

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 20<sup>th</sup> April, 2016

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

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

### PRAYERS

### MESSAGES FROM THE NATIONAL ASSEMBLY

CONCURRENCE OF THE SENATE ON THE ASSISTED  
REPRODUCTIVE TECHNOLOGY BILL  
(NATIONAL ASSEMBLY BILL NO.36 OF 2014)

CONCURRENCE OF THE SENATE ON THE ANTI-DOPING  
BILL (NATIONAL ASSEMBLY BILL NO.6 OF 2016)

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3)(4), I have received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Assisted Reproductive Technology Bill (National Assembly Bill No.36 of 2014) and the Anti-doping Bill (National Assembly Bill No.6 of 2016). I quote:-

“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 Assisted Reproductive Health Bill (National Assembly Bill No.36 of 2014) and the Anti-doping Bill (National Assembly Bill No.6 of 2016) were published vide Kenya Gazette supplement No.32 of 29<sup>th</sup> August, 2014 and No.27(a) of 10<sup>th</sup> March, 2016 respectively;

Whereas the Assisted Reproductive Health Bill (National Assembly Bill No.36 of 2014) seeks to provide a statutory framework for provision and access to assisted reproductive technology services by women affected by infertility; and the Anti-doping Bill (National Assembly Bill No.6 of 2016) seeks to give effect to the world Anti-doping code at the United Nations Educational, Scientific and Cultural Organization Convention against doping in sport; and,

Whereas the National Assembly considered and passed the said two Bills on 10<sup>th</sup>

March, 2016 and 19<sup>th</sup> April, 2016, respectively, with amendments and in the respective forms attached hereto;

Now therefore, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.42 of the National Assembly Standing Orders, I hereby refer the said Bills 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 have, therefore, directed that the said Bills be listed for First Reading today Wednesday, 20<sup>th</sup> April, 2016. Indeed, the said Bills have been scheduled in Orders Nos.9 and 10 for the First Reading in today’s Supplementary Order Paper.

I thank you.

Order, Senators, I have another short communication to make.

CONCURRENCE OF THE SENATE ON THE PROTECTION  
OF TRADITIONAL KNOWLEDGE AND CULTURAL EXPRESSIONS  
BILL (NATIONAL ASSEMBLY BILL NO.48 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 passage by the Assembly of the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2015). I quote:-

“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.

That the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2014) was published vide the Kenya Gazette Supplement No.132 of 11<sup>th</sup> August, 2015 to give effect to Article 11, 40(5) and 69(1)(c) of the Constitution by providing for promotion and protection of indigenous knowledge, cultural expressions and intellectual property rights.

Whereas the National Assembly considered and passed the said Bill on Tuesday, 15<sup>th</sup> March, 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 Bills 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 tomorrow, Thursday 21<sup>st</sup> April, 2016.

I thank you.

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, there are a few statements to be sought. I will allow those who want to seek for statements then we will

decide on what to do with the statements for today.

Is there anybody seeking or asking for a statement? Well, if there is none, then we will proceed to the next Order.

**Sen. Adan:** On a point of order, Mr. Deputy Speaker, Sir. We have statements to be issued on the Order Paper.

**The Deputy Speaker** (Sen. Kembi-Gitura): There are four statements to be issued, that is true. Let us look at them. The first one was sought by Sen. Wetangula and I note that he is not here. The second one was also sought by Sen. Wetangula and again I notice he is not here. Is the one by Sen. (Prof.) Lonyangapuo ready? I would like to request Senators that I re-organise the Order Paper in such a way that the statements will be issued slightly later. That takes us to the next Order.

## BILLS

### *First Readings*

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

THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL  
(NATIONAL ASSEMBLY BILL NO.36 OF 2014)

THE ANTI-DOPING BILL (NATIONAL  
ASSEMBLY BILL NO.6 OF 2016)

*(Orders for First Readings read – Read the First Time and  
ordered to be referred to the relevant Senate Committees)*

**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. This follows your communication. I notice that the Senate is very prompt in processing Bills from the National Assembly when they come to the Senate, but we have been inquiring about Bills that were sent to the National Assembly even last year. We are not sure whether they have even been read for the First Time in the National Assembly. Would it be in order for your office to inform this House, in a systematic manner, what fate lies with the Senate Bills in the National Assembly and whether they will ever see daylight?

