug which must be dealt with like yesterday. I would want to engage the Committee. Further, I have read tabloids saying that I was demanding money from these people. We need to deal with this industry somehow.

Hon. Speaker, I want to plead with you to deny him the time he is asking. Do not give him time and let us debate. I personally ask that we go for the weekend having debated this Bill and the Third Reading be done by next week. Before we know it, we will be facing issues of lack of quorum. It will be a tragedy for us if we do not confront this. Hon. David and the Members

know that and they have been asking me when this Bill is up for debate. I urge you to reject what Hon. David Were is trying to do.

**Hon. Speaker:** You see, Hon. Members, the request is to me. So, I do not think I will be assisted by anyone. The Mover has given his position. So, even though I allow others to say what they may wish, it will not be helping me because the decision is mine, whether to accede to the request or refuse.

Since the Leader of the Majority Party also appears keen to say something, maybe he could make a point. I can also see the Vice-Chair Departmental Committee on Finance, Planning and Trade has indicated a desire to speak. I do not want to appear to debate a request like this one. I have seen it in the recent past in another place which I do not wish to mention. Most of you might have watched it on television people discussing that which is not before the House.

Leader of the Majority Party!

**Hon. A.B. Duale:** Hon. Speaker, I report on behalf of the House Business Committee (HBC) which you chair every Thursday. Hon. Were is a Member of the HBC and knows the Standing Orders very clearly. When the Bill is read the First Time, it is given 21 days. This Bill has stuck in this House for too long.

A number of times we have debated Bills after the Committee has delayed the report. This Bill should not be different from them. We are dealing with a very serious matter. Those Members who have read the Betting, Lotteries and Gaming (Amendment) Bill (National Assembly Bill No.49 of 2016) will know what we are talking about. I just want to join my colleague, the Mover, and because of the issue of quorum and this matter being very serious, ask you not to allow the Chair that luxury.

Maybe he wants to go and do voter registration in the next two weeks or campaign, but allow us to deal with this monster. This is a very serious matter. Last night, I was watching the premier league and I saw a logo down there written "SportPesa". They pay over Kshs3 billion every year to teams. Who pays? It is Kenyans in our villages. This is a serious Bill and we need to discuss it. So, use your wisdom and between the two weeks he is asking and the one day the Mover is asking, I am sure you can make some very wise decision. We need to deal with this matter looking at the quorum issue in the House. I agree with him, but maybe next week Tuesday would be fine, but the decision lies with you, Hon. Speaker. We must deal with this matter.

**Hon. Speaker:** The Vice-Chair, Departmental Committee on Finance, Planning and Trade.

**Hon. Gaichuhie:** Thank you, Hon. Speaker. I agree with both the Mover and the Leader of the Majority Party that this is a very important Bill. I also want to agree with the Chair of the Committee that the Members who want to debate this Bill would like to get an informed decision. I hope that when they get views from the KRA, the National Treasury and others, this will enrich the debate in this House. You have heard the two previous speakers saying that it is an important Bill, but it is also important for us to discuss from a point of information. I would plead that what the Chair of the Committee is asking be granted. But, otherwise, that is at your discretion. Thank you very much for allowing me to comment.

**Hon. Speaker:** Very well, Hon. Members. I think it is the truth that, indeed, when the Bill was read for the First Time and referred to the Committee, the House was just about to proceed on Christmas recess. I issued an administrative circular suspending the sittings of all Committees so as to allow our staff to take their Christmas holidays. That extended up to the time when the House resumed. Inevitably, I am sure the Committee must have then suffered the effects of not having staff to attend to it.

I view with sympathy the request by the Chair of the Committee to which the Bill was referred to and also sympathies with the Mover. We should congratulate Hon. Midiwo, as a House, for having come with such a comprehensive legislative proposal. I think being as comprehensive as it is, those of you who have cared to look through it will agree that it is really a detailed proposal. I would agree with the Vice-Chair of the Departmental Committee on Finance, Planning and Trade that it is the more reason why the House needs to debate this Bill from a serious point of information and knowledge which may come from the report that the Committee will give.

