

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 31st May, 2016

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

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

PRAYERS

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have many Communications to make because today is the first day after the recess. Please, bear with me.

MESSAGES FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE ACCESS TO INFORMATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.36 OF 2015)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 (3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Access to Information (Amendment) Bill (National Assembly Bill No.36 of 2015):-

“Pursuant to the provisions of Standing Order Nos.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

Whereas, the Access to Information (Amendment) Bill (National Assembly Bill No.36 of 2015) was published vide the Kenya Gazette Supplement No.94 of 30th June, 2015, to give effect to the provisions of Article 35 of the Constitution relating to the right to information, by facilitating access to information held by Government Ministries and other public authorities through proactive publication and dissemination of information;

Whereas, the National Assembly considered and passed the said Bill on Thursday, 28th April, 2016 with amendments in the form attached hereto;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly standing orders, I hereby forward the said Bill to the Senate for consideration."

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill

introduced in the Senate by way of First Reading, in accordance with Standing Order No.129. I, therefore, direct that the Bill be listed for First Reading in the Order Paper of Thursday, 2nd June, 2016.

Hon. Senators, I also wish to bring to your attention that this Bill is one of the Bills required to be enacted within five years of the enactment of the Constitution of Kenya. This timeline lapsed on 27th August, 2015, but the National Assembly, by resolution, extended the timeline by one year.

I thank you.

(Several Hon. Senators entered the Chamber)

Hon. Senators, you may take your seats.

APPROVAL OF THE CONSTITUTION OF KENYA (AMENDMENT)
(NO. 2) BILL (NATIONAL ASSEMBLY BILL NO.2 OF 2015)

Hon. Senators, I have another Message from the National Assembly on the approval of the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.2 of 2015)

I wish to report to the Senate that pursuant to Standing Order No.40 (3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the Constitution of Kenya Amendment (No.2) Bill (National Assembly Bill No. 2 of 2015).

Pursuant to the provisions of Standing Orders Nos. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

"Whereas, the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No.2 of 2015) was published vide the Kenya Gazette Supplement No.3 of 9th January, 2015 as a Bill originating in the National Assembly to amend the Constitution of Kenya with a view to prohibiting courts from interfering with matters being proceeded with or pending consideration before Parliament, county assemblies and their Committees;

Whereas, the National Assembly considered and passed the said Bill on 27th April, 2016 without amendments in the form attached hereto;

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

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129.

I, therefore, direct that the Bill be listed for First Reading in the Order Paper of Thursday, 2nd June, 2016.

I thank you.

(Several Senators entered the Chamber)

Hon. Senators, please, take your seats.

Sen. Haji, do you have a point of order?

Sen. Haji: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Haji. Today, I have several Communications to make and I think it will be unreasonable to issue all of them when Senators are standing at the door.

APPROVAL OF THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 43 OF 2015)

The next Message from the National Assembly is on the approval of the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015).

Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order No.40 (3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No. 43 of 2015)-

Pursuant to the provisions of Standing Order Nos. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

“Whereas, the Seeds and Plant Varieties (Amendment) Bill (National Assembly Bill No.43 of 2015) was published *vide* the Kenya Gazette Supplement No.127 of 11th August 2015, as a Bill concerning county governments proposing to amend the Seeds and Plant Varieties Act, (CAP 326) and to give effect to the provisions of Articles 11(3)(b) and 69(1) of the Constitution so as to recognize and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by Kenyan communities and protection of genetic resources and biodiversity for equitable sharing of accruing benefits;

And whereas, the National Assembly considered and passed the said Bill on Thursday, 5th May, 2016 with amendments in the form attached hereto;

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

Hon. Senators, following again our own Standing Orders, I direct the Bill be listed for First Reading in the Order Paper of Thursday 2nd June 2016. I also wish to bring it to your attention that this Bill is one of the Bills that require to be enacted within five years of the enactment of the Constitution of Kenya. This time line passed on the 27th August 2015, but the National Assembly, by resolution, extended the time line by one year.

I thank you.

APPROVAL OF THE PETROLEUM (EXPLORATION, DEVELOPMENT
AND PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO.44 OF 2015)

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The next Message has to do with the National Assembly approval of the petroleum Message from the National Assembly on the approval of the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015)

Hon. Senators, I wish to report to the Senate that pursuant to the relevant Standing Orders, I received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015)-

Pursuant to the provisions of Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly-

"Whereas, the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) was published *vide* the Kenya Gazette Supplement No.128 of 11th August, 2015 as a Bill concerning County Governments to provide a framework for contracting, exploration and development of petroleum, including safe cessation of upstream petroleum operations; provide a framework for production of petroleum discovered within the licensed petroleum exploration blocks; give effect to relevant provisions of the Constitution of Kenya 2010; and repeal the Petroleum (Exploration and Production) Act, 1984;

And whereas, the National Assembly considered and passed the said Bill on 3rd May, 2016 with amendments in the form attached hereto;

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

Hon. Senators, pursuant to the relevant Standing Orders, I direct that the Bill be listed for First Reading in the Order Paper of Thursday, 2nd June, 2016. I also wish to bring to your attention that this is one of the Bills required to be enacted within five years of the enactment of the Constitution of Kenya which elapsed on 27th August, 2015, but was extended by resolution of the National Assembly by one year.

Sen. Mositet, please, take your seat.

(Sen. Mositet entered the Chamber)

APPROVAL OF THE ENERGY BILL (NATIONAL
ASSEMBLY BILL NO. 50 OF 2015)

Hon. Senators, this message has to do with the National Assembly on the approval of the Energy Bill (National Assembly Bill No.50 of 2015)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the aforesaid Bill.

Pursuant to the relevant Standing Orders of the National Assembly, I hereby convey the following message from the National Assembly-

“Whereas, the Energy Bill (National Assembly Bill No. 50 of 2015) was published *vide* the Kenya Gazette Supplement No.134 of 11th August, 2015, as a Bill concerning county governments proposing to *inter alia*, consolidate the laws relating to energy; align the legal framework of the energy sector with the Constitution of Kenya 2010; clarify the specific roles of the national and county governments in relation to energy; and to repeal the Energy Act, 2006 and the Geothermal Resources Act, 1982;

And whereas, the National Assembly considered and passed the said Bill on Thursday, 28th April, 2016 with amendments in the form attached hereto;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby forward the Bill to the Senate for consideration".

Hon. Senators, pursuant to the relevant Standing Orders, I direct that the Bill be listed for First Reading in the Order Paper of Thursday, 2nd June, 2016.

I also wish to bring to your attention that this is one of the Bills required to be enacted within five years of the enactment of the Constitution of Kenya. This timeline lapsed on 27th August, 2015, but the National Assembly, by resolution, extended it by one year.

APPROVAL OF THE COMMUNITY LAND BILL
(NATIONAL ASSEMBLY BILL NO. 45 OF 2015)

The other Message has to do with the approval of the Community Land Bill (National Assembly Bill No.45 of 2015)

Hon. Senators, pursuant to the relevant Standing Orders, I have received the following Message from the National Assembly-

Pursuant to the provisions of Standing Order Nos.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

“Whereas, the Community Land Bill (National Assembly Bill No. 45 of 2015) was published *vide* the Kenya Gazette Supplement No.129 of 11th August, 2015 to give effect to the provisions of Article 63 of the Constitution by providing for recognition, protection, management and administration of community land;

And whereas, the National Assembly considered and passed the said Bill on Tuesday, 21st April, 2016 with amendments in the form attached hereto;

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

Hon. Senators, again pursuant to the relevant Standing Orders, I direct that the Bill be listed for First Reading in the Order Paper of Thursday, 2nd June, 2016. Once again, I wish to bring to your attention that this was one of the Bills with the five year timeline which expired but was extended by the National Assembly for one year from 27th August 2015.

APPROVAL OF THE LAND LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 55 OF 2015)

Hon. Senators, now this one has to do with the approval of the Land Laws (amendment) Bill (National Assembly Bill No.55 of 2015).

Hon. Senators, pursuant to the relevant Standing Orders, I have received the following Message from the National Assembly.

Pursuant to the provisions of standing order Nos. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

“Whereas, the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) was published *vide* the Kenya Gazette Supplement No.140 of 18th August 2015, as a Bill concerning county governments, seeking to give effect to the provisions of Article Nos. 66, 67 and 68 of the Constitution by *inter alia*, amending and consolidating various laws on land use and management; eliminating the existing overlap in the respective mandates of the National Land Commission and the Ministry of Lands, Housing and Urban Development and establishing the Board of Trustees to manage the Settlement Scheme Fund;

And whereas, the National Assembly considered and passed the said Bill on Thursday, 5th May, 2016 with amendments in the form attached hereto;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No. 142 of the National Assembly Standing Orders, I hereby forward the said Bill to the Senate for consideration”.

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129.

I, therefore, direct that the Bill be listed for First Reading in the Order Paper of Thursday, 2nd June, 2016.

I also wish to bring to your attention that this is one of the Bills required to be enacted within five years of the enactment of the Constitution of Kenya 2010. This timeline lapsed on 27th August, 2015, but the National Assembly, by resolution, extended the timeline by one year.

I thank you.

POINT OF ORDER

STATUS OF SENATE BILLS FORWARDED TO
THE NATIONAL ASSEMBLY FOR CONSIDERATION

Sen. Mutula Kilonzo Jnr: On a point of order, Mr. Deputy Speaker, Sir. While I appreciate your Communications on matters concerning the National Assembly, I still insist, at the risk of sounding like a broken record, that this Senate deserves communication from the National Assembly on the 18 or 19 Bills we have forwarded to

them. This is because you have now directed that in the course of the week we put seven or eight Bills in our tracker for purposes of expediting the process. It is unfair to the Senators to subjugate their work to the one of the National Assembly yet we do not know that there is what we call reciprocity from them.

Would I be in order to suggest and propose that we get direction on that and the revenue sharing formula which is going to affect the county revenue allocation which has been at the National Assembly for a while?

Sen. Ong'era: On a point of order, Mr. Deputy Speaker, Sir. I further want to also support what Sen. Mutula Kilonzo Jnr is saying. We do not see why we should continue receiving Communication on new Bills from the National Assembly when we have over 18 Bills that we have given them. They have refused to respond on them and nothing has been done. As we seek this ruling from you, I think time has come when we call a spade a spade and the Swahili say *kama ni kubaya ni kubaya*. The time has come for this Senate to also sit on these Bills.

The Deputy Speaker (Sen. Kembi-Gitura): I have heard both Sen. Ong'era and Sen. Mutula Kilonzo Jnr. and all I have done is to communicate a Message from the National Assembly which I have to do. I must communicate because that is what the Constitution and our Standing Order says. The right moment for you to raise those issues is during the First Reading of the Bills when it comes on Thursday. I am not sweeping this matter under the carpet because there are pertinent issues. For now I have done what I had to do; which is to communicate the Bills to you. I do not think that two wrongs make a right. That is a completely different argument and you can raise it on Thursday, 2nd June when the matter comes for the Second Reading.

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE ANTI-DOPING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.17 OF 2016)

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order 40(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016).

"Pursuant to the provisions of Standing Orders Nos. 141(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas, the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016) was published vide Kenya Gazette Supplement No.74 of 19th May 2016, as a Bill concerning county governments, to amend the Anti-Doping Act, 2016 by aligning various provisions of the Act with the United Nations Education Scientific and Cultural Organization (UNESCO) Convention Against Anti-Doping in Sports;

And whereas, the National Assembly considered and passed the said Bill on Thursday, 26th May, 2016 with amendments in the form attached hereto;

Now therefore, in accordance with the provisions of Articles 110(4) of the Constitution and Standing Order 142 of the National Assembly, I hereby refer the said Bill to the Senate for consideration".

Hon. Senators, as you may recall, on Thursday, 21st April, 2016, this House debated and passed the Anti-Doping Bill (National Assembly Bill No.6 of 2016) without amendments. The Bill was subsequently assented to within the deadline as set by the World Anti-Doping Agency (WADA). However, the WADA later indicated, to the Government of Kenya, the need to align various provisions of the Act with the UNESCO Convention Against Anti-Doping in Sports. This is what this Bill is addressing.

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129.

Owing to the urgency to have the Anti-Doping Act amended to conform to the requirements of the UNESCO Convention Against Anti-Doping in Sports, and by leave of the Senate, I have directed that the Anti-Doping Bill (National Assembly Bill No. 6 of 2016) be considered today as indicated in the Supplementary Order Paper. I also direct that upon the Bill being read a First Time, the Standing Committee on Labour and Social Welfare urgently engages stakeholders on the Bill and files a report today before the commencement of consideration of the Bill at Committee of the Whole.

I thank you.

I have one other brief Communication.

COMMUNICATION FROM THE CHAIR

INVITATION TO THE ANNUAL NATIONAL PRAYER BREAKFAST MEETING

Hon. Senators, I have communication regarding the National Breakfast Prayer Meeting. Follow up to the Communication from the Chair issued on Wednesday, 4th May 2016, the Speaker informed you about the annual National Prayer Breakfast, 2016. This is to remind you that the Kenya Parliamentary Prayer Fellowship Group shall host the annual Prayer Breakfast on Friday, 3rd June 2016 at The Safari Park Hotel, Nairobi. It is expected that over 2,000 guests shall be in attendance.

The National Breakfast Prayer Meeting is an annual ecumenical event held under the combined authority of the Speakers of the Senate and the National Assembly and organized by a group of dedicated volunteers. The event allows the Members of Parliament, other State officers and public officials to gather together with men and women from different backgrounds to pray for the nation and connect through our shared faith in the Almighty God.

Hon. Senators, I request you to confirm attendance by the close of business today, 31st May, 2016 to facilitate the sitting arrangements. You are also kindly requested to contribute some money towards hosting of the noble event. A contribution form is available with the Serjeant-at-Arms at the entrance of the Chamber. Invitation cards to all

the Members of Parliament have already been distributed. Sen. Elachi is coordinating on behalf of the Senate. You may contact her for any clarifications. You may also get in touch with Chairman of the Kenya National Prayer Breakfast Group, Hon. Clement M. Wambugu.