**The Deputy Speaker** (Sen. Kembi-Gitura): I hear you, Sen. (Prof.) Anyang'-Nyong'o. That issue came up on Thursday, last week and it was canvassed at length before the Speaker made a communication on it. I propose that we leave it at that for now. The Rules and Business Committee (RBC) will direct us on how to process Bills from the National Assembly because we, as a Senate, must do what we have to do.

Hon. Senators, Order No.11 is on Division. It is quite obvious we do not have the requisite number to vote. However, I will keep it in abeyance then we will come back to

it later. I will not defer it. If we get the requisite number, I will give further direction. Let us move on to the next order.

### PROCEDURAL MOTION

RESOLUTION TO HOLD A MORNING SITTING ON  
THURSDAY, 21<sup>ST</sup> APRIL, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to Standing Order No.30(3)(b), the Senate resolves to meet on Thursday, 21<sup>st</sup> April 2016, between 9.30 a.m. and 12.30 p.m.

This procedural Motion is a product of consultations between the two sides of this House as well as the Speaker's Office. It arises from the need to expedite the passage of the Anti-Doping Bill (National Assembly Bill No.6 of 2016). As everybody knows that the country is under an international deadline which must be met by latest tomorrow, so that the agency can be in place by next week as required by the relevant international bodies.

I have consulted my brother, the Senate Minority Leader. We are in agreement that this Bill can be processed if we have an extra sitting tomorrow morning, so that the report of our deliberations can then go to the originating House in the afternoon so that our country does not get banned for not meeting the deadline as stipulated by the concerned international organizations.

I can see the Senate Minority Leader is busy consulting yet he is the Seconder of the procedural Motion. I beg to move and request him to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I was consulting and wondering what Sen. (Prof.) Lesan is doing here. He is supposed to be with the money guzzlers in Meru.

*(Laughter)*

I beg to second the Procedural Motion for the single reason that the business that we want to transact this afternoon and tomorrow morning is so critical for the youth of this country. We must not conduct or omit to conduct ourselves in any manner that would undermine the interests of our youth who have marketed this country more than any single entity that I know of. I, therefore, urge the House that this is a matter that needs no debate and I request the Chair to propose and put the Question at the same time.

**The Deputy Speaker** (Sen. Kembi-Gitura): First, I will propose the Question.

*(Question proposed)*

**Sen. Obure:** Mr. Deputy Speaker, Sir, I oppose this Procedural Motion because I strongly believe that the sittings of the Senate are known and predictable. We should not be taken by surprise that a sitting is urgently required the following day. We have just

postponed Division on Order No.11 because we did not have the requisite number yet we are now being requested to have a special sitting tomorrow. I do not think that sitting is necessary because this item is listed as Order No.13. I believe that we can discuss that business this afternoon and dispose of it. It is not necessary for us to postpone and have a special sitting tomorrow morning. This House has a programme which we all agreed on. Therefore, we should not be ambushed to the extent that we require another sitting tomorrow morning.

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I rise to support this procedural Motion. I would like to make two points; first, to the distinguished Sen. Elachi, the Chief Whip of the Senate Majority as well as the Chief Whip for the Senate Minority, Sen. Muthama. Those two should make sure that we have Members here tomorrow. I will not mention the two people who should also lead by example.

*(Laughter)*

Secondly, allow me to use this opportunity to congratulate the players of the Kenya Sevens Rugby Team for defeating the Fiji team in Singapore. This is an appropriate time for me to congratulate them because they are also athletes. This Bill will go a long way in supporting them.

I beg to support.

**Sen. Okong'o:** Mr. Deputy Speaker, Sir, I would like to differ with my senior Senator, Mzee Obure, who is a veteran sportsperson and led so many organizations, including the Kenya Football Federation (KFF) in his heydays. The President made a promise in an international media house that he would persuade Parliament to deal with this issue. Therefore, on that basis, we are obliged to deal with this issue.

Personally, I have been a consultant in the athletics arena for many years. I know the challenges facing this multi-trillion industry. Therefore, we should fast track and pass this Bill.

Finally, I would also like to congratulate the Kenya Rugby team who won in a league whose name I am not even aware of. They made Kenya proud.

I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): This has attracted more interest than I thought it would. However, we must give everybody a chance. So, please, make it as short as possible because it is a Procedural Motion.