I have listened to what the Leader of the Majority Party has said that it seems to be an interesting industry. To me, it is also interesting. The Chair of the Committee has said that they have received a number of memoranda. Perhaps, we need to strike a balance. I know the Mover of the Bill wants us to discuss it before we break for the weekend. I think if we balance the desire of the Mover and the request by the Chair of the Committee, and appreciate that we are living in interesting times because right now as you can see, we number less than 30 in the House, it is a matter which then means we must also move with speed to bring to conclusion the House's decision on this Bill.

Hon. Were indicated that there is a group from KRA, the National Treasury and the Ministry of Interior and Coordination of National Government which wants to appear before his Committee on Tuesday. To be fair to the Chair, let us allow his request to have the Bill on the Order Paper on Wednesday afternoon, so as to allow him time to receive views from the KRA, the National Treasury and the Ministry of Interior and Coordination of National Government. This is so that by the time the House commences debate on that Bill, there is more information from the Committee which will enrich the debate.

Hon. Were, I may not comment about the other areas that you said because I can see there is still desire for people to contribute. I think the Mover is keen to move the Bill even as the debate on the Bill goes on. Wherever you would have reached with the hearings which are important, I will hear your request and consider it administratively to see what else you can bring. Perhaps, there could be amendments that would enrich the Bill. For now, we will grant the request that the Bill be on the Order Paper on Wednesday afternoon, which is seven days from now. Please, ensure that all those who have the interests that you have indicated and those Government institutions that want to appear before your Committee do so.

Hon. Midiwo, I know your desire was that you go away for the weekend having finished moving the Bill. We will also require you to be present to listen to the contributions of Members, so that when you come to reply, you will have heard them. Movers of Bills need to sit and listen to the contributions. We want to tie you to sitting in the House when debate is happening, so that when you reply, you also reply to the issues raised by the various contributors.

Let us move on to the next Order.

#### THE MOVABLE PROPERTY SECURITY RIGHTS BILL

**Hon. A.B. Duale:** Hon. Speaker, I beg to move that the Movable Property Security Rights Bill, 2016 be now read a Second Time.

The principal objective of this Bill is on access to low credit, especially to micro, small and medium enterprises. We have been facing a serious and recurring debate in this country for many years on access to low credit especially to those three segments, namely, the micro, small and medium enterprises. On one hand, borrowers have been complaining about high interest

rates, hidden charges, non-disclosure of pertinent information by the lenders and above all, unfair denial of access to credit by certain lenders. That is one side of the story. On the other hand, the lenders are worried about the high default rate and difficulties on foreclosing on the collateral through courts in the case of defaults and special funds. Lenders were also saying that they have serious issues. They have high defaulters and most of their cases are pending in court. They cannot get back their money that they have given or lent to various business enterprises or individuals. With these two views or schools of thought, which are very conflicting, our economy continues to miss out on the huge potential that the micro, small and medium enterprise have been driving the economic growth of our country.

In the Ease of Doing Business Report, which is produced annually by the World Bank, Kenya continues to get a poor rating in as far as the Getting Credit Indicator is concerned. This scares away both foreign and local investors. Among the reasons cited for this poor ranking in terms of the Getting Credit Indicator was lack of a secured transaction framework, lack of an electronic notice-based collateral registry available both to the incorporated and unincorporated entities and adequate protection of lenders in case of borrowers insolvency. This Bill is trying to create a register of both incorporated and unincorporated entities and an electronic notice where lenders and financial institutions can look at.