I thank you.

Sen. Ndiema, what is your point of order?

POINT OF ORDER

HURRIED ENACTMENT OF THE ANTI-DOPING BILL

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. I have an issue with the Anti-Doping Bill (National Assembly Bill No. 6 of 2016). I recall that last time; we hurried and beat the deadline at the expense of proper scrutiny. I believe that if the Senate had scrutinized the Bill, we would not have had the problems that we did. Is it in order for us to take one hour on the Bill and assume that stakeholders have been consulted and that public participation has taken place? A day or two would have sufficed.

The Deputy Speaker (Sen. Kembi-Gitura): I have given direction. I hope that you are not asking me to revise it. We need to understand that we did what we did because there were timelines. We had our athletes at stake. This is not a matter within our control. We have been given extension to review the law that did not satisfy the requirements of WADA. We stand a new risk of having our athletes excluded from the Olympics which would be a great disaster. Sometimes we have to do things in the manner that we did because we agreed to correct the errors that could have occurred through amendment. This is not the time for blame games. We have to be practical and realistic in the circumstances.

Sen. Okong'o: Mr. Deputy Speaker, Sir, I am in agreement with you, but I believe that thorough scrutiny should have been done on the Bill before passing it. I am not blaming anybody, but in future, we should not wait to receive pressure from external organizations like WADA to do things right.

The Deputy Speaker (Sen. Kembi-Gitura): The best time to express those sentiments is in the Second Reading, when and if we get to it.

Proceed, Sen. Wangari.

Sen. Wangari: Mr. Deputy Speaker, Sir, I am giving guidance as a Member of the Committee because we have been involved in this matter before. It has come back to the Committee. We are doing everything possible. After the First Reading, we will mobilise stakeholders so that we can fast-track it. Owing to the timeline that we have been given as a country, we must give guidance. We are on it as the Committee on Labour and Social Welfare. We will involve as many stakeholders as possible.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. That was meant to assist the Chair.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I agree with what you said. We had no time. We made many proposals for amendment. My only disappointment was that we operated with what we call *uberrimae fidei*; in absolute good faith.

Therefore, this time round, once bitten twice shy. I suggest that the Senate Majority Leader does a little more homework. The original documents that were referred to should also be given to the Senate. Although changes were made wherever they were made, eventually we took the blame as the Legislature.

So, Sen. (Prof.) Kindiki, the Senate Majority Leader should give us the information so that when we pass whatever we will pass, we pass it from an informed position.

Sen. Madzayo: Mr. Deputy Speaker, Sir, I would like to inform the House that we had consulted the stakeholders in the morning. They are already within the precincts of Parliament. We will have a meeting right now. I will do a report thereafter. I need at least to be given an hour or an hour and a half. I will be quite comfortable.

The Deputy Speaker (Sen. Kembi-Gitura): Is that not what I directed? That is what I directed. I said that we will not go to the Committee before we have your report.

So, take an hour or two hours. When you come back and tell us you have a report, only then we can go to the Committee if we shall have the numbers.

Sen. Madzayo: Mr. Deputy Speaker, Sir, I am much obliged.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.

Sen. (Prof.) Kindiki, are you seeking the Floor?

(Sen. (Prof.) Kindiki spoke off record)

Okay, it is so directed.

Next order!

Hon. Senators, before you withdraw from the Chamber – I hope you are going for the relevant Committee – but remember that we require Members in the House even as you wait for the Committee to come back.

There are many statements to be issued today. However, I will restrict them to be issued on Thursday, this week.

I will allow those seeking statements to do so now.

Sen. Khaniri, are you seeking several statements?

STATEMENTS

REDUCTION OF ELECTRICITY CONNECTION FEE

Sen. Khaniri: Mr. Deputy Speaker, Sir, I wish to seek two statements.

Pursuant to Standing Order No.45(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Energy regarding the Government's move to reduce electricity connection fee for customers living within a radius of 500 metres from an existing electricity transformer. In the statement, the Chairperson should state:-

(1) The amount of money for the connection of electricity by customers whose premises are within the 500 metres and those that are more than 500 metres from an existing electricity transformer.

(2) Explain why the Government is discrimination against sections of the public in terms of their location when determining charges for electricity connection.

(3) Explain the plans the Government has in place to connect electricity to the premises of Kenyans living in radius of more than 500 metres from an existing transformer.

The Deputy Speaker (Sen. Kembi-Gitura): Where is the Chairperson of the Committee on Energy? Do we have any Member from the Committee?

Sen. Ongoro: Mr. Deputy Speaker, Sir, I undertake to inform the Chairperson to issue it in two weeks' time.

The Deputy Speaker (Sen. Kembi-Gitura): It is so ordered. Is that okay, Sen. Khaniri?

You may seek your second statement.

Sen. Khaniri: Mr. Deputy Speaker, Sir, that is okay. Thank you very much.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, what is your intervention?

Sen. Ndiema: Mr. Deputy Speaker, Sir, I would like to ride on that statement.

The Deputy Speaker (Sen. Kembi-Gitura): I do not encourage it very much. However, proceed since it is there as a provision.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I would like to know what the Government's policy is on connection of electricity to schools which are less than three kilometres from the power lines. Would it be connection of the power line or the solar system? I am asking this because in Trans Nzoia County, some schools are within three kilometres from the power line. However, instead of them being connected to electricity, they are given the solar system which is more suitable for far-flung remote areas.

Sen. Ongoro: Mr. Deputy Speaker, I still undertake within the two weeks to factor in that part of the question and then, we give a comprehensive answer.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Khaniri, do you have another statement?

MISAPPROPRIATION OF TEXT BOOK FUNDS BY PUBLIC SCHOOLS

Sen. Khaniri: Mr. Deputy Speaker, Sir, yes. I have a second statement.

Pursuant to Standing Order No.45(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Education regarding alleged misappropriation of money meant for text books under the free primary and day secondary education programme. In the statement, the Chairperson should:-

(1) State the amount of money lost in the syndicate.

(2) Table the audit report on the use of funds meant for the purchase of text books under the free primary and day secondary education programme.

(3) Explain measures put in place by the Cabinet Secretary for Education, Science and Technology to punish the culprits and ensure recovery of the funds.

(4) Explain measures put in place by the Cabinet Secretary to ensure proper and accountable supply of text books to public schools in the country.

The Deputy Speaker (Sen. Kembi-Gitura): Where is the Chairperson of the Committee on Education?

Proceed, Sen. Karaba.

Sen. Karaba: Mr. Deputy Speaker, Sir, I will issue the statement in two weeks' time.

The Deputy Speaker (Sen. Kembi-Gitura): Is there any other Senator seeking for a statement? There is none.

As I said, I will suspend the issuing of the statements until Thursday.

What is it, Sen. Sijeny?

Sen. Sijeny: Mr. Deputy Speaker, Sir, nothing. I was trying to digest your statement, what were you saying.

The Deputy Speaker (Sen. Kembi-Gitura): Digest my statement? We just came from lunch.

(Sen. Sijeny spoke off record)

We have business to do which I have communicated on - the Anti-Doping (Amendment) Bill - which I would like us to finish.

Next order!

BILL

First Reading

THE ANTI-DOPING (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.17 OF 2016)

*(Order for First Reading read – Read the First
Time and ordered to be referred to the Committee on Labour and Social Welfare)*

The Deputy Speaker (Sen. Kembi-Gitura): Next Order.

Second Reading

THE ANTI-DOPING (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.17 OF 2016)

(By leave of the Senate)

The Deputy Speaker (Sen. Kembi-Gitura): This is by leave of the Senate. Who has the authority from the Senate Majority Leader to move the Bill?

(Sen. (Prof.) Kindiki entered the Chamber)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker Sir, I apologise that you called for the order when I was away.

I beg to move that the Anti-Doping (Amendment Bill) National Assembly Bill No: 17 of 2016 be read a Second Time.

As you have already guided this House, hon. Senators, we are all aware that we did a good job last time, in terms of trying to rescue our sportsmen and women from the indignity of being thrown out of the forthcoming Olympic Games in Rio de Janeiro, Brazil.

The reason we hurriedly passed the Anti-Doping Bill last Month was because we had an international deadline. I thank all colleagues across the political divide, because when this issue came, we did not have any differences, and we were all agreed that there was need to comply with the international deadline. It appeared that what we passed had a number of shortcomings. The mistake was not done by the National Assembly or the Senate. It came from the differences at the Attorney General's Office and the Ministry; in terms of trying to interpret the international obligations and making them part of national law.

They may have missed some points in terms of making sure that the UNESCO Convention against Doping in Sports is now translated into Kenyan law, as well as the World Anti-Doping Agency (WADA) rules. The shortcomings which were highlighted later were not a consequence of lack of seriousness by the National Assembly or the Senate.

The second point is that, besides the requirements by the WADA, there is a bit of international politics involved. As a Kenyan, I can say that a number of people out there will not mind if Kenya does not participate in this year's Olympics. There have been unconfirmed reports, which I have reason to believe could be true, that a number of countries that have been trying to put a lot of money in sports, especially in athletics, to try and overcome our dominant position which we have retained for so many years now. Such countries have been celebrating silently, and even lobbying.

The reason I believe that there could be competitors of Kenya who may not be interested in us participating in the forthcoming Olympic Games, is because our country is the third country in the world which has aligned its law with the international standards on anti-doping, yet we know countries with very serious doping problems but there is no pressure, deadline and ultimatums.

When our team, the Cabinet Secretaries for Sports and Foreign Affairs and the other team of technocrats went to Ottawa, Canada, they raised the issue. They asked why Kenya was being more pressurized than any other country. They got a report in terms of a diplomatic answer that since Kenya is a leader in athletics, it must lead by example by first aligning its law with international standards and other countries would follow. I want to bring this background so that we see the predicament we are in.

The third point is the the genuine remarks that have been raised here. I remember when this Bill came, the Senator for Bungoma and Minority Leader and Sen. Mutula Jnr for Makueni raised one or two issues and we agreed. We are not opposed to amendments; let us comply with the deadline. That time there was that deadline and even now we are almost running out of patience of that organisation. The President has told me that there is too much pressure. I had to abandon the state luncheon in honour of the visiting Korean President, to come and prosecute this national duty. The President has told me that the pressure is everywhere.

I have spoken to my counterpart; Sen. Wetangula. He is in agreement and has assured me he should be here anytime from now. I left him there because national events are for everyone, and that is the spirit we need in this country. We should not exclude any Kenyan from participation in national life. I commend the Opposition for showing leadership.

(Laughter)

Mr. Speaker, Sir, protect me from the Senator for Mombasa because he is pursuing party politics. He is telling me that two of the leaders in CORD have become “moles”.

The point is that the pressure is still on. We have tried to resist it, but nobody is listening to us. The answer we are getting is that we are leaders in sports and athletics, and we must lead by example.

My plea to those of us who might have read the Bill or had amendments that are not part of what the WADA has specifically said we must do – I cannot injunct any senator or this house from doing what it must do. However, we have to make sure that people do not use the excuse of our legal framework to bar our sports people from participating in Rio de Janeiro. The embarrassment is huge because out there in the public opinion, the implication, if we do not participate, will be that maybe Kenya has been winning by unorthodox or dubious means. These athletes and sportspeople have practised for a long time for these Olympics. I am told by those who are more conversant with these things that participating in the Olympics is the highest fete that a sports person can achieve, especially if you win.

If our sportspeople cannot participate, we will demoralize them. They have spent time practising and those who have qualified must be supported, so that they can realize that very important achievement of participating in the Olympics.

Mr. Deputy Speaker, Sir, in that connection, therefore, my plea would be that since we will still have to amend this law – it is our law anyway – for today we should concentrate on the amendments that have come from the international organization. Unless there are obvious typos, we should refrain from putting forward any other amendments, so that we do not have the international organization involved using this as a scapegoat and have an endless circle of referral and counter-referral. Those are my preliminary points.

These amendments are both substantive and procedural. Many of them are revised definitions, as the Senators would see. The other sticking point was the participation of

the Government in the regulation of doping and anti-doping activities. There was an inclusion of the Attorney General in one of the structures in the agency. The argument by the WADA is that sports federations should be free from government interference. For example, many of us know that FIFA, in terms of football, demands that the Government must stay out of football federations, so that they are independent and become regulators. They are only answerable to FIFA itself. The same concept is being used here; that the Attorney General has no business to sit in the agency, because he is a functionary of the Government. There is need, therefore, to remove the Attorney General. That is one of the sticking points.

There were also missing definitions, where a word appears in the definition clause and there is no substantive definition or you go to the text and find the words “This word means as described in Section 2.” However, when you go to section 2, that definition is not there. That is one area where we need to align ourselves.

There are a few changes about the tribunal and its powers. The other substantive change is with regard to Section 41. There are new sections inserted after Section 41 where, for example, the Kenya Anti-Doping Agency is empowered to bind every person to the anti-doping rules. The use of the word ‘person’ includes both the natural person and the juristic person. There is also an obligation thereunder for every person to report violations of anti-doping rules. In the case of the national sports federation, they should report to the international federation, while any other person is bound to report to the local agency, in this case, the Kenya Anti-Doping Agency.

The other addition at the tail-end of the amendment Bill is the expansion of the nomenclature or typology of the prohibited conduct by sportspeople, in other words, what amounts to violation of anti-doping rules. They have expanded that a bit in line with the WADA anti-doping rules and most importantly, the UNESCO Convention against doping in sports.

I would like to give my colleagues time to ventilate as we wait for the Committee to look at the Bill and help us pass this legislation. Once again, I thank my colleagues for showing courage and great determination to solve this national problem. Going forward, this is a law we will keep on improving. I do not think there is any hidden card anywhere by any Kenyan on this matter. This is something that should be dealt with in a straightforward manner. I hope that we will finish this agenda within the day because I know that after Madaraka Day some Senators may want to stay out there and do county work. That notwithstanding, I believe that we will do a good job.