Proceed, Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I join Sen. Obure in opposing this procedural Motion. This is for one very simple reason; when Sen. Obure speaks, we better listen. He is the longest serving member of athletics and sports teams. We should fast-track the business in the Order Paper and discuss the Anti-doping Bill. There is nothing that will stop us from doing so, immediately after this. That is why I oppose this procedural Motion. We should pass the Motion, discuss the Anti-doping Bill now, and clear it so that our athletes will be happy. The President who has been waiting can see how the Senate takes its work seriously.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, if I got you right, do you want us to fast-track the Bill and finish it today so that we do not come tomorrow? This will be quite welcome.

*(Sen. (Prof.) Lonyangapuo nodded)*

What is it, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. What Sen. (Prof.) Lonyangapuo has prayed for is completely unprocedural. Is he in order to anticipate debate and assume that it will be concluded today? That is against our Standing Orders.

**The Deputy Speaker** (Sen. Kembi-Gitura): He is not out of order! He is just making a wish that this matter be dealt with and concluded this afternoon so that we do not have to come tomorrow morning. I understood it that way. He is reasonably in order.

Sen. Mutula Kilonzo Jnr., have you concluded?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I have not started.

*(Laughter)*

Mr. Deputy Speaker, Sir, I support this Motion for a good reason. If there was a time this nation went out of its way to demonstrate patriotism, it is when our team sang the three stanzas of the National Anthem and continued to show that this country is greater than us, politicians.

Mr. Deputy Speaker, Sir, during Christmas we have come to this Senate to deal with matters, in my view, of lesser importance. We came here to vote on something I think we should not have, but we did. However, for purposes of people who go out there, particularly our athletes; this is not about any of us. It is about people who make this country proud. The Olympics would not be the real Olympics without Kenyans participating. So, if we have to work at night, let us do so.

That is why I support this Motion. I am ready to come and sit here to see that this Bill is passed – particularly, because we are not the only ones who are doing it. Therefore, there is no reason to pretend that we can fast-track this Bill because, then, we would be violating the law.

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

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. Mutula Kilonzo Jnr. to suggest that this House meets to discuss matters that are not important?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage, Sen. Mutula Kilonzo Jnr. is expressing his opinion. I would be completely out of order if I denied him the right to express his opinion whether it is acceptable to you or to anybody else or not. It is his right.

Sen. Mutula Kilonzo Jnr., have you finished?

*(Sen. Mutula Kilonzo Jnr. nodded)*

There are still other hon. Senators seeking the Floor. Therefore, I will not put the question now.

Proceed, Sen. Sang.

**Sen. Sang:** Mr. Deputy Speaker, Sir, I rise to support this Motion. Yesterday, at 4.30 p.m. when the National Assembly passed the business that we will transact, courtesy of this Procedural Motion, News Alert 411 recorded that the National Assembly had passed that Bill and it was waiting for the President's assent. Some of us were shocked because, definitely, sports is a devolved function. It affects counties. We were shocked that somebody would imagine that this Bill would go to the President for assent without the input of this House. Now, that reason has prevailed and this Bill is with us, we have to put all effort to ensure that we transact this business and complete it within the required time.

Mr. Deputy Speaker, Sir, with those remarks, I beg to support.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I support the Motion. I did not intend to rise to speak on it, but something was mentioned by Sen. (Dr.) Khalwale which compels me to say one or two things. It is related to the Kenya Rugby Sevens team. Having won an international match in Singapore and on coming back to Kenya, they were given US\$1,000 each as a reward; it is a shame to this nation. The only other thing that was added is a trip to any destination where Kenya Airways can take them yet Kenya Airways can take them to very few destinations on the face of the earth.

*(Laughter)*

Therefore, I urge this Senate to think of coming up with a national sports reward protocol so that our athletes can be appropriately rewarded when they perform wonders in the global stage and not leave it to some tiny-headed individual who feels that US\$1,000 in this day and age, for international stars like the Kenya Rugby Sevens team, is something to be proud of.

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

Please, let us make it brief because it is a procedural Motion.

**Sen. Kagwe:** Mr. Deputy Speaker, Sir, I also rise to support the Motion with a rider. I remember that the Senate Minority Leader said that this Motion shall not require much debate. We can come and vote quickly. However, we must allow the hon. Senators to debate on the matter even as we vote. It is a very important issue. If there is a team in this country that shames tribalists and goes out there and identifies us, as Kenyans, it is our athletes.