As a solution to this, a technical committee comprising of the National Treasury, the Central Bank of Kenya (CBK), the Office of the Attorney-General, the Department of Justice and the Kenya Bankers Association (KBA) was established in 2014 to look at and explore ways of increasing private sector credit and access of credit to the private sector. One key recommendation by this committee was to overhaul the law for collateralisation of movable securities and establish a collateral registry for movable property. It takes months for you to charge property in our country and to charge, either land or movable or non-movable property. This committee felt that there must be an electronic collateral registry for all movable property in our country.

This was informed by the fact that micro, small and medium enterprises lack fixed assets such as land or buildings to offer as collateral. We are talking about people who are engaging in business in Eastleigh, Gikomba and many of our small malls or wholesaling. Those people lack fixed assets such as land or buildings as collateral entities to use for borrowing. As movable property, they have goods in their shops and other items which are movable which are considered as risk collateral by most financial institutions and lenders. Lenders say you might have goods worth Kshs20 million, but the bank will not allow you to borrow using those movable assets in your shop because they say that, that is risk collateral when it comes to the lender.

The Movable Property Security Rights Bill will create ease of doing business and focus on the use of movable assets as collateral. The Bill is trying to change the narrative that for you to access credit, you do not just need only land or any fixed asset, but you can use the goods, services and movable assets that you have, for example, my camels. I own about 400 to 500 head of camel. There are people who own 1,000 cows. They can use that as a movable asset. You can also use the goods you have in your shop. We have so many young Kenyans in Luthuli Avenue who engage in the electronics business and they have goods worth Kshs10 million in their shops. That is what this Bill is trying to establish. It will establish the Office of the Registrar of Security of Rights. So, there will be an office to deal with these securities. It will promote consistency and certainty in secured financing related to moveable assets. It will enhance ability of individuals and entities to access credit using moveable assets and will establish a registry to facilitate the

registration of notices relating to security rights and moveable assets. So, this is the history, the objects and principle behind this Bill.

Let me go to the Bill. Part I of the Bill, as usual, provides for preliminary matters like the short title, interpretation, objects and the scope of application. The proposed Bill shall apply to every transaction that secures payments or performance of an obligation with regard to its form and to the person who owns that collateral. Specifically, the Bill applies to chattels, mortgages, credit purchase transactions and credit sale agreement, which is very common in Islamic banking. It involves floating and fixed charges, trust indenture, trust receipts and any other transaction that secures payment or performance of an obligation. The proposed Bill shall not, however, apply to security rights in the book entry securities under the Central Depositories Act.

Part II of the Bill provides for the creation of a security right by recognising that a security agreement must be in writing in order to have a binding legal effect. So, whatever will happen must be done within the law and be written. What does it do? It recognises the security right as a right in a receivable effect between the guarantor and the secured creditor and against the debtor as mentioned in the Bill.

Part III of the Bill provides for the security right in any moveable property to be effective against any third party. For any security right in any moveable property to be effective against a third party, a notice in respect to such security must be registered with the Registrar. In any case, that is the new office that we are going to establish under this Bill.

Part IV of the Bill provides for the establishment of a registry in which notices relating to security rights may be registered. This Bill sets out the procedure for registering such notices. Of course, if you want to do subsequent amendments, that procedure is also provided for in the Bill. This Bill also provides that a notice for registration of a security right must be in the English language. It should not be in vernacular or in a language that is not official. The effective period shall not be more than 10 years which may however be extended. This is how to create access to credit for the small and medium enterprises by giving them credit that they can pay within a reasonable term under very flexible conditions.

Part V of the Bill provides for priorities among competing security rights. It recognises that a guarantor may use single collateral to create more than one security right. So, you cannot use it more than once. Part VI sets out the rights and obligations of the parties to the secured transaction. This Bill recognises that guarantors or the secured creditor in possession of collateral must exercise reasonable care with an obligation of the secured creditor to return to the guarantor upon full satisfaction of the secured.

The Bill also provides for general provisions including powers of the CS to prescribe regulations. Every law must have regulations. It gives the CS in charge of this department powers to prescribe certain regulations.