With those few remarks, I beg to move and request Sen. Mutula Kilonzo Jnr. to second on behalf of the Opposition.

(Interruption of Debate on Bill)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., before you second the Bill, I have a brief Communication to make.

COMMUNICATION FROM THE CHAIR

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VISITING DELEGATION OF PARTICIPANTS IN
THE 9-WEEK LEGISLATIVE DRAFTING COURSE

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting participants of the 9-week Legislative Drafting Course. They are part of the training that was organized by the Kenya School of Law, in collaboration with the Commonwealth, for the last nine weeks and is in its final week.

I request each participant to stand when called out, so that they may be acknowledged in the usual Senate tradition.

They are:-

- | | | |
|-------------------------|---|--|
| 1. Mr. Isaac Kuloba | - | Principal Lecturer, Kenya School of Law |
| 2. Dr. Duncan Berry | - | Legislative Drafting Consultant,
Commonwealth Secretariat |
| 3. Betty Soi | - | Legal Officer, Ministry of Health |
| 4. Belinda Kounah | - | Private Legal Consultant |
| 5. Christine N. Mulatya | - | Parliamentary Counsel, Office of the
Attorney General (Department of Justice) |
| 6. Sheldon Begisen | - | Parliamentary Counsel, Office of the
Attorney General |
| 7. Angela Musau | - | Parliamentary Counsel, Office of the Attorney
General |
| 8. Paul Wekesa | - | Parliamentary Counsel, Office of the Attorney
General |
| 9. Antony S. Otieno | - | Parliamentary Counsel, Office of the Attorney
General |
| 10. Linie Karanu | - | Audio Visual Assistant, Kenya School of Law |
| 11. Phoebe Ndung'u | - | Administrative Assistant, Kenya School of Law |

On behalf of the Senate and my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay.

Thank you.

(Applause)

Sen. Sijeny: Mr. Deputy Speaker, Sir, I would like to add my voice in welcoming my learned friends. I urge them to learn and understand clearly what they are doing, because they are the future leaders of this nation and the country depends on them.

Thank you very much.

(Sen. Hassan spoke off-record)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Omar! I am sure you did not recognize any of the names, which tells you how long it is since you practiced law.

Sen. Mutula Kilonzo Jnr., you may proceed.

(Resumption of debate on the Bill)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I rise to second the amendments to the Anti-Doping (Amendment) Bill. From the outset, I must say that if there is one thing that brings Kenya together – makes us equal, has no equal – it is athletics. Therefore, if there is one time we must show patriotism, this is one of those occasions. I am, therefore, privileged to second these amendments.

I have gone through the amendments and did not find anything offensive; it is just a question of tidying up the Bill. However, there are fundamental points that must be raised in the definitions. There is improvement of the definition of a national level athlete in contradiction to a county league athlete. These are definitions which were not previously in the Bill. For those who understand legislative drafting, this is a way of tidying up a Bill.

I must point out that I have found something very interesting. The definition of drug trafficking is: “Selling, giving, transporting, sending, delivering or distributing, possession or possessing, for any such purpose, a prohibited substance or prohibited method either physically or by any electronic or other means.” I have found it very interesting that you can actually traffic through an electronic method. As we deal with this issue, we will have very many challenges, because trafficking electronically is something very interesting. As we continue interrogating this Bill, the Senate and the National Assembly must be aware of the things that have been included, which might, of course, cause us some problems.

Under Clause 11, a tribunal has been set up. That tribunal is guided by a code, international standards established under the code, the 2005 UNESCO Convention against anti-doping and the anti-doping rules amongst other legal sources. I will ask the Committee to interrogate whether this clause in itself is an exclusion of Kenyan law, because then we would have a problem about what would happen once we appeal.

Under the new dispute resolution mechanism, there appears to be an appeal mechanism. I do not know whether that appeal mechanism will also follow the same process of the UNESCO Convention against doping in sports or there would be other rules, although the Cabinet Secretary has been given an opportunity to prescribe rules to effect this section.

I agree with the amendments proposed in Clause 6. I raised an issue about the definitions of “authority” and “agency.” There appeared to be a conflict about who the “authority” is and who the “agency” is and what the agency and authority would do. It is this agency that is given the authority to investigate. That is the issue I had with the original amendment.

Similarly, if you look at Clause 5, there is a new amendment which will introduce something very unique, that other than stopping doping, called ‘promotion of anti-doping education.’

Mr. Deputy Speaker, Sir, similarly, the original Bill had a problem in Clause 23 which has now been amended to have a sports administrator who is a retired sportsperson. It was about the qualifications of who sits in some of those committees. In

fact, I agree with the amendments to Clauses 26 and 27 and the amendments thereof and a committee that had been set up under Clause 23 called Therapeutic Committee.

We had suggested that it would not be in order to have a committee that deals with anti-doping without having a person from the Pharmacy and Poisons Board. We had suggested an amendment because some substances that might be banned by the WADA come in legitimately and are sold by the licensed chemists. The only persons who could deal with such chemists, in terms of punishment, would be that board but they have been excluded from the authority and I can see there is an attempt to amend that.

Mr. Deputy Speaker, Sir, lastly is about the definitions under Clause 14. Again, tiding up to ensure that every possible method of carrying banned substances, attempting to dope, assisting to dope, abetting doping, aiding doping or even thinking of doping is covered in this. So, it is a question of ensuring that every loophole and every possible method is given. In fact, under Clause 14(d), they have introduced “whereabout failures.” This is complicated drafting, but we know that in terms of rules and international standards, they have ensured that international standards on anti-doping are included into the last possible position.

Therefore, this is also a warning to persons who have been covered here as athletes. It is important that they know that there is a category of a person called “national level athlete.” It has defined who that is, where they participate and how they participate. They should know that this will catch up with them.

There is a further definition of “prohibited association” to the extent that it will be illegal to be associated with persons who are considered prohibited or prohibited associations in this Bill. This goes into great lengths to that extent.

Mr. Deputy Speaker, Sir, I have no hesitation in my mind that we are passing a penal law with extreme penal consequences. Therefore, in terms of any law that prescribes penal sentences or attempts to prohibit and punish a person who commits crimes, this law is, on all fours, a penal law that is extreme in terms of its definition and punishment. Most importantly, it has afforded an opportunity for those persons who are found to have committed any crimes or offences under this law to go and report or go to a tribunal for an appeal.

I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Mutula Kilonzo Jnr. I will now propose the question.

(Question proposed)

Sen. Ongoro: Mr. Deputy Speaker, Sir, I stand to support this Bill. Let me start by congratulating both Houses of Parliament for setting aside business last month and passing this Bill because of the timelines that were involved, the international deadlines as well as the possibility and the risk of having our good athletes locked out of the impending games. Having said that, I want to disagree a little bit with the Senate Majority Leader on his view that while passing this Bill today, we should just consider the proposed amendments coming from the international community. I want to insist that

we can take this opportunity and consider all amendments, both local and international, bearing in mind that the credibility of our sportsmen and women is at stake.

I will repeat what Sen. Mutula Kilonzo Jnr. has just brought to our attention. We cannot overstate the extremity of the law that we are just about to pass and the possibility that it could have far-reaching legal consequences on anybody who contravenes it and the fact that a lot of legal issues have been raised, bearing in mind that some of us have actually proposed further amendments to the proposed amendments coming from the international community. We will do ourselves a lot of justice as well as to our athletes if we considered all amendments in totality. I believe that hon. Senators will bear with me and stay put in the House as we consider this.

Mr. Deputy Speaker, Sir, lastly, in supporting this, it will put to rest the possibility of our credible competitors from the international community who had over the years been casting doubt on some of our athletes, because of the sustained win by Kenyans, that there could be something sinister. In passing this Bill and subjecting our athletes to this, it will rest this case once and for all that our athletes are just good. The international community should just ensure there are credible competitors and stop casting doubts on our athletes because they are good and they are doing what it takes to train and win honourably.

Sen. Karaba: Mr. Deputy Speaker, Sir, this Bill on anti-doping should be passed immediately so that we have athletes who are ready to represent our country in Brazil. They should have the confidence to compete with other competitors. You will realise that Kenya is admired by very many countries because of its prowess in sports. Recently, we had a very successful performance by the Rugby Sevens Team and they posted very good results in Singapore. Our athletes have always emerged victorious in the World Athletic Championships out there and many countries are not happy with our successes. This could be one of the areas they would want us to appear as if we are not complying. Therefore, we should pass the amendments that are supposed to be passed, so that our athletes continue making us proud.

Mr. Deputy Speaker, Sir, you will realise that it is during the time of international games that Kenyans put aside their differences. There are very few times you will hear a certain tribe or a region celebrating another one for doing something good. It is during such times that we really embrace nationalism. We should not lose sight of this especially when it comes to recommending the various amendments that are already in the Bill. I can confidently say that there are some countries in Europe which have barred Kenya from taking part in some of the events because the moment they take part, the hosting countries will never win. That tells you that Kenya is a country that is ready to do very well in sports. Some of these could be excuses from international agencies meant to bar Kenya from taking part in the Olympics.

I can also remember that Hitler refused to hand over the gold medal after an American Negro successfully won 400 metres in 1936. That can tell you a lot about what people think about the African athletes and footballers and anybody else who is doing well.

So if this is the area they think that they are going to stop us from winning, let us amend the law as required, compete and beat them just the way we won the Rugby

Sevens Tournament in Singapore and we will continue winning other marathons including the London, Boston, Athens and others. This is one area that many international competitors would like us to fail so that we do not appear in these meets and as result of our failure to appear, some of the countries that appear will claim glory.

It is, therefore, important that we support the amendment and continue going for the success.

With those remarks, I support the Motion.

The Deputy Speaker (Sen.Kembi-Gitura): Proceed, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Thank you, Mr. Deputy Speaker, Sir. As I support this amendment Bill, there are few observations I would like to make. Indeed, English is not a mother-tongue to most of us. Most Kenyans would interpret English statements or words into their native languages and, thereafter, re-interpret them back to English to set the meaning of what they had in mind. Had the drafters of the original Bill attempted to write it in Kiswahili, they would have succeeded. They should also have had the African English at the back of their minds when they were interpreting language at the international forum. It is a shame and an embarrassment on the part of our drafters here at home, who have shown that they do not meet international standards.

The visiting teams that are with us here today are learning something out of this. I have been informed that they are on a nine week learning course. The visiting team should have seen how poor drafting can embarrass this country. In my understanding, our drafters wasted the time of the National Assembly and the Senate in a manner that we may not have wanted to. We would have spent this time today discussing other matters if the drafters had cared to pick on the thinking of UNESCO anti-doping programs.

However, after laying blame on some people, I am happy that we have been given the opportunity to meet the international deadline that was sought by our Cabinet Secretary for Foreign Affairs. This would have been a crisis for sportsmen and women of this country to miss such a highly respected event like the Olympics games slotted to take place in Brazil.

The envy from countries, as has been put by the Senate Leader of Majority may be far-fetched, but if that is true, then it is unfortunate because knowing the virility of Kenyans, we are likely to produce more and better athletes in future. In future, they should be ready to see faster runners from Kenya. We have not reached our limit. They should remove envy and jealousy out of their mind. We still remain the top three international countries that have had good anti-doping laws.

It makes no sense for this agency to have picked on Kenya. We think the issues raised are trivial, for example, defining the word “attempt”. If you have to look at the Cambridge Dictionary or any international dictionary, the word ‘attempt’ has different meaning depending on the type of dictionary you are using. That was unfair. Thinking of removing people like the Attorney-General from certain committees is neither here or there. Many able Kenyans can be able to do that.

There was also concern on the definition of the phrase ‘healthcare’ practitioner. That phrase is finding itself in many medical documents. We should have not used such general terms. We have to decide and pick the one we want. We either have a qualified medical practitioner registered by the Medical Practitioners and Dentists Board or a

registered nurse. We should use nomenclatures that are understood internationally instead of using phrases that make no meaning to some of us who are professionals in the medical field.

The definitions that were of concern were national level athletes and county level athletes who we have in our country. We have a two level government and they should also understand that. It does not make much difference to accept their definition that includes electronic trafficking which they did not define how someone can electronically traffic drugs. This is not possible unless you talk of electronic transfer of funds and such kind of things.

Mr. Deputy Speaker, Sir, all said and done, I support this amendment because it is for the good of our athletes and because we will not be barred from this international organization.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, thank you for giving me this chance. I rise to support this Motion and I do so especially coming from a county that is blessed to have the first Kenyan to win an Olympic medal. I know what the Olympics means to us as a nation. It would have been a great tragedy if, as legislators of this nation, we had not rectified the challenges that we are facing. We know the history of what happened until we have found ourselves here today. That is not strange news to any of us in this House. We do understand the challenges before us.

The reason I personally go out of my way to have our athletes participate in these international competitions is because I know that it is a source of livelihood to them and others as well, just the same way politics and many other businesses that I do are a source of livelihood. If this was going to threaten the whole economic mainstay of certain regions of this country, it would be absolutely wrong.

As leaders, we are always called upon to rise to the occasion in certain instances. As much as we feel that this international body has pushed us to a certain corner, let us be sincere with ourselves and accept that we have watched even local investigation series. I do remember what the sports journalist from *Citizen Television* did under the title: 'Poison Spikes', if I am not wrong. We must agree and accept that doping is real and it was beginning to creep into this country and threatening careers of many young people and affecting their psyche. It does not necessarily affect only athletes, but even those people who depend on them for their survival and also the country as a whole. We know how things are done when it comes to the selection of a national team. Athletes are under pressure to excel. Many of them have fallen prey to such malicious traps set for them by people who do not mean well for this country.

Once we have this law in place, I am sure it will deal with issues of doping in this country. It is for that reason I am supporting this Bill. I wish that we expedite this process. I hope that the agency that will be tasked to implement this Act will live up to the spirit and word of it, so that we protect our athletes and the image of our country.

With those few words, I beg to support.