Whereas, I agree with the Senator for Kisumu, my teacher, Sen. (Prof.) Anyang'-Nyong'o; the fact that they must all be rewarded in the best manner possible, we must remember that they did not do it for the money. They are not doing it for the money. They do it because of the passion that they have for the sport and Kenya. In a way, we must never make it a situation where you work for it because of the money. We will reward what they have done. I agree with that, but we must never make it a *quid pro quo*

where we pay them because of what they have done. Therefore, we must do so, to shame the enemies of Kenya.

There are people out there who have lost to Kenya's athletes continuously and they would like to explain away Kenya's success by saying, "You know, these guys dope, breathe the air in Eldoret which is thinner *et cetera*." They are excusing away the fact that our people are simply talented and good at what they do.

Therefore, I support the procedural Motion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sijeny, are you seeking the Floor?

**Sen. Sijeny:** No, Mr. Deputy Speaker, Sir.

*(Sen. Murungi was applauded as he entered the Chamber)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senators! Please take your seat.

There being no other hon. Senator seeking the Floor, I will put the question.

*(Question put and agreed to)*

Next order!

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, what is your point of order?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, the Chair said he will hold the Division of Revenue Bill in abeyance and if there shall be a requisite number, we shall vote. I am reminding the Chair that we have the requisite number.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you, Sen. Murkomen. It is true I said we dispense with Order No. 11 and when we have the numbers, we vote on the Motion. Now, do we have the numbers?

**Sen. Murkomen:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Therefore, I direct that we go back to Order No.11 and proceed with the Division.

I order that the Division Bell be rang for two minutes.

*(The Division Bell was rung)*

**The Deputy Speaker** (Sen. Kembi-Gitura): The Division Bell has gone off. We are now ready to vote.



**MOTION****ADOPTION OF REPORT ON THE SECOND BASIS FOR EQUITABLE  
SHARING OF REVENUE AMONG COUNTY GOVERNMENTS**

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on the second basis for equitable sharing of revenue among the County Governments laid on the Table of the House on Wednesday, 30<sup>th</sup> March, 2016.

*(Sen. Billow on 13.4.2016)*

*(Resumption of Debate interrupted on 19.4.2016)*

**DIVISION****ELECTRONIC VOTING**

*(Question, that the Senate Adopts the Report of the Standing Committee on Finance, Commerce and Budget on the second basis for equitable sharing of revenue among the county governments laid on the Table on Wednesday, 30<sup>th</sup> March, 2016, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Karaba, Kirinyaga County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans-Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Deputy Speaker** (Sen. Kembi-Gitura): Hon. Senators, I wish to announce the results of the Division as follows:-

**AYES:** 24

**NOES:** Nil

**ABSTENTIONS:** Nil

The "Ayes" have it.

*(Question carried by 24 votes to 0)*

*(Applause)*

Draw the Bar and open the door.  
Next Order!

## **BILL**

### *Second Reading*

#### THE ANTI-DOPING BILL (NATIONAL ASSEMBLY BILL NO.6 OF 2016)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that the Anti-Doping Bill (National Assembly Bill No.6 of 2016) be now read a Second Time. The background of this Bill has already been provided.

From the outset, I wish to appreciate my colleague Senators from both sides of the political divide, for appreciating the urgency of this matter and putting the country first; by giving an indication that it is important that we finish with this Bill, so that our athletes are not jeopardized in terms of their participation in the Olympics.

Kenya has had a comparative advantage in athletics. For many years this is one area where God has been good to us, as a country. Everytime Kenya participates in athletics the question is not if Kenya will win, but always how many Kenyans we will see in the winners' podium. This is one area we, as a nation, should be grateful to God for. This is because He has given our young people a talent free of charge. What we can do as a country, in appreciation of a God-given talent, is to support, nurture and even encourage it.