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

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

Hon. Temporary Deputy Speaker, the last part contains consequential amendments to various laws which will be affected once this law is enacted. These laws include the Hire Purchase Act, the Business Registration Act, the Companies Act and the Insolvency Act. Sections of that law will be amended through consequential amendments.

This is a very straightforward Bill. It is about access to low credit especially to micro, small and medium enterprises. The problem we face in our country is the ease of doing business. The poor rating in getting credit indicator is a serious problem. So, this piece of legislation is trying to harmonise and sort out that issue.

I beg to move and ask Hon. (Dr.) Pukose to second.

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Speaker, I beg to second.

This is a very important Bill. It introduces intellectual property as collateral to be recognised by banks and other lending institutions, a phenomenon that was previously unheard of in our country. Although we have seen shylocks doing the same by providing credit in an informal sector, this is a very important Bill that will provide them with a framework to operate legally. This is a situation where the beneficiaries are going to be basically the micro and medium enterprises. This is in line with Vision 2030. We have individuals who have moveable properties in their shops, farms where they have cows, sheep, goats or maize and one feels that this is something you can use as collateral. If you go to a shop, you find that people have huge stock of commodities; electronic or others. If this person wants to improve his business, he can use it as collateral to obtain credit from banks.

In respect to intellectual property, we hope this will be extended to banks and other lending institutions which will then be expected to consider loan applicants who present them as security. The Bill reinforces our constitutional obligations to support and promote intellectual property rights of Kenyans. It further enables recognition and respect for intellectual property by investors who may find an incentive to duly register their intellectual property. The law will also widen the scope of business and entrepreneurship in the country. It will enable the creation of linkages between financial lenders and entrepreneurs, especially the small and micro business enterprises. This is very good. I hope this House will support it and soon it will become law.

With those few remarks, I beg to second the Bill.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Member for Kitui Central, Hon. Makali Mulu.

**Hon. Mulu:** The request was not for this one.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): It was not for this one. That is okay if it was for the previous one.

Hon. Members, then there is no one on my screen who wants to speak on this Bill.

Hon. Members, we have just moved and seconded the Second Reading of the Moveable Property Security Rights Bill, National Assembly Bill No.50 of 2016. If there is no interest on it, we can postpone it and put it on the Order Paper next time, so that we can go to the next Order.

#### THE SACCO SOCIETIES (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, this is also a Bill that is supposed to be moved by the Leader of the Majority Party. Again, we can postpone this one. Hon. Kimani Ichung'wah, are you ready to move Motion No.15 on the Order Paper? It is the Report on the NSSF. I have seen your Chairman hanging around.

First, let me officially say that we defer the SACCO Societies (Amendment) Bill, because the Leader of the Majority Party is not here.

*(Bill deferred)*

Let the Clerk call the next Order. Otherwise, we cannot discuss when we have not called it.

## MOTION

### REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON NSSF TASSIA II PROJECT

THAT, this House adopts the Special Report of the Public Investments Committee on the Procurement and Financing of the National Social Security Fund (NSSF) Tassia II Infrastructure Development Project, laid on the Table of the House on Wednesday, 30 April, 2014.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Ichung'wah, you can move it if you are ready.

**Hon. Ichung'wah**: Hon. Temporary Deputy Speaker, we honestly had not anticipated that we would get to that Order this afternoon. Therefore, we were not prepared. As you can see, most Members of the Committee are not in the House. I pray that we defer this Order maybe to tomorrow afternoon.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, I agree with you. We had not anticipated that we would reach at this point. It is because of the Bills that have not been moved as expected. We will have this Motion on the next available Order Paper.

**Hon. Ichungwah**: Much obliged.

*(Motion deferred)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, that brings us to the end of business of the House today. The time being 5.37 p.m., this House stands adjourned until tomorrow Thursday, 9<sup>th</sup> February, 2017 at 2.30 p.m.

The House rose at 5.37 p.m.