Sen. Hassan: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. Last time we were here with a very clear conscience and passed this Bill to facilitate our athletes to continue with their growing international dominance in sports.

Mr. Deputy Speaker, Sir, this whole idea about doping and anti-doping is about making the playing field equal. We also need to level the playing field in both politics and sports. It is a betrayal for you to lead the world in a certain arena and to be told you did so through deceit. Today we have Lance Armstrong, a renowned world cycling champion who has seven times dominated the world of cycling. I was actually one of those who celebrated him for his exemplary performance. However, I felt extremely betrayed by the fact that he had improved his performance on account of deceit. It is total disgrace for him. We need fairness in our sports arena. If we must win fair and square, then there must be some fairness.

Kenyans are an extremely gifted group of athletes and therefore, we must protect ourselves from people who want to cast aspersions on our victory. We have been winning since time immemorial. As Sen. Cheruiyot said, I read somewhere that Kipchoge Keino won when our nation was basking in the glory of Independence and we hardly knew anything to do with drugs.

We must continue to robustly protect the excellence of our athletes in the international arena. If it means making a few concessions to the international bodies, it must not be construed that the mistake of a few people in presenting a Bill that does not meet international threshold was a mistake of this Parliament or a desire of this country to cheat.

In fact, the President should ask the person who deceived both Houses of Parliament by bringing a Bill that did not meet international threshold to bear the consequence. This is because the perception was that Kenyans were interested in subverting the international standards so that our performance is based on anything less than the quality of our athletes. People who want to deceive us in terms of athletics are evolving almost on a daily basis.

The other day, I read in the media about a young man from the Netherlands who has fitted a motor on the back wheel of his cycle to excel in his performance. Unfortunately, we have now moved a notch higher to “technological doping.” He was using technology to fast-track his performance so that he could win. This is a 19 year old young man. He wanted to lie to the world that he was a successful biker by simply enhancing his performance. Unfortunately, if I relate that kind of deceit to Kenya, it is also something that we locally do. Parents buy their children examination papers to excel in their performance. So, parents also lie to ensure that their children get grade “A” to be admitted to universities only for them to produce substandard professionals in this country.

Mr. Deputy Speaker, Sir, this country must, therefore, take a resolution to gag everybody who tends to corrupt our institutions by all means. This means that those who try to corrupt our sports, including sports administrators, must face the consequences. In addition to this doping legislation, Kenyan sports are poorly managed. One day we do well in cricket, but the next day, we lose.

Currently, we are doing well in rugby and I hope we keep it that way. Today Kenyans are doing well by simply training themselves like the *YouTube* athlete who throws the javelin. We have many other places where Kenyans have excelled. For example, the Dunford brothers excelled in swimming with no investment by the various sports agencies to ensure their performance. It was either through parents, family or individual initiatives.

These amendments are in line with what the international practice demands of us because we are of international standards. Whether you bring this law or another one, we will still adopt it in this Parliament and still win. So, let nobody have any doubt that there was anything that Kenyans wanted to do short of having these young people dealing with the world. Some of these young people are the most humble I have ever met. When I was in the military briefly, I used to be trained by some of them who are very extra ordinary runners. Let us not only celebrate them on a temporary basis when we see them in public domain winning medals. Let us celebrate them at home. These are people whom we pass by in supermarkets and other public places and we do not recognise them until something tragic befalls them. We know some young athletes in this country who have died tragically and that is when we took notice.

As we pass these rules, we must also pass other regulations and policies that enhance, not only the performance or curbs deceit, but ensures that we grow this industry and make these athletes our national heroes and points of reference. It is sad that this country still has politicians as its centre of reference. Most of us here do not deserve to be a centre of reference to many of the issues that go on in this country. Unfortunately, day in, day out, our headlines do not report exactly what happens in the sport arena. Sometimes Kenyans are winning medals, but media houses insist on putting a political headline of a showdown between two political forces. We, as a country, must also change tunes and reposition our value system.

Mr. Deputy Speaker, Sir, as we debate, it must also reflect that this is one arena where these young men and women can be role models. We have a world champion in the National Assembly. He has been winning for us at regional levels in Parliamentary championships. We need to ensure that we build this arena so that people can grow, as Sen. Cheruiyot said. Sen. Cheruiyot himself is a young athlete in this Parliament because he came at the age of 29 years. So, that means that you are a young person whom the anti-doping law must help to grow. You know what I mean. So that we do not have people who take undue advantage to succeed in these types of arena.

I hope my brother, my former classmate and my former college mate at Moi University has taken note that it was wrong--- It is Sen. (Prof.) Kindiki who was my former classmate. This young man, Sen. Cheruiyot, has no capacity to be my former classmate. I think the general vibe that was sent across the world is that Kenya was unwilling to take firm action against the anti-doping menace. I think we must correct that image and part of it is that once the President has assented to this Bill, somebody must bear the consequences. This should be a country where there are consequences for those who make us perform poorly. That person duped and doped us by taking the wrong Bill before the Presidency and to the World Anti-doping Agency (WADA).

With those many remarks, I beg to support.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators.

Sen. Murkomen, do you want to contribute?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I stand here to congratulate this House for the work we did last time in so far as this Bill is concerned. I want to congratulate the Senate because many people have said that this House cannot rise to the occasion especially when things are supposed to be passed expeditiously, but within a span of less than six hours, we dealt with this Bill having been advised that it could not be changed--- I remember certain Members suggesting that certain things need to be put in place and we were advised that we did not have to change anything because the advice of the institution that is oversighting matters related to sports, that is WADA, needed the Bill as it was.

I agree with the incoming governor of Mombasa, Sen. Hassan, that we were either duped or doped. We did it in good faith because we wanted to ensure that our athletes are not locked out from the competition in Rio and other places. The arena of sports is very competitive but our athletes are doing well.

As I have said before, there is an assumption that doing well is automatic. People do not understand that these athletes put a lot of time and effort in personal training with very little support from the Government. They put a lot of effort in training including running in the morning, at night and during the day. I know this because world champions like Japheth Kimutai and William Chirchir are people I know. I know that these are men and women who do not sleep. They wake up at 4.00 a.m. in the cold of Iten to go and run. They put in every effort to ensure that they succeed.

I am sure that there are bad elements through collusion from coaches or men and women who pretend to be coaches and yet they teach our youth bad habits. Most of these youths have no knowledge about doping. They have no access to these drugs. The real drivers of doping are foreigners. Therefore, our athletes need protection. There is a moral hazard that since there is a benefit for the person coaching and even there is a higher benefit if the athlete wins - they are the ones who, without the knowledge of the athletes mislead them to use certain drugs as treatment for muscles or as part of the good menu. Ultimately, their intention is to get money if the athlete is going to win. It is important for us to rise to the occasion and provide a clear legal framework that is acceptable globally to protect our athletes.

Actually, using drugs or doping is cheating. This is a culture that we must get out of in our country. It is the same mentality that leads to corruption, rigging elections and so on. The most important thing is to deal with our moral values as a country to ensure that we adopt the strategy of winning fairly. There is something that we can learn from our athletes. When they compete, they do not think about their tribes and so on. There is a time last year, we went for the world champions and 70 per cent of the gold medals came from a small circumference in my county but it did not feel as such to any Kenyan.

When they run and carry the flag of Kenya, nobody worries about where they come from. This is the kind of country we need to build. We need to build a political culture or leadership that looks at everybody based on their values and abilities.

There has been a debate in this country that the presidency should rotate from one region to another. It is not about tribe. It is not the tribe that leads. When Raila Odinga is the leader of CORD, Luos are not leading, it is only one person. When Uhuru Kenyatta is the leader of the country, it is not Kikuyus who are in office. There is a debate in this country where we do not recognise the values of an individual. Tomorrow, Uhuru's brother can run. If he is the most qualified person we will vote for him. It is a system of democracy. Tomorrow, Raila's son can run. If he is the most qualified person we will vote for him. It is a system of democracy.

This country must start a system that recognizes the values, capacity and ability of a person to lead without really attaching it to how many people come from that tribe. We must see a country where the brilliant Sen. Hassan is qualified to be the governor of Mombasa. People should not ask how many of his relatives live in Mombasa, what his heritage is or how much wealth he has. We must look at the quality of the person as an individual.

Mr. Deputy Speaker, Sir, the other day, Sen. Murungi told his competitor that as a matter of fact, it is not the age that is in competition but the values. It is the values, abilities and capacities of that person to lead. There are young people, as young as us, but their values are convoluted. There are people who are older like Mandela was but have no better values that can effectively lead the country. Therefore, these are things we can learn from athletics.

Today, I was so elated to see the Senate Leader of Minority smiling in State House with Hon. Nkaissey together with the former Rt. Hon. Prime Minister. They were almost hugging. They were enjoying a meal in State House. That is the kind of leadership we want. I saw that Sen. (Prof.) Kindiki was displaced a little bit. He was sitting in a different table. With humility, he allowed his brother to sit in the front sit. I am saying this with humility, if Kenyans would learn from us, they would appreciate that this is competition of politics. Politicians eat and dine together. There is no reason why poor common Kenyans should be used in the streets fighting, getting teargassed and throwing stones. They must learn from sports. Although today we will lead them to the streets, tomorrow we will be dining together, staying together and helping each other. That is the country we need. We need to tell Kenyans to stop being misled by politicians.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. Is this young Senator in order to continue exhibiting unhelpful excitement---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wetangula we have now gone through that before. You must refer to Senators with their names.

The Senate Leader of Minority (Sen. Wetangula): Mr. Deputy Speaker, Sir is Sen. Murkomen of Elgeyo Marakwet in order to continue exhibiting unhelpful excitement over matters he does not understand? The other day he tweeted that Julius Caesar was buried by his killers. I hear him quoting the Bible. I do not know if he knows that Jesus was not buried by his killers. The things he is talking about are very grave. He

should learn how to understand issues. I will have my opportunity and I will put him in his proper context.

(Laughter)

Sen. Murkomen: Mr. Deputy Speaker, Sir, the presidential candidate of Ford Kenya was smiling while responding to that. There is nothing for me to respond to. He has just come from a very important consultation in State House. The Kenyan people must also have the chance to sit down together. He had a wonderful camera moment and a good photo moment. Kenyans can see all over the country. The former Prime Minister was excited and smiling. This is the kind of Kenya we want. The only caution is that we must learn from our athletes. When Usain Bolt is running and competes with Justin Gatlin, they hug each other at the finish line. The UEFA Champions League final was between Atletico Madrid and Real Madrid, when the game was over, Diego Simeone and Zinedine Zidane hugged and congratulated each other.

This is the kind of leadership we need in this country. Once one is defeated, you must wait until another competition comes. One should not sulk every moment lamenting about the referee. We should not be on the streets every now and then.

(Applause)

If one wants a moment to dine with the President, it is their right. It is their President. There are no two Presidents in this country. This country has only one President and many leaders of Opposition. This is the nation we want so that we can unite the country.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen! What is your point of order, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. Whereas I appreciate the youthfulness of some Members of this House, would it be in order for matters of national importance like seeking dialogue over the current crisis that is boiling and incubating this country, to be trivialized with that kind of discussion in this House? Is he in order?

Sen. Sijeny: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. Murkomen in order to talk about things that are not relevant to the Anti-Doping Bill that we are discussing today?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, what is your response?

Sen. Murkomen: Mr. Deputy Speaker, Sir, there are great lessons in this country we can learn from sports that can take this country forward. Sen. (Dr.) Machage has raised a very important issue. I was asking Kenyans why they are fighting each other. Look at us. We dine together. We politicians sit together when invited to State House. Kenyans are stoning each other. Their children are dying. The sons of politicians are not in the streets. Kenyans should learn from today going forward that they cannot be used in

a political debate. They cannot be used in a political contest; a fight for power to lose their lives.

(Applause)

Like sports, we must learn to accept defeat. If one accepts defeat, they will have another chance to compete. If one accepts defeat they will have an opportunity to prepare. If one accepts defeat they will have an opportunity to win other people to their side. However, every time one cannot be sulking, saying the other side did not win, the referee was biased or they need extra material. That way we will never unite this country. We will never as a country, move forward and build a country we can be proud of. I am one of the politicians.

When a person from the CORD Coalition has any problem I have been willing and ready to support him or her and the same applies to somebody from the Jubilee side. When any Senator from any side has had a personal problem this House has united in supporting each other. However, we go out there and lie to Kenyans that we are great enemies who do not even talk or sit down together to canvass. We do this just to keep them in an agenda that has no direction so that we can be relevant in politics. This is something that must change.

Let us not lie to Kenyans. If we want to talk, let us talk. We cannot go to report to Kenyans why we want to talk. We have the license, the forum, the House, the opportunity and the knowledge. In any case, the Senate Leader of Minority together with the President were on the same side. The Deputy President together with the Leader of Opposition were on the same side. How do Kenyans forget so fast?

Mr. Deputy Speaker, Sir, even hon. Kalonzo Musyoka, the deputy leader of the CORD was also on the other side at that time with the current President. Things change. This is a competition of ideas, but some people want to turn it to be a competition of boxing people's lives. That must change; we must learn that from sports. Otherwise, we will say that some people are running politics that are full of doping, which must come to an end.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen!

Sen. Ongoro, what is your point of order?

Sen. Ongoro: On a point of order, Mr. Deputy Speaker, Sir. Is the Senator for Elgeyo-Marakwet in order to continuously mislead this House and the nation by giving irrelevant examples between athletics and reckless competition in this country, where the winner is never given the right to lead? You cannot continue misleading us by comparing the athletes who compete and win honourably with the politics of this nation.

In the Tenth Parliament, I was fighting side by the side with the Deputy President.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Ongoro! You are on a point of order.

Sen. Ongoro: Mr. Deputy Speaker, Sir, we were in the streets together. When Sen. Murkomen, who is a newcomer in politics insists that fighting certain battles by picketing and demonstrations - which is provided for in the Constitution - is something akin to not accepting or not dialoging, is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ongoro, I hear you. In my view - since you are asking whether he is in order – I think he is just being analogical. You may not agree with his analogy, but it is a matter of debate. You can take issue with him, but I think he is just giving an analogy, as he understands it, between sports and politics. That is the way I look at it.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Would I be in order to advise Sen. Murkomen?