Mr. Deputy Speaker, Sir, as the Senators are aware, the country had been given a deadline of one or two months ago, to pass this legislation. However, it was impossible to do so because there was need even to agree on the content of this Bill. The country went on to negotiate an extension and no lesser person than the President himself engaged the World Anti-doping Agency directly. He made a commitment – as some of my colleagues have already pointed out – that this Bill would be passed in two weeks' time. The President of the World Anti-doping Agency, after consulting his colleagues in the committee, gave us the three weeks that we are enjoying, which are lapsing next week. Particularly, he said to the Kenyan authorities that the deadline of next week is final and will not be extended by any means whatsoever.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. I do not mean to interrupt my boss, the Senate Majority Leader, but considering that this House has many Senators, would I be in order to request you to inform the Members to be available at the end of this debate, hopefully at 6.00 p.m., to vote on the Second Reading this Bill? This will ensure that we go straight to the Committee of the Whole stage tomorrow. Could you request my colleagues to be available at an agreed time – maybe at 6.00 p.m. – for purposes of voting?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Three years after being interned into parliamentary practice, the country would expect that the Deputy Majority Leader would know that the Speaker of the Senate is not the Chief Whip of either the Majority or Majority side. You should, in fact, consider putting sanctions against him for imputing improper motives.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. A Bill or an issue is on the Floor of this House only after you have proposed it. The issue being discussed by the Deputy Majority Leader is not yet even before this House. Is he in order?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, Sen. (Dr.) Khalwale is asking me to throw you out, but I do not think you have transgressed in such a manner as to be thrown out yet. On one hand, I agree with both Sen. (Dr.) Khalwale and Sen. (Dr.) Machage, that the matter is not yet on the Floor of the House. However, on the other hand, whilst I appreciate that I am not a Whip or leader of either side, there is nothing wrong in Sen. Murkomen – because he is anxious to have this Bill passed – requesting that the Members stay so that we can vote on it and finish towards the end of the day. That request has been made and all of you have heard it.

Proceed, Sen. (Prof.) Kindiki.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Deputy Speaker, Sir, I think the Senate Deputy Majority Leader has succeeded in what he wanted, which is to communicate the message that we need to be around. Maybe his county is the biggest producer of athletes and that explains why he could be more anxious than the rest of us.

The National Assembly has already considered this Bill. It is a product of negotiations between Kenya and the World Anti-doping Agency and other international institutions that are involved in athletics.

As the Mover of this Bill, I will not be averse to any suggestions on its improvement, but one difficulty – and I have already shared this with my brother, the Senate Minority Leader – is that given the negotiations that have gone on between--- Kenya actually had to submit the draft for them to look at and approve. They got back to say that this is the version which meets the standards they require. I am also aware that in the National Assembly there were instances where Members wanted to suggest certain amendments, but given those peculiar conditions, it was agreed--- Of course, the Senators are not bound by what happened in the National Assembly, but it would be in the interest of the nation if we could pass the negotiated version of this Bill and maybe pursue possible amendments later, in the ordinary course of things.

I committed to my counterpart, the Senate Minority Leader – I hope he is listening – that it should be captured in the HANSARD, that after this Bill has been assented to and our athletes are cleared to participate in the Olympics and other international events, I will be supportive of any amendments that will improve this Bill, whether they come from the Minority or Majority side.

The core function of this Bill is to establish the agency that will be responsible for controlling and dealing with cases of doping in our country. Those who follow sports news are aware that there have been a few cases of alleged doping worldwide. One country that has been in the spotlight from very powerful international media houses is

Kenya. I am told by those in the sports fraternity that there are people from other countries who have camped in this country for the last two years, trying to dig out possibilities of doping in this country, because there are many countries which do not believe that what our countrymen and countrywomen do out there is as a result of hard work, talent and discipline. They will be very happy, therefore, to watch Kenya tumbling down. That is why it is important that an agency like this one be put in place, so that we can regulate ourselves and make sure that the sport of athletics is clean and offers fair competition to everyone.

Mr. Deputy Speaker, Sir, I am also told from international sources that there are people who are hoping that we will not meet the deadline, so that people can have a field day between 5<sup>th</sup> and 21<sup>st</sup> August this year in Brazil when the Olympics will be held. Therefore, I just hope that we will disappoint them and make our country proud as it has always been.

Mr. Deputy Speaker, Sir, if I may highlight very briefly, the agency will be known as the Anti-Doping Agency of Kenya. Its functions are spelt out in Clause 7. They include promoting participation in sports, free from doping, in order to protect the health and wellbeing of competitors and the rights of all persons who take part in sports. They also include maintaining data on all prohibited substances in accordance with the directions of the World Anti-Doping Agency (WADA).