(Sen. Wetangula spoke off-record)

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, I did not say that. I want to advise Sen. Murkomen that what he is attempting to do is not healthy, especially when we are getting an opportunity to have the two sides of leadership of this county come together. I would advise the young Senator to read some wisdom from me and desist from doing that.

Sen. Murkomen: Mr. Deputy Speaker, Sir, whereas I recognize what Sen. (Dr.) Machage has said, my advice was to Kenyans. I am telling them the truth of what I have seen in politics in the last three years. We, in politics, lie to the rest of the citizens that we do not talk. We use them as playing sticks to achieve what we want. I am telling them to leave us who are in politics to talk. They should not join in the game of fighting. That is my advice to Kenyans. These are words of wisdom; that Kenyans should leave politicians alone. We are capable and able to sit and change sides anytime. That is the message I was trying to pass. Sen. Ongoro, the summary of my message is that we should get rid of doping in politics.

Thank you.

Sen. Sijeny: Mr. Deputy Speaker, Sir, thank you for giving me the opportunity. I beg to support this Bill, even though some definitions are yet to be clarified. This is an international document that will affect our citizens both locally and internationally. Nothing should be left for people to interpret as they wish.

The definition of the word ‘trafficking’ is still disturbing. I have been thinking of what “other means” could be. It could be selling, giving, transporting, sending and other means. There is also the issue of sending electronically. Section 2(f) also provides that this definition shall not include the actions of *bona fide* medical personnel involving a prohibited substance used for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving prohibited substances which are not prohibited in out of competition testing unless the circumstances as a whole demonstrate such prohibited substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.

What do they mean by “out-of-competition?” The definitions that they have included are broad. It could be interpreted that an athlete who has used some substance that is considered to be prohibited could lose their medals even when they have trained well. Unfortunately, the Bill is being rushed. I would have loved a situation where *wananchi* of Kenya are given a chance to scrutinize it. They should ask to be given

examples and correct definitions of the prohibited substances. Where the Senate Minority Leader comes from there is a substance that the Luhya men take to boost energy.

The Senate Minority Leader (Sen. Wetangula): For all the good reasons.

Sen. Sijeny: For all the good reasons, as he says.

I know this because I come from the former Western Province and they are our in-laws. This substance is used by general people. If it is able to boost performance it should not be said that it interferes with the athletes from there. Those married to Luhya men who take *mkombero* should be more concerned about Kenyans being put through the anti-doping processes and their medals being taken away from them.

I am more concerned about the traditional things, which should be looked into carefully. I am sure this will affect so many Africans. I am sure that every country has some traditional herbs. Our brothers and sisters from the pastoralist region of Maasai hawk a lot of traditional herbs, which help them in their daily lives, including strengthening their bones and appetite.

The proposed New Section 41 B provides that each sports federation shall have rules and regulations. It also states that paramedic personnel should agree and be bound by the anti-doping rules. I would insist that these rules must be clear. We need public participation because Kenya is a country of athletics. Anybody from any part of this country can compete in sports without necessarily having a manager, elite or professional. If people do not know the rules, regulations and code of conduct, why should they be penalised and told that they disobeyed them? This Bill should not be rushed in Parliament without explaining to *wananchi* what it is all about. I do not know who was sleeping on the job that led to rushing of the Bill.

Clause 14(6) talks of an athlete or his support personnel who violates any of the anti-doping regulations and they go ahead to state the whereabouts or failures. What whereabouts are they talking about? That statement is vague. Everything should be made clear because this is a legal document. It should state the means. We should not leave things to chance that some malicious person can decide to look for the whereabouts, failures and penalize us for it.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Temporary Speaker (Sen. Ongoro) took the Chair]

Madam Temporary Speaker, possession of a prohibited substance or method is also talked about. We need to know those prohibited methods that are stated in the Anti-Doping Act so that we do not punish Kenyans. There are people whose lives depend on this. We have seen where nations have been developed through sports. Athletes have brought about development in Elgeyo-Marakwet County and Rift Valley region as a whole because of their prowess in sports. That is where they derive their income. We should not take things for granted. It is unfortunate that Sen. Murkomen has walked out but playing around with such serious issues that is a livelihood of many people is unfair. Athletics have raised the Kenyan flag in many forums. Therefore, we should not be joking around with this matter.

The sports sector is very important. Sportsmen and women compete and there is always a winner at the end of the day. However, if one competes and wins through unfair means that should not be allowed.

With those few remarks, I beg to support.

Sen. Murungi: Madam Temporary Speaker, I rise to support this amendment Bill. I would like to echo the spirit in which the Senator for Mombasa County, Sen. Hassan, expressed himself. It is common knowledge that the only sector that Kenya is known for internationally is the sports sector, especially athletics. It is in the long distance races that Kenyans shine everywhere in the world. Whenever we travel, no one asks us about Ministers, tea or coffee in Kenya. Even those who do not speak English have seen Kenyan athletes on television. Therefore, this is one of the most important sectors in Kenya.

The athletes should be the owners of Brand Kenya because they market Kenya more than the advertisements we pay for on CNN or hiring image promoters from countries like the United States of America (USA) or Britain. That money can be used to promote sports because it gives Kenya the image that we have been unable to get through other sectors.

Madam Temporary Speaker, Rugby is also an upcoming sport that should also be supported because it could also be affected by the same challenges that we have noticed in athletics. The doping rumour was denied for a long time and it is only recently that the problem was acknowledged. As other Senators have said, cheating has now become a Kenyan culture. Some people cheat in examinations. The Cabinet Secretary in charge of Education had to take some drastic steps that included banning parents from visiting their children in schools to avoid leakages and stealing of exams.

This Bill is meant to bring about a system that will bring honour and integrity in our sports. It is for that reason that I support the amendments. It is very unfortunate that we were called in a hurry and passed the Anti-Doping (Amendment) Bill (National Assembly Bill No. 17 of 2016) which was later found not to meet international standards. I hope that with these amendments, those standards are going to be met and that our athletes will not be treated with suspicion when participating in international races.

Madam Temporary Speaker, there is a lot of racism in sports. Not everyone out there is happy when Kenyans win every race. If they could find ways of proving that Kenyans are corrupt and engage in doping, hence the reason we have been winning races over time, they would be very happy to expose us. We have to prove as a country that we are winning fairly and squarely and not through any influences.

I am in agreement with the Senators who have said that it is sports that unite Kenyans. Whenever we watch athletes on television carrying the Kenyan flag, we feel proud even though we do not come from that part of the country that participates in those races. I am always proud to see that a Kenyan has won a race especially when they take the first three positions. They could be Kalenjins from small villages that Sen. Murkomen mentioned but to me, they are Kenyans. That is the spirit that we should promote.

Madam Temporary Speaker, I disagree with Sen. Murkomen who tried to lampoon the Senate Minority Leader for going for lunch at the State House today. The days when we used to avoid State House for fear of being told that you have eaten *Ugali*

are long gone. In the old days of hon. Shikuku and others, State House was out of bounds for the Opposition during President Moi's era. These days, State House is meant for everybody because it is sustained by tax payers' money. I was happy to see the Senate Minority Leader, Sen. Wetangula, the Former Prime Minister, hon. Raila Odinga and other Members of the Opposition enjoying lunch at State House today. That is what should be encouraged.

When the Late Hon. Kijana Wamalwa was still alive, I was a Member of FORD-(K). The Senate Minority Leader can attest that he used to call us and tell us that a family which eats together remains together. Therefore, we are very happy when the family of Kenyan leaders eats together. It is through that, that we can solve some of the problems that are facing this country. We do not need to solve the issue of Independent Electoral and Boundaries Commission (IEBC) through death or injuries of some people when there is democratic space for us to discuss and agree on how the issues of IEBC can be resolved. There is no reason why hon. Raila Odinga, Sen. Wetangula or hon. Kalonzo Musyoka cannot be invited to State House to discuss with the President the challenges of IEBC. We do not want to see people dying on the streets or businesses being disrupted when the Constitution is very clear about what can be done.

Madam Temporary Speaker, the only problem with the Bill is Clause 11 which talks about the Sports Tribunal. It is very good for us to have a Sports Tribunal also dealing with anti-doping issues. However, as we have seen in the Judiciary, people lacking integrity and competence being appointed compromise administration of justice. It would be sad if we have a Sports Tribunal which is made up of brothers and sisters who have nothing to do with sports. Former sports people such as Mr. Kipchoge Keino, others who have distinguished themselves and probably some doctors should sit in the Sports Tribunal. This will ensure that cases of doping are scientifically established and objectively dealt with.

It is also unfortunate that according to Clause 11(3), the Tribunal would determine its procedure. Why could we not just provide that the Tribunal will be guided by the law and follow the rule of natural justice because it could be a Kangaroo Tribunal which decides---

(Technical hitch)

The Temporary Speaker (Sen. Ongoro): Okay, that has been corrected. Proceed, Senator.

Sen. Murungi: Madam Temporary Speaker, at the Committee Stage we should examine how to strengthen the Tribunal by clarifying the procedures that it will use so that justice is not only done but seen to be done, especially with regard to serious allegations on doping which might not be properly established.

Madam Temporary Speaker, lastly, I would like to appeal to all athletes in this country and other sports people to consider using *miraa*. It is not a drug. I recommend it for our sports people. It will give them strength, lift their spirits and give them stamina in the field. They will not run the danger and risk which is being handled by this

amendment because they will not be considered to be doped but will have strength and stamina to run the races.

With those remarks, I beg to support.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, allow me to also contribute to this Amendment Bill.

Before, I go to the Bill, I wish to say the following: My brothers hon. Raila Odinga, hon. Kalonzo Musyoka and I were invited by the President to meet as leaders of this country. We were invited to a luncheon hosted in honour of the visiting President of the Republic of Korea. We attended the luncheon. People may be wondering where our brother hon. Kalonzo Musyoka is. He is out of the country in China on an official/ private visit. He is fully in the picture of the invitation and the discussions that we had.

Secondly, after the luncheon, my brother hon. Raila Odinga and I met with the President and his deputy. On the table was the issue of how we can engage as the leadership of the country to address issues that are affecting the country including that of the IEBC. We had good but inconclusive discussions to the extent that we agreed to meet and discuss further before we reach a level where we can put up teams possibly to look at the issues within the Constitution and other administrative structures that portend bottlenecks and hindrances to having a peaceful, cohesive country that can go to elections without disputes and many other things that may not be part of elections.

Therefore, I am saddened when excited young Senators like Sen. Murkomen make fun of an otherwise very important issue and laugh until his last tooth can be seen as if it is a discovery or innovation for leaders to meet. Leaders all over the world meet. It is this cheap excitement that can otherwise make things that are fairly well founded and well-meaning look like they are secret and as if people are undermining or betraying the people they work with.

Madam Temporary Speaker, I have a son who I have been going to the demonstrations with. So, when somebody stands up and says, "Where are their sons?" Who in this country goes displaying their children everywhere and say, "For avoidance of doubt, this is my son." I have seen hon. Raila Odinga coming to the demonstrations with his daughter. You have also seen. I have also seen hon. Kalonzo Musyoka come to demonstrations with his sons. I have also gone with my son and we have inhaled the wicked teargas that has been thrown at us together.

So, I encourage that humility is a virtue. It helps much more to build bridges than exhibiting unhelpful excitement and arrogance that does not take us anywhere.

The Temporary Speaker (Sen. Ogoro): Sen. Murkomen, what is out of order?

Sen. Murkomen: Madam Temporary Speaker, on a point of order. Is it in order for the Senate Minority Leader to put words into my earlier contributions? I was clear that politicians on both sides; ours and his, must not use the public and citizens as a bait to get them to the table.

As I said, we must speak as politicians and not at the expense of the blood of Kenyans.

The Temporary Speaker (Sen. Ogoro): What exactly is out of order?

Sen. Murkomen: Madam Temporary Speaker, the Minority Leader is trivializing an important contribution I gave in this House in so far as the fact that they met with the

President today. I said clearly that that is what Kenyans have yearned for, for a long time. It cannot be procured by stone throwing Kenyans being hurt or killed.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, you were sitting here when you heard the distinguished Senator for Elgeyo-Marakwet speak, even cynically saying we were all smiling. Did he expect us to meet the President crying? What did he want us to do? He said that he saw us smiling broadly.

It is not that he is complementing us. You know what cynicism means in life. He is being cheaply cynical about a very serious matter, because people have lost lives. People are still angry in this country and we are trying to reduce this anger and tension. My distinguished brother, Sen. Murungi was there, and has spoken very well. He did not pour vitriol on our meeting, neither was he cynical nor made it appear as if we were privileged or angling. He spoke very soberly and I appreciate what he said, because we have walked this path before in 1996-1997. We sat on the Inter-party Parliamentary Group (IPPG) when the country was on the brink of a precipice. Instead of somebody standing here and saying, we saw our leaders meet and that is the direction to go, you start telling us about Usain Bolt and whatever. These are things that are totally irritating and unhealthy. Let me go to the Bill.

Sen. Murkomen: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Let me allow you that last point of order. Stick to what is out of order.

Sen. Murkomen: Madam Speaker, if the Minority Leader is the leader he is trying to profess, he would have addressed me with respect, particularly when it is on matters of his personal interpretation, as to whether or not I was cynical. I did not say that only the Opposition was smiling. The President, hon. Duale, and Cabinet Secretary Nkaissery were all smiles. I was not trying to talk to politicians. That was an indication to Kenyans that we have been and are always talking to each other.

My message was not to Sen. Wetangula, President Uhuru Kenyatta, or the Deputy President. It was to Kenyans, that you cannot be held at ransom by politicians. We are capable of engaging and we do not need bloodshed in order to engage. I conclude by telling Sen. Wetangula that I am among the few Senators that have welcomed his presidential candidature and I am willing to listen to his manifesto and support him. Instead of him using that opportunity to invite me to support him, he is chasing me away.