Mr. Deputy Speaker, Sir, because of time, allow me to say that the functions of the agency as well as the other Clauses that deal with the standards and enforcements are derived directly from three sources. These are the World Anti-Doping Code which is developed by the WADA as well as standards emanating from the United Nations Educational Scientific and Cultural Organisation (UNESCO) Convention against doping in sports. The third one is our own standards from our sporting fraternity. Basically, it is modelled on the international standards along the lines of the bodies that I have just cited. Those functions are too many, but they are there in Clause 7.

Clause 9 deals with the independence of this agency. It provides in particular that the agency established under this Act will not require the consent of any person or authority to commence any investigations or impose any administrative sanctions. The words are “administrative sanctions” as opposed to criminal sanctions which the State agencies will have the power to deal with.

Secondly, the agency will not be under the direction or control of any person or authority in the exercise of their powers under the Act or any other written law. The agency is created, the membership is provided for and the independence of that agency, therefore, is secured through Clause 9 of the Bill.

Mr. Deputy Speaker, Sir, the other clause that I want to highlight is Clause 26. It deals with the prohibited activities under this Act. They include the presence of prohibited substance, its metabolites or mucus in an athlete’s sample; the use of or attempted use by an athlete of a prohibited substance or a prohibited method; the evasion, refusal or failure to submit to the collection of a sample by an athlete; the violation of whereabouts or failures; the tampering or attempted tampering with any part of doping control *etcetera*.

Other than establishing the agency that controls and deals with doping and providing for its independence, this Bill also provides for a dispute resolution mechanism. It provides that an appeal from the decision of the agency may lie in the World Sports Tribunal (WST) and the provisions are in Clause 31.

The other part I want to highlight is on the offences which are under general provisions from Clause 41 henceforth. Some of the offences the Bill creates include disobeying a summons of the agency; failure to produce any sample, document, papers or any other thing on the order of the agency; refusing to submit a sample and failure to comply with an order of the agency. It goes on to create offences like unlawfully transporting or transferring prohibited substances within or outside Kenya, stocking supplies of products containing prohibited substances and administering or applying to an athlete prohibited substances. That section is quite expansive. It includes things like using or causing another person to use prohibited substances, possessing them or being found in possession of them, administering those substances, buying, selling, stocking and transporting of those substances, *et cetera*.

Mr. Deputy Speaker, Sir, this Bill gives effect to the appropriate international standards in the area of sporting. Sporting has become very competitive and it is also very lucrative. Some of the richest people in the world today and some of the most highly paid professionals today are not the traditional engineers, doctors and lawyers, but sportsmen and sportswomen. Some of them earn---

*(Sen. Wetangula spoke off record)*

I am told the only lawyers who make some money are lawyers from Panama. Even those ones cannot match what some of our athletes earn per week. So, we are looking at a very lucrative industry. Many young people in this country have been inspired to pursue athletics and sports because it is something that can help them break free from the shackles of poverty and bring progress. There are towns in our country like Eldoret where much of the economy, especially investments in real estate, is based on proceeds of athletics. I can speak with some authority because I lived in that town. I know a number of buildings that belong to some of the big time athletes that we have.

Mr. Deputy Speaker, Sir, we know the kind of fame people like Kipchoge Keino, Ben Jipcho and other prominent athletes gave this country in early years. We are not about to depart from the tradition of excellence in sports. Therefore, this Bill and its passage will go a long way in strengthening our position and making us a society that is open. When the rest of the world sees Kenyans out there, they will be seeing people who are there as a result of sheer hard work and discipline and not because of shortcuts. If there is anything that ruins sports, it is shortcuts just like any other profession. Therefore, this Bill will go a long way in trying to demystify Kenya and by adhering to the applicable international standards.

Mr. Deputy Speaker, Sir, I hope Senators will find this Bill and its urgency a matter of national interest. I hope we will pass it and get it behind us. Should we need to look at it in the future, there is nothing that prevents this country from relooking at its own laws.

Lastly, I have emphasised a lot in terms of the negotiations between Kenya and the international agencies. I have already quoted the UNESCO Anti-Doping Convention. Under the 2010 Constitution, Article 2(5) provides that:-

“International treaties, conventions and standards are part of the law of Kenya.”

Mr. Deputy Speaker, Sir, we are not contradicting ourselves by saying that this is our law and, at the same time, we have consulted. This is a negotiated version between ourselves, as a country, and the international agencies that deal with sports. It is in accordance with our Constitution. Article 2(5) provides for the application of all treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Treaty, to which Kenya is a party.