The Temporary Speaker (Sen. Ongoro): To the best of my knowledge, I think we are all in agreement in this country that the Opposition has always sought for dialogue which the Jubilee Administration has not accepted before and so, when we see indications akin to dialogue, we should all treat it with the decorum it deserves and wait for the leaders to dialogue but not vilify. We might stop a good process.

Proceed, Senator and now dwell on the Bill.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, I will dwell on the Bill. For my brother, Sen. Murkomen, for whom I have great respect, it is unlikely that he will stop carrying William Ruto's briefcase and support me.

(Laughter)

When this Bill came to this House, you may recall that I sounded a caution that there were some clauses that were going to create problems. Since we were in a hurry to legislate, because we were told it was important, it has gone full cycle and come back to where we were. If we had agreed at that time to marshal and move amendments on this Floor, the least we could have had was to go to mediation with the National Assembly. It probably would have cost us a week or two and would not have cost the country millions of shillings for three Cabinet Secretaries and an entourage of an uncountable people - some who were going to do nothing - going all the way to Canada, ostensibly to convince WADA that we are going to amend the Bill we would have done rightly in the first place.

Now that we are there, I discussed with my distinguished colleague, Sen. (Prof.) Kindiki, and I want to appreciate his level of decorum and respect for others. I cannot say the same of his deputy.

This Bill now comes to the Floor for us to relook at some clauses. I want to encourage Sen. (Prof.) Kindiki, that now that it has come back to us in a fashion acceptable to the international arena, we still must tighten several nuts and bolts that might take away an opportunity that will hurt young athletes, who are quite often victims of agents, who recruit them from primary schools and literally turn them into guinea pigs. When they see these youths slowing down, either because the season is bad or due to fatigue, they encourage them to take enhancement drugs so that they continue winning and the agents earn even more money than our athletes.

I want to urge Sen. (Prof.) Kindiki to address the definition of trafficking which is on page 4. It says: "Trafficking means selling, giving, transporting, sending, delivering, distributing, or possession for any such purpose, a prohibited substance or prohibited method, either physically or by any electronic or other means by an athlete". Even at the level of common English, the descriptions there do not amount to trafficking, because to traffic is to move. You traffic something when you cause it in motion. When you say possessing is trafficking, then I have difficulties, but I can live with that. The devil is further on, where it says: "An athlete support person or any other person, subject to the jurisdiction of an anti-doping organisation to any third party." An athlete's support person could be your wife, husband, child; anybody you live with or travel with.

Unless we define what an "athlete support person" is, we will end up having some of these prohibited drugs even planted or maliciously given to people to carry. You can travel to Canada with a support person who can be given a parcel to carry without you knowing what it is, but you end up in a trap because he is your support person. I want to ask my brother, Sen. (Prof.) Kindiki to ask the Ministry to ask WADA what they mean by an athlete support person, because we will end up having our young athletes having serious problems because the law is not clear.

In ordinary criminal law, we often have a clause called "knowing or having reason to know". Where you have no knowledge or no reason to know, then you are caught up in a web. But where you have no knowledge or reason to know, then you are caught up in a web or a trap that can easily be---

I heard the Senate Majority Leader moving the Bill. He was talking of the attention to Kenya because of our prowess and distinguished performance where our athletes go to any international event and the day is bright. Kenyans have been known to

win all races from 800m to marathon. That is in the middle and long distance races and it attracts jealousies. Those White and foreign agents that come here could also be agents of destruction of our athletes and they could easily be used. If many of them can swindle a young athlete, they can also receive money to destroy them. Therefore, we have to be very careful about them. I hope Sen. (Prof.) Kindiki will look at this.

Madam Temporary Speaker, when we were having the first debate, I pointed out about the composition of the Agency. I can see you have moved one step down the ladder and say that a sports administrator is a person who shall have retired at least two years prior to the appointment. This is not bad but I would have loved to have at least two or more of retired athletes. Secondly, since we are saying that you have to have been an administrator to be part of the agency, we must also spiral back to the law that administers athletics and make it mandatory that some of the administrators must be former athletes to qualify being here because those characters who have been swindling athletes

For example, the fellow who took bribes to conceal the evidence about Rita Jeptoo have never been known even to jog, leave alone to be an athlete. However, he found his way there and he is using our athletes as a means to an end. So, we must, as the Senate Majority Leader said, look at the law governing the management of the Athletics Kenya (AK), so that we also provide for mandatory athletes who are retired to be part of the management of their own sport.

I am very proud of young but retired athletes like Paul Tergat. My great friend Kipkeino has a distinguished career both as a runner, an administrator and a member of the International Olympics Committee (IOC). Every time I get a call from him inviting me to either buy me lunch or dinner, I look forward to it because he has such a rich history about athletics. In fact, the other day, I asked him why he cannot commission somebody to sit with him and write a book about his journey in life through athletics from Mexico in 1964 to date where he is still a member of the IOC, so that it can help our young athletes to see that you can actually run, be a world-beater and be acknowledged as a legend without shortcuts and going to drugs. Therefore, we need to look at Clause 7.

Madam Temporary Speaker, something else that I want to ask the Senate Majority Leader to address is the issue of the tribunal. The distinguished Senator for Meru used strong but acceptable language that it could be a “kangaroo court”. When you set up a tribunal, you cannot have it set its own rules. In fact, in this country now under our new Constitution, the rules administered by any quasi-judicial body, whether subsidiary or substantive legislation, must go through Parliament.

So, if the idea of the tribunal setting up its own rules has to stand where it is, then it must be given a rider that such rules must be treated as subsidiary legislation that shall go through the test of the two Houses of Parliament – both the National Assembly and the Senate – so that we make sure that they are grounded on fairness, rules of natural justice and rules of procedure that are commensurate and equal to expected standards of dealing with matters where somebody is suffering prejudice and so on. Even more callous – I believe this is what made Sen. Murungi say what he said – is Clause 31(4) which states that the tribunal shall sit as a court of first instance and then reconfigure and reconstitute itself to also sit on appeal. I have never heard this in the world.

(Sen. Murungi consulted with Sen. (Prof.) Kindiki)

Madam Temporary Speaker, could the King leave his subject to listen to the contribution?

(Laughter)

The Temporary Speaker (Sen. Ongoro): Proceed, Senator.

The Senate Minority Leader (Sen. Wetangula): I know that Sen. (Prof.) Kindiki is a very good student. I am sure he will see through the things that we are saying at a later stage. Like I said, he does not get excited and make statements that infuriate people.

Madam Temporary Speaker, Clause 31(4) states that disputes involving national and county level athletes, athlete support personnel, sports federations, sports organisations, professional athletes and professional sports persons shall be resolved by the tribunal both at the first instance and at appeal. I have never heard of a trial tribunal sitting at the first instance and then sitting as an appellate tribunal. All they are saying is that it will reconstitute itself from a tribunal of first instance and then sit on appeal. That is like having the first and second chamber. That is unacceptable. It is not even in keeping with the rules of natural justice.

I will have no difficulty where, for example, an appeal for an athlete of international stature like Rita Jeptoo, the one I call my son, Ezekiel Kemboi, or other great athletes go to the international tribunal. However, the same tribunal that has convicted you will sit on appeal to determine whether they convicted you properly or not. This is not fair and this has to be changed. If the international instruments do not oust the jurisdiction of our local courts, then the natural course of events is that an aggrieved party should have audience at the High Court.

Most tribunals are quasi-judicial and, therefore, subject to the supervision and appellate authority of the High Court. So, I encourage Sen. (Prof.) Kindiki to look at this very critically because what we are trying to do is to entrench unfairness, prejudice and dictatorship because we probably do not know. There is such serious dictatorship in the management of athletics in this country that the Government must look into it.

When we went to London for Olympics, I witnessed athletes being housed in some shadowy village and given an allowance of about USD200 or USD300 per day. The administrators that we have said have never even been known to jog live in 5 Star Hotels and pay themselves USD3,500 a day, living on the sweat of the young people. We need to bring sanity to this sport.

Madam Temporary Speaker, you can see how much money a footballer like Wanyama is earning. Our athletes are more famous than Wanyama and they could even be earning more but who gets the money? There is a person called Velsian and another one I cannot remember the name. These are the same people who lead athletes down the dangerous path. So, I would like us to seal all the loopholes.

Madam Temporary Speaker, I had encouraged my brother that we should have had a much more far-reaching consultations on this Bill before we deal with it. However, since Olympics are around the corner---

Sen. Madzayo: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Ongoro): Senator, do you wish to be informed?

The Senate Minority Leader (Sen. Wetangula): Yes, especially by the retired judge.

The Temporary Speaker (Sen. Ongoro): Proceed.

Sen. Madzayo: Madam Temporary Speaker, I want to inform my senior colleague that the World Anti-Doping Agency (WADA) is part of the United Nations (UN) body and, therefore, it confirms itself as an independent body, just like the Fédération Internationale de Football Association (FIFA) which has its own rules and regulations. These regulations ought to be followed to the letter. Any interference either by the Government or any other party is not acceptable. Incidentally, that is how international agencies operate. It does not exclude WADA. I believe when my senior brother and one of the outstanding counsel in this country says that it is unfair to have this kind of tribunal, I believe this was some kind of copycat from the WADA rules and regulations.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator.

Proceed Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, I thank my distinguished colleague for the information but I think we are saying the same thing. Sen. (Prof.) Kindiki should look at the appellate structure and see if there is a dispute that goes beyond the internal mechanism. They have a tribunal out there like FIFA. The tribunal that tried and suspended Michel Platini and Sepp Blatter, was not their national tribunal but rather the international tribunal in Switzerland. I am sure that the international tribunal can and should have jurisdiction to hear matters that come from states that go beyond the dispute mechanism of the said states.

Madam Temporary Speaker, in any event - this is something that we need to point out - under Article 2 of our Constitution, every international treaty and convention that we have signed becomes part of our law and must work in conformity with our legal system. I know the sensitivity of FIFA and all these bodies.

I hope the team that went to Canada, that included Sen. Madzayo, Sen. Munyes and the three Cabinet Secretaries - from what I read in the media - had good engagement and brought exactly what we ought to have had in the first place. Secondly, there must be some lapse somewhere. If what we are told here by Sen. (Prof.) Kindiki, is true and I believe so, that this was copy-cat legislation, who edited it to make it unacceptable? Who removed the clauses that made it unacceptable to WADA? If it is the Ministry, they must bear responsibility, if it was the Attorney-General's Chamber, then they must take responsibility. If it is the committee from the House of Parliament, where the Bill originated, they must equally bear responsibility for embarrassing the country and causing anxiety to our athletes. Can you imagine how the athletes who were preparing to go to Rio De Janeiro would react or feel if they were told that they may not go? They may either lose focus or become unstable and end up not running well.

Finally, this country has earned great fame from our athletes. I would want to see our Government supporting our athletes even more. We are the only country, with the level of athlete success that we have, that sends athletes to international sports with one doctor covering a whole contingent of the country.

Madam Temporary Speaker, at our level, when we sent an athlete that we know is going to possibly win a medal, particularly a gold medal, that athlete should have a State paid physiotherapist, doctor, nutritionist, among others. I have seen Mozambique sending one athlete to the Olympics and they get 100 percent returns. Maria Mutola would go to the Olympics with a delegation of 15 to 20 consisting of physiotherapist and an assistant. In case the physiotherapist is unavailable, the assistant takes change, a doctor, a chef, and a nutritionist, among others. Everybody knows Maria Mutola - and probably a psychologist to make sure that the frame of mind is correct at all times.

At every athletics competition, Maria Mutola got a gold medal and remained unbeaten for 12 years until she started aging. In fact, the first female athlete to beat her was Pamela Jelimo, who I gave a diplomatic passport for her performance. She was the first one to win International Grand Prix Circuit alone. The International Grand Prix circuit is normally shared. If three of you win seven events, you will be given one million US dollars to share. Pamela Jelimo won it alone, got one million US dollars, came back and her young husband squandered it in less than one year. It was terrible. Let me give opportunity to others to contribute. To that extent, I support.

Temporary Speaker (Sen. Ongoro): Proceed, Sen. Hargura.

Sen. Hargura: Thank you, Madam Temporary Speaker. I would like to support an amendment to the Anti-Doping Bill which unfortunately, had to come back because of issues which are outside this Parliament. We are told it was to do with the drafters. As a country, we had cultivated an image of world champions, of world beaters like our neighbours the Ethiopians who we compete with. It is that image which is at stake through this kind of malpractice, which makes people doubt our prowess in athletics and which we have to protect because our athletes have attained what they have attained through their own personal efforts. We cannot allow them to lose because a culture has developed somewhere where everybody is put in the same basket.

All athletes have to be checked, on and off competition, to make sure that they are not using any of the enhancement drugs or any substances. That is why we have to come in and make sure that we develop the necessary international laws and domesticate whatever is there, just like we are being told by WADA to do.

This will ensure that we do not expose our athletes to any doubt, that is, whatever they are doing out there is due to their own capabilities and not being assisted by drugs or other substances. We have people who have done their best as we were told by Sen. Murkomen, that there are people who train in particular parts of this country to become world beaters.

The other day I was listening to the British Broadcasting Corporation (BBC) radio, and they said that there is a village in Ethiopia, called Dekhogi near Addis Ababa with high altitude where all those Ethiopian athletes come from and not scattered throughout Ethiopia. These people have been training throughout from their youth. Kenyans are doing the same in Iten. So, we need to protect them by having the necessary

legislation so that they do not appear to be missing their hard earned titles because somebody somewhere feels they have cheated. That is why we need to pass this kind of legislation so that our athletes who have developed their skills as their means of livelihood cannot be stopped from competing in the main event, being the Olympics in Rio De Janeiro as well as leagues such as Diamond leagues where they compete and earn their money the hard way.