**Sen. Mutula Kilonzo Jnr.:** It is 2(6)

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, it is 2(5). I have a very clear understanding of the Constitution. There is Articles 2(5) and 2(6). Article 2(5) deals with treaties and conventions. Article 2(6) deals with customary international law. If it is the other way round, I stand guided.

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! We are not in a court of law.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move and I request my brother, Sen Wetangula, to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I thank you and I beg to second this very important Bill.

It is unfortunate that our country procrastinated on this matter for so long. It was because of the goings on in Athletics Kenya (AK) and the corruption that surrounded the conduct of some of their members, including the Chief Executive Officer (CEO). They were unable to bring this Bill at the right time to the extent that we nearly lost our slot to Rio de Janeiro for the next Olympics. That the Bill has come is a matter that we all support and I want to make a few comments.

I hold my brother the Senate Majority Leader to his promise that any concerns that we raise that will require amendment – the time prohibition notwithstanding – will be dealt with later. This Bill sets up an anti-doping agency as required under an arranged structure that has to deal with mushrooming cases of doping the world over. One can remember the case of Ben Johnson, the man who was running like a bullet in one of the Olympics – I think it was either in Japan or China – winning four gold medals in three days, only to turn out to have been using banned substances to give him a competitive advantage against his colleagues. We have heard many cases of use of banned substances, particularly in the former East Germany, Russia, United States of America (USA) and, of late, it is creeping into Africa.

I have no doubt that athletes in this country are born good runners. They run very well and they are world beaters just like Ethiopians and, once in a while, athletes from isolated countries like Uganda, Namibia and so on.

This Bill is so important because our well-meaning innocent young runners have of late become victims of marauding promoters of sports who capture them and use them

as tools of earning a living, hawking them from one athletics event to another and making sure that they win so that they make their money. When they tire out, they then introduce them to substances. Such a case is that of a very promising young girl called Ms. Rita Jeptoo. I hope that after her ban, she will still have the energy and the will to run.

Let me point out just a few things. I hope that now that the Bill has not been committed to the Committee, the King of Meru County will give the Mover of the Bill an opportunity to listen to our views, so that where we need to muster an amendment later, he can follow. The Bill, in Clause 10, establishes a board. I want the Mover to take note of Clause 10(d) when he comes to look at the possible amendments, to remove the CEO from being a member of the board because he serves the board. You will see in another clause later that he will be hired by the board to serve the board. Therefore, he cannot be a member of the board. So, it is not right to include him in Clause 10 as one of the members of the board.

Mr. Deputy Speaker, Sir, where I have a serious issue is Clause 10(e), which says:

“Not more than five other persons appointed by virtue of their knowledge and experience in sports appointed by the Cabinet Secretary (CS).”

When you move on to Clause 10(2),

“A person shall be qualified to be appointed as a member of the Board---”

This again covers 10(e). Those exclusions are unacceptable.

“---holds a degree from a university recognised in Kenya, has at least 10 years’ experience in matters relating to anti-doping in sports or administration, satisfied the requirements of Chapter 6 of the Constitution and so on”.

My humble opinion is that I would want to see some of the most talented and celebrated athletes who may not have degrees, but who have distinguished themselves in a manner that nobody can dispute, to sit on this board. How many athletes have degrees? They are very few. Even the great people like Sebastian Coe and others have no degrees, but they have distinguished themselves as custodians of the interest of athletes.

**Sen. Kagwe:** On a point of information Mr. Deputy Speaker, Sir. Let me just point out to my colleague, Sen. Wetangula, that as a matter of fact, it talks about post-secondary school education. It says:-

“A person shall be qualified to be appointed as a member of the Board if such a person holds a post-secondary---

It is post-secondary and not university.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, are we dealing with the same document?

*(The Speaker handed a document to Sen. Wetangula)*

Could I have that document?

Thank you for the information, but even post-secondary is still limiting. When you finish Form 4 and start running, what other post-secondary can you have? Unless you want to qualify running as post-secondary because if we are dealing with qualifications --

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(Laughter)

I beg the House that I want to see a young man like Paul Tergat, Kipchoge Keino, John Ngugi and others, sitting on this board. So, we need to look at even post-secondary.

Let me go back to the disease of this country where we pass a very good Bill, take it to the President and he appoints a board in a hurry. I just hope that he will wake up and realise that there are more than two communities in this country. This is because all the appointments that we have been seeing are just limited to two communities. This is not right. I want to see a *Waria* sitting on this board even if there are no *Waria* runners.