Madam Deputy Speaker, I support the Bill and also raise the same issue that was raised by the Senate Minority Leader on the practicality of the law. When you have a tribunal which also serves as an appeal tribunal over its own decision, then I do not think we are creating laws which will serve our athletes. If they feel aggrieved by the decision of a tribunal, then we must put in place laws which will enable them have justice instead of being submitted to the same individuals who convicted them in the first place.

I support the Bill. I hope this time, we will get it right and that the WADA will accept whatever laws we have passed.

The Temporary Speaker (Sen. Ongoro): Hon. Senators, before we proceed, allow me to take this opportunity to give a communication.

COMMUNICATION FROM THE CHAIR

INVITATION TO *KAMUKUNJI* ON THE SENATE MONITORING AND EVALUATION FUND

Hon. Senators, I wish to inform you that a *Kamukunji* will be held in this Chamber on Thursday, 2nd June, 2016 starting 11.00 a.m. This is, therefore, to request all Senators to attend this *Kamukunji* as crucial matters relating to the activities of the Senate Monitoring and Evaluation Fund Committee will be discussed.

Thank you.

Sen. Ndiema: Madam Temporary Speaker, I stand to support this Bill for the purpose of ensuring that our athletes participate in the forthcoming Olympics. I really cannot understand the reason for all this pressure by these international organisations. Kenyans are not afraid of any such laws as long as it will be fair and just to athletes. In any case, I believe that we are already signatories of the UNESCO Convention against Doping. Article 2(6) of our Constitution domesticates that Convention.

We already have a law against doping in our statutes. We should now try to find out why we need to have another law in a hurry without even proper scrutiny to support that. We should be careful because, perhaps, the net is being or might be cast so wide, that it will even catch those athletes who are competent, but innocent arising from various provisions, some of which may be suggested here, as amendments.

We are aware of other international legislations that have caused us problems. We are signatories to the International Criminal Court (ICC). However, some countries are not, but they want to use ICC to deal with issues in some countries. The Senate Majority Leader here indicated that, perhaps, there is a move to target us because we are leaders in athletics. To me, this sounds like we are also being taken as the examples. It is the same

way the ICC stated; that Kenya was to be an example. Are we going to be an example in athletics in this case?

Madam Temporary Speaker, we are also signatories to the United Nations (UN) Convention on Refugees. We were rushed at some point to have a Refugee Act in this country. The Act offers more privileges to refugees than are even in the UN Convention and which now makes it difficult to deal with refugees. So, it is very important that we scrutinize this Bill carefully before adopting it with amendments as they come.

There are certain issues that are unclear here, for example, the definition of; “whereabouts failures”. Is this going to impact on the freedom of movement? Our Constitution grants citizens, including athletes, freedom of movement. Will this provision curtail their movement or must they report all the time wherever they are? Is that not infringing on their human rights?

Under Clause 14, there is also the provision against tampering with any part of doping control. The provision says that we should not tamper. We will enact this legislation with a view that if there is anything to be amended later, we amend. Is this provision captured in Clause 14(b) and (c), not tying us to a certain extent so that we do not bring any amendment?

Madam Temporary Speaker, WADA and UNESCO are international organisations. When we were enacting this law, they also had access to it. In this modern age, they could have access. Why did they not bring their input right from the time that it was drafted, public participation was done, the National Assembly dealt with it and it came to the Senate? Why did they wait until the law is assented to and signed by no less than the President for them to come later on and say that it is not in order, when they had all the opportunity to make any amendments?

Madam Temporary Speaker, regarding the issues of a tribunal, it is very important that any tribunal established here must be in accordance with our laws and recognise need for an appeal. Some of these athletes may not have money, but they should access our local courts and not be called to go to international courts, which they cannot afford. A system of appeal that involves our local courts should be enshrined in this legislation.

With those few remarks, I support. I ask the Senate Majority Leader to look into these issues. If possible, he brings all these amendments at the Committee Stage.

Sen. Lesuuda: Madam Temporary Speaker, I rise to support this Bill. For Kenyans, it came as good news when we finally learnt that we still had a window to pass this Bill in the amended form. That was when our Cabinet Secretary (CS) for Foreign Affairs and the Cabinet Secretary (CS) for Sports, Culture and the Arts, respectively went to present our case before WADA. We really congratulate them for the good job that they did. We especially congratulate our Cabinet Secretary (CS) for Foreign Affairs for the work that she continues to do internationally to make sure that Kenya is in a good rating globally.

Many of us were almost in panic mode to think that Kenyans will not participate in this year's Olympics because of this Bill. So, it is an important Bill for us, as a country, to pass and make sure that our athletes who continuously train and work hard will participate in the 2016 Rio De Janeiro Olympics.

As my colleagues have said, as a country, we should look at what is good for us as much as we have other international obligations and other laws that we have to meet. We do not live in an island, but a global set-up. This means that we have to meet some obligations. We also have to look at what is good for us, as a country, especially for our athletes who continue to bring so much pride to our country.

It is also important to note some issues raised by this law. Since we have continued to perform very well as a country for a very long time, we do not want to be seen as if we are afraid of anything. I believe strongly that our athletes have continued to train and perform well from time immemorial. It is important that the law looks at how we train and educate our athletes, coaches and the support staff. They should be aware about doping and how it happens.

Some could be doing it without their knowledge, through some of the supplements that they are given for training. It is important that they are educated. After we have passed the law, it is important for the Ministry of Sports, Culture and Arts to ensure that our athletes and everybody who is involved in athletics are educated. We know that our credibility will go down if one, two or three are found to have been involved in doping.

Madam Temporary Speaker, with those remarks, I support this Bill and wish our athletes who will be participating in the Olympics the best. We hope that they will continue to participate fairly and bring honour to our country.

Thank you, Madam Temporary Speaker.

PAPER LAID

REPORT OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE ANTI-DOPING (AMENDMENT) BILL

Sen. Madzayo: Madam Temporary Speaker, first and foremost, I would like to thank all my colleagues who have contributed to this Bill.

I beg to lay the following Paper on the Table of the Senate:-

The Report of the Standing Committee on Labour and Social Welfare on the Anti-Doping (Amendment) Bill (National Assembly Bill No.17 of 2016).

(Sen. Madzayo laid the document on the Table)

The Temporary Speaker (Sen. Ongoro): The Senate Majority Leader, there being no more requests, you can proceed to reply.

The Senate Majority Leader (Sen. (Prof) Kindiki): Madam Temporary Speaker, I beg to move. I request that pursuant to Standing Order No.54(3), you defer the putting of the question to Thursday, tomorrow being a public holiday.

The Temporary Speaker (Sen. Ongoro): There being no quorum, it would be in the best interest for me to defer the putting of the question. That means that I will also proceed to defer the Committee of the Whole on the same, because we do not have a quorum.

(Putting of the question deferred)

We should then proceed to the next Order, which is also Committee of the Whole.

The Clerk-at-the-Table: Order No. 11 – Committee of the Whole.

The Temporary Speaker (Sen. Ongoro): The Chairperson of the Committee, Sen. Billow, is not in the House. Since the Senate Majority Leader is in the House, we will move to Order No.12.

BILLS

Second Reading

THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

The Senate Majority Leader (Sen. (Prof) Kindiki): On a point of order, Madam Temporary Speaker. With your permission, I request to be allowed to move Order No.13, because there is a way in which I had arranged to proceed with the Bills. There are so many Bills, some of which have even come today about 10.00 a.m. Even before we went on recess, there were five others. If it is in order, I request to move Order No.13.

The Temporary Speaker (Sen. Ongoro): Are you requesting that we defer Order No. 12?

The Senate Majority Leader (Sen. (Prof) Kindiki): Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Very well. That is granted.
Next Order!

(Bill deferred)

Second Reading

THE FOREST CONSERVATION AND MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO.49 OF 2015)

The Senate Majority Leader (Sen. (Prof) Kindiki): Madam Temporary Speaker, I beg to move:-

THAT, the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) be now read a Second Time.

This is one of the Bills that are required to be in place, to align the forestry sector to the new Constitution of Kenya (2010.) The long title, therefore, describes it as an Act of Parliament to give effect to Article 69 of Constitution with regard to forest resources, to provide for the development and sustainable management, including conservation and national utilization of all forest resources for the socioeconomic development of the country and for connected purposes.

Madam Temporary Speaker, forestry is one of the key natural resource sectors that are critical for the development of our country. It is in this connection that the Fifth Chapter of our Constitution broadly talks about natural resources. The chapter concentrates significantly on management of natural resources. This Bill amplifies on the particular provisions of the Constitution, in particular Article 69, that calls on the State to put in place measures to make sure that natural resources, including forest resources, are managed and conserved for present and future generations of this country.

The issue of environmental protection and conservation is a requirement, not just of our Constitution, but also of international laws which, as Senators are aware, are now part of the laws of Kenya. We have signed so many agreements, including the agreements sponsored by the United Nations (UN) agencies as well as the International Union for the Conservation of Nature (IUCN). Kenya is a party to many international treaties - I have already mentioned one. The other one is the Convention on Biological Diversity (1992), which takes care of the world's flora and fauna including forest resources.

As hon. Senators may know, forest resources are part of the biological diversity of our country. How we protect our biological diversity, the flora and fauna of a country, informs how we mitigate some of the environmental challenges that our country is going through. Notably, challenges like global warming have been associated with degradation of forests and unsustainable use and utilization of forest resource. Briefly put, forests become important because they act as natural sinks for carbon dioxide and other greenhouse gases. Through the natural processes of photosynthesis, forests require carbon dioxide and in return, they emit oxygen which is useful. Therefore, forests and plants support life as a source of oxygen which is a by-product of photosynthesis and by absorbing excess carbon dioxide and other greenhouse gases that are emitted by mechanization, agriculture, industrial and human activities.

Madam Temporary Speaker, the importance of forestry in our country cannot be overemphasized. It is in that connection that it has been recommended internationally that every country must have at least 10 per cent of its cover under forest cover. There has been debate in this county over how much of our country is under forestry but even as the figures vary, it is clear that we are short of ten per cent of our territory. Some of the countries that have done so well in the protection of forests have up to 60 per cent of forest cover. Countries like Costa Rica, Finland and other countries in Asia have done very well.

This Bill is trying to help us solve a big problem. We have eaten into our forests. The 1980s and 1990s saw our country degazette so many forests through agricultural activities and theft of public land which hitherto was covered by forest. That is responsible for some of the problems that we are experiencing today including desertification, unreliable rainfall patterns, global warming and climate change which has devastating effects on human life in each and every sector that one can imagine of.

Madam Temporary Speaker, this Bill is consistent with the international principles of sustainable development as well as intergenerational equity which require among other things that what present generation must do in utilizing natural resources including forests must not deprive future generations of a clean and healthy environment.

We have a duty to ensure that we do not deplete the country's resources including forest resources in such a way that future generations are deprived of a healthy environment.

This Bill has very extensive provisions but I would like to rush through the key provisions so that I can be seconded in good time. Looking at the clock, we do not have much time.

Clause 8 establishes the Kenya Forestry Service (KFS) as a service whose functions are described in Clause 8 to include the conservation of mainly public forests as well as receiving and considering requests for licences or permits relating to forest resource management. This is an area that has been abused in the past in our country. There are too many people licensed to exploit forest resources. Some of them have exploited those resources in an unsustainable manner where some have even exploited endangered species which is against not only our Constitution but the international law, in particular, the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES Convention.)

The debate in this county has concentrated more on the protection of one species; the elephant. Whenever people talk about the CITES Convention, they refer to the elephant and a few other endangered species. However, that Convention that Kenya is party to since 1992 protects all the endangered species of flora and fauna. Many of the endangered species of plants are found in the forests. We have witnessed many incidents of people in this country being arrested in possession of rare protected species like sandalwood. I hope that the KFS of the future under this Bill will do greater environmental justice to this country by making sure that they police our forests.

Madam Temporary Speaker, the Jubilee Government is increasing the capacity of policing our forests. For the first time in the last two years, there has been recruitment of a significant number of forest guards; about 400. I think that number should be increased because for a long time, that is a sector that has been neglected. Perhaps the theft of forest species or unsustainable exploitation of forests could be associated directly to the lack of oversight and policing capacity of KFS. I hope that the new KFS will be given the capacity to protect our forest cover especially the endangered species.

The new KFS will also develop programmes for tourism, recreation and ceremonial use of natural forests. Allow me to mention that forests are not just for economic purposes and exploitative purposes. They are also used for ceremonial, cultural, spiritual as well as recreational purposes. People can go to the forests to rest and enjoy themselves. This Bill recognizes this as part of the mandate of the new KFS.

The new KFS will also promote forest education and training in Kenya through the Kenya Forestry Institute which is established afresh in Clause 17 of this Bill. The Kenya Forestry Institute in Londiani still exists under an Act of Parliament. This Bill is recreating it afresh and giving it a very broad mandate in the area of forestry education so that it can develop forestry education in our country, vocational and technical training in the area of forest conservation and management.

Madam Temporary Speaker, the KFS will have a board of directors as provided for in Clause 9 and the composition of the board of directors is provided for. As I have said, Clause 17 is on the establishment of the Kenya Forestry College which will provide

forestry education, vocational and technical training courses in forest conservation and management.

Allow me to also highlight another provision in Clause 21 on the functions of the county governments because it is important for this House. Part of the forestry area is vested in county governments especially the implementation of forest policy which is done by the national Government. Part of the functions of the county governments in the area of forestry will include implementing national Government policies, managing all forests on public land under county governments and reporting to the KFS with the approval of the county assemblies. In other words, they should be submitting reports to the KFS through the relevant county assemblies. That will give the local people an opportunity to have a say in how forest resources are managed at the local county level.

Madam Temporary Speaker, the other function of the county government is to promote forestation in the county, assist communities and individuals in the management of community forests or private forests.

There are three types of forests; public, community and private forests. The county governments have quite an extensive role. The county assemblies in every county may enact legislation to give effect to this Act. In other words, this is not the alpha and omega on forestry management and conservation. This law allows each county to have enabling legislation that gives effect to this Act.

Madam Temporary Speaker, in the interest of time, I will mention two other clauses so that I do not speak for too long. The issue of counties is important for this House. Basically speaking, this act is simply promoting sustainable development, intergenerational equity and also to ensure that people who commit offences related to forestry are meant to pay not just in terms of criminal liability but also in terms of economic liability. In international environmental law, we call it the polluter pays principle. Any person who degrades the environment must be held responsible not only by criminal sanctions but also by economic sanctions to restore. For instance, if you cut trees unsustainably or beyond the licensing; other than criminal sanctions, you should be forced to pay monetary compensation that can recreate or replant that forest.

Without much ado, this is an important Bill. It is one of the Bills that have a deadline. The deadline was supposed to be 27th September, 2015 as the Chair communicated earlier this afternoon. However, the National Assembly had to extend that deadline to 27th August this year. We have many other Bills of this nature. I hope the relevant Committee and Senators in the plenary will put effort to ensure that we do not let the country down.

I have no doubt whatsoever that this House is in a position to deliver in the shortest time possible to ensure that the legislations that have constitutional deadlines are enacted by the time we go on recess because 27th August falls within our scheduled recess which starts at the end of July. So, we have a lot to do. However, as usual we will rise to the occasion and deliver to the people of Kenya.

Madam Temporary Speaker, with those many remarks, I beg to move.

I request my friend, neighbour and senior in the legal profession, Sen. Murungi who is also the King of the part of the country where I come from and where I am the spokesman, to second this Bill.

Sen. Murungi: Madam Temporary Speaker, I rise to second this Bill. In so doing, first, I would like to thank most profusely the Senate Majority Leader, the Senator for Tharaka-Nithi who is also the spokesman of the Kingdom of Meru for ably moving this Bill. He has taken us through the Bill. So, I do not want to repeat what he has said.

However, we all need to understand that there are about five key water towers in the country which are around the national gazetted forest areas that are being protected by this Bill.

In addition to other benefits which are enumerated in the Bill, the entire ecosystem of the country, rainfall patterns, and agriculture would be determined by the manner in which we protect our forests.

The Bill is not being discussed in a vacuum because a Forest Service Act which was enacted before the current Constitution already exists. There exists a Kenya Forest Service (KFS), which in my view, considering the past which I am aware of; where there was massive destruction of forests in this country, we should commend the current KFS. We no longer hear of massive logging and destruction of forests in our areas. Bhang was being planted in the forest. That has considerably reduced. Therefore, we have to commend the KFS for the good work that they are doing.

This Bill brings the existing legislation in protection of our forests in line with the Constitution of Kenya, 2010. The main innovation that was brought by that Constitution is devolution. Right now, I cannot say that the devolved units of this country are in any way involved in conservation and management of forests in this country. There is plenty of confusion on the ground as to the roles of KFS and county governments who also have a mandate under the Constitution to participate in conservation and management of forest resources. So, I am very happy to note that under Clause 21 of this Bill, the county government is given a very specific role in the management and conservation of forests within its jurisdiction.

Madam Temporary Speaker, what is missing in the Bill is the fact that in the constitution of the national forest service, there is no participation or representation from the county governments. Indeed, the representation is top heavy, it consists of the Chairperson appointed by the President, four Principal Secretaries, four people appointed by the Cabinet Secretary but there is not even one person in the KFS representing the interest of the county government. Therefore, it is our duty as Senators who represent county governments to amend this Bill in the Committee Stage to include representation of the county governments in the KFS.

We have done it in the past. We have been considering the Fisheries Act where a similar mistake had been made. We had proposed that two or three people appointed by the Council of Governors (CoG) sit in the national service. Therefore, even in this Bill I recommend that amendments be made to include representatives of the CoG in the national forest service so that the interest of the county governments is taken into account even as they make the policies.

Secondly, one of the areas of contention is that there will be various benefits that will accrue from use of forest resources. This is exploitation of wood, timber, licensing and granting of concessions for tourism and recreation facilities. However, currently, it is the Kenya Forest Service (KFS) which negotiates those concessions and sometimes pays

huge sums of money for them and the county governments get nothing. Therefore, as we look at this Bill, there is need for us to introduce some amendments so that even the county governments on whose land sits the forests or whose people should benefit from the forest resources also benefit from any fees or any sale of forest produce within the areas of their jurisdiction.

Thirdly, the KFS itself needs to be devolved so that we do not have forest guards coming from all over Kenya but there are no forest guards from the regions where forests are situated. County governments should also be given some responsibility of allocating funds and training forest guards to work with the KFS in protecting the forests and that will be a good recognition to them.

Fourthly, the Kenya Forestry Research Institute (KEFRI) at Londiani has been there since 1940s but it is not expanding. We would like to hear of other forest research institutes or campuses of that institute. Mount Kenya area is one of the largest water conservation areas in this country. We would like to have a branch of the KEFRI within that region and, indeed, in other regions like the Trans Mara area, the former Coast Province *et cetera*, so that other counties also benefit from the training and education that would come as a result of those institutes. Indeed, there is a shortage of forest personnel. Such institutes would take care of that. Looking at how forests have been defined, it is now possible to establish private forests. Like we have agricultural officers, we need forest officers who can work with farmers to establish forests within their own farms.

Madam Temporary Speaker, I think time has come for us also to be bold in our thinking. When I travelled to Malaysia, I found out that rubber trees were the main source of furniture. It is that furniture that Malaysia exports all over the world. We have swampy areas in this country like Yala, Budalang'i and others where we can introduce rubber trees. We do not have to continue relying on the traditional trees that we know. We can introduce new exotic trees with value which can also improve the economies of the various counties in this country. I am told that the bamboo trees have over 200 uses. There is no reason why we cannot establish bamboo forests as plantations in this country. An attempt was made to plant some in the Trans Mara area but I do not know what happened because nobody talks about it.

Madam Temporary Speaker, I also would like to link forests with people and development. Right now, there are many areas in this country where there has been massive deforestation including semi-arid areas. When you drive even in the semi-arid areas, you will find *gunias* of charcoal. That is massive destruction of trees even in tree-scarce areas. So, we need a very strict regulation of charcoal and encouragement of other forms of energy because we are likely to create a lot of desertification in this country in the process of seeking cheap energy.

When I was in the Ministry of Energy, we introduced a programme that was supposed to work with women in this country to plant trees because we had discovered that no amount of electricity could replace firewood from our *jikos*. We had discovered that even in areas where we had extended rural electrification, people used electricity for lighting and firewood for making their meals. Therefore, we came to a decision that wood should be treated as fuel. We recommended investment in afforestation and growing more trees so that other trees would still grow even if we harvested some for fuel.

Madam Temporary Speaker, this Bill should also come up with very clear affirmative action programmes for planting trees even where there are no trees. It has been found that trees like blue gum are growing in fairly arid environments. Therefore, it is important that these new strategies be used to expand the forest cover in this country.

Madam Temporary Speaker, with those few remarks, I beg to second this very important Bill. I thank you.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator.

I will now propose the question.

(Question proposed)

Sen. Okong'o: Madam Temporary Speaker, from the outset, I take this opportunity to congratulate the Mover of this Bill who is the Senate Majority Leader. I still want to realign this to give effect to Article 69 of our Constitution. I have seen a number of issues which need to be catered for at an appropriate time. For instance, the proposed Kenya Forest College should be enhanced to have effect especially to counties. To achieve this, we should have campuses in every county so that it can be in line with devolved functions of our governments.

Madam Temporary Speaker, we have had the same laws, especially The Forest Act, which gives effect to the operations of the KFS. However, we have had problems especially where indigenous trees and species have not been taken care of effectively. I hope that this Bill will not just be another Act of Parliament which will gather dust on the shelves.

Secondly, you will realise that despite the fact that we have plenty of rainfall, Kenya is among the countries which have not attained the internationally required forest cover of 10 per cent. As Sen. Murungi said, this is an issue that we need to sensitise our people about, especially at county levels and schools, so that we work on this very important area which takes care of our livelihoods.

Madam Temporary Speaker, the issues of forest personnel and others are very important especially to areas where there is conflict. Like where I come from, we experience cattle rustling between Bomet and Nyamira counties. The forest cover in that region is wide and is densely populated. I suggest that we establish a college and post well trained personnel to protect that forest. When cattle are stolen from the neighbouring communities, they are driven inside this forest. Youth from both sides could be trained as forest personnel. This will reduce cattle rustling in those regions because they would be engaged.

Madam Temporary Speaker, as Sen. Murungi said, forests are taken care of by county governments. We all know agriculture is a devolved function. The County Executive Committee (CEC) members in charge of forests should come up with policies to operationalize this Act in county governments.

Some leaders in this country have taken drastic actions to protect our forests. For example, the late John Michuki as a Minister for Environment took care of our forests. We have blue gum trees which consume a lot of water. We also expect leaders in this

country, from Members of County Assembly (MCAs) and Members of Parliament (MPs) to take a role in conservation of forestry in this country.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator. There being no further interests in this Bill, I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I take this opportunity to thank Sen. Murungi for his remarks during the seconding of this Motion in support of this Bill. I also wish to thank the Senator for Nyamira, Sen. Okong'o, for his contribution also in support of this Bill.

It is hoped that when this Bill goes to the Committee, any amendments, including some of the suggestions that have made by both contributors, will be considered. In particular, I am in support of decentralization of the Kenya Forestry College (KFC). That college, as the Senator for Meru said, has been there for many years. It is a small college. I have reason to suspect the curriculum could also be quite restricted, narrow and old fashioned. It should be modernised because the threats to our forest cover and natural resources are changing with time.

Even more importantly, challenges like climate change that are associated with how much forest cover we have, need to be taken on board in that curriculum. Even further critical is the need to infuse modern methods of management and conservation of forests. These include teaching our experts in forest management and protection on the roles of various levels of Government because we have never had devolution before. We only had a centralized system of Government. I am sure that as the decentralization of the college is envisaged, which I think is a good idea, it is also important to look at the curriculum so that we modernize it and put it at par with modernity.

Madam Temporary Speaker, those are useful comments. Another comment which has been made is about public participation, especially with regard to community forests. The best people to protect forests are the people who live in the neighbourhood. There must be a way, through this Bill or even through the enabling legislation that county assemblies will pass in various counties, to recognise and utilize the local communities in the conservation and management of forests.

What has ruined our forests is that over-securitization of forest resources by the government against the local communities. For example, if you are spotted collecting firewood in the forest, there have been cases of injuries where some are even shot or arrested. Yet, research has shown that if local communities can be encouraged to even access forests, utilize certain resources which are not harmful to the whole idea of forestry and forest management in exchange of giving information on forest invaders who cut trees illegally and do other criminal activities, then that would be a step in the right direction.

For example, there is a lot of honey in forests. I see nothing wrong in allowing controlled honey harvesting by neighbouring communities in exchange for community involvement in protecting forests against other people who may want to cut trees, degrade forests or use forests for illegal activities. So, that area of community participation is an area that can be built on either through this Bill or even enabling legislation by various county assemblies as provided for in this Bill.

There is also the whole idea of the role of county governments themselves and benefits sharing. This is the direction that the world is moving to. The area of natural resources is now governed by certain cardinal principles, including that of subsidiarity, where decision making is decentralized to the lowest possible level. The issue of benefits sharing is also taken to the basic level. I see no reason why the national Government should be harvesting the resources of a forest in Cherangany Hills while Trans Nzoia County and the neighbouring Elgeyo-Marakwet County – that tower encompasses those counties – do not benefit at all. So, there must be some form of benefits sharing. Counties are legitimate beneficiaries. They should be direct beneficiaries in terms of revenue so that they are encouraged. They are the people who are best suited to manage these resources.

Madam Temporary Speaker, finally along the same line, I am convinced going forward, given the complexity of forest management and conservation issues, the national Government could even transfer management issues that fall within national Government through Articles 186 and 187 of the Constitution. This is because counties are best suited to even perform some of the functions that could still be vested in the national Government on behalf of the national Government. I see nothing wrong with that because the spirit of the two levels of Government is cooperation and consultation. It is not conflict and competition. They are all serving the same Kenyans. I see nothing wrong if county Governments are empowered.

With those many remarks, I beg to move.

The Temporary Speaker (Sen. Ongoro): Thank you, Senator. Again, because of the obvious quorum issue, I will defer the putting of this question even though you did not request.

(Putting of the Question on the Bill deferred)

Next Order!

Second Reading

THE PROTECTION OF TRADITIONAL KNOWLEDGE AND CULTURAL
EXPRESSIONS BILL (NATIONAL ASSEMBLY BILL NO.48 OF 2015)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, given the time left; and given the Standing Orders that at least when a Bill is moved it must be seconded before time; and given that the time is 6.26 p.m., I beg that we defer that Order and the subsequent Orders where I appear. That is my humble request because of time constraints so that we can also have more time for Senators to ventilate on issues.

(Bill deferred)

Second Readings

THE HEALTH BILL (NATIONAL ASSEMBLY BILL NO.4 OF 2015)

THE ORDER OF PRECEDENCE AND TITLES BILL
(NATIONAL ASSEMBLY BILL NO.11 OF 2014)

(Bills deferred)

The Temporary Speaker (Sen. Ongoro): Thank you, Senators. I am in agreement and that should go for the rest of the Bills. Two of them are for the Senate Majority Leader and he has already put across his request. Sen. Wamatangi and Sen. Wangari are not in the House. Therefore, it would be in the best interest that we bring this to a closure for today.

THE MICRO AND SMALL ENTERPRISES (AMENDMENT)
BILL (SENATE BILL NO.12 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND
(AMENDMENT) BILL (SENATE BILL NO.9 OF 2015)

(Bills deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now time to interrupt the business of the Senate. Since tomorrow is a public holiday, the Senate stands adjourned until Thursday, 2nd June, 2016, at 2.30 p.m.

The Senate rose at 6.25 p.m.