(Laughter)

**An hon. Senator:** Mo Farah!

**The Senate Minority Leader** (Sen. Wetangula): Mo Farah is not a Kenyan *Waria*.

I want to see the President recognizing that Paul Ereng was a Turkana runner and he can sit on this board. I want to see the President realizing that a person called David Rudisha - who is neither from his community nor his Deputy's community, but he was a great runner - can sit on this board.

Mr. Deputy Speaker, Sir, we, as an alternative government, have made up our minds, that any such flawed appointments, we will be going to court to challenge for being unconstitutional and an assault on the cohesion and unity of this country. I want to believe that the people lined up to be appointed in a hurry after the assent to this Bill will represent the face of Kenya, the talent of Kenya and it will not be limited.

Mr. Deputy Speaker, Sir, I have no problem with a young man like Paul Tergat being appointed. In fact, in the community where I come from, we have no runners. So, I am not asking for them to come in the category of 10(e).

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

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. Some of the most celebrated athletes in this country come from Bungoma County. Is it in order for the Senator of Bungoma to deny his own athletes who come from Mount Elgon area and who have given this country great pride like the Chemos' family and the other family which has four athletes? Is it in order for the Senate Minority Leader to deny his own people?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I did not say athletes from my county. From my county, I have great people like Ben Jipcho, the Chemos girls and the Masais'. I know them and I am very proud of them. I was talking of the Mulembe nation that the President does not see, hear of or recognize when he is making his appointments.

(Applause)

Mr. Deputy Speaker, Sir, I am very proud of Milcah Chemos, Linet Masai and my friend Ben Jipcho who supports me. They are all my friends who vote for me and support



me. I am sure since the President and his Deputy came to power, they have never appointed anybody from Mount Elgon apart from Hon. Fred Kapondi who was charged with Sen. (Dr.) Machage in one case. He was appointed the Chairman of some failing bank.

Mr. Deputy Speaker, Sir, I want to go to Clause 11.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order! Can somebody give Sen. Wetangula the correct Bill?

**The Senate Minority Leader** (Sen. Wetangula): Yes, Mr. Deputy Speaker, Sir. I have been given and I will compare the two because I have made my notes in the blue Bill.

Clause 11 deals with the Tenure of the Board. This board will do an important job. A three -year tenure is too short. I would have liked this board to serve for a six year non renewable term. In the following appointments, we have a clause that can insulate some Members so that we stagger at any one time; half of the members dropout and another half remains.

*(Sen. Wako crossed the Floor without bowing)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Sang, what is your point of order?

**Sen. Sang:** On a point of order, Mr. Deputy Speaker, Sir, did you notice that the Senator for Busia County crossed to this other side of the House and walked all the way and crossed back and disappeared?

**The Deputy Speaker** (Sen. Kembi-Gitura): Where is he? I cannot see him anywhere.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, he not only did that, but he also stood directly between your eye and the person on the Floor, which is against the Standing Order.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wako, you have heard the complaint made against you. My request to you is that you observe the rules of the House because you know them well.

**The Senate Minority Leader** (Sen. Wetangula): In fact, Mr. Deputy Speaker, Sir, in my long experience in Parliament, I have never seen any Member go and stand behind the Clerks. They always stand in front.

**Sen. Wako:** Can I explain Mr. Deputy Speaker, Sir?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wako, you are completely out of order!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, I have finished with Clause 11. I now go to Clause 14 regarding the powers of the board to receive grants, gifts, donations and so on. This has to be qualified because some of those international bodies that manufacture banned substances may be the ones gifting the board so that sometimes when the offensive substances are traced, they are not exposed. We need to be careful on what gifts they will receive and from whom. Should they

receive gifts from Nike, Puma, Adidas or a manufacturer of drugs? We need to qualify that.

Mr. Deputy Speaker, Sir, with regard to Clause 17, I have already said that the Chief Executive Officer (CEO) should not be a member of the board. Clause 17 defines what the CEO should be. So, when you go back to where the board is described, you delete the CEO so that it becomes an employee and the worker of the board. Clause 17(5) says the CEO shall hold office for a term of three years and is eligible for re-appointment. Why should we limit the term of the CEO of the board to three years? We shall have a huge turn over. This is not good for the board. I would suggest that the CEO is given a five year term renewable once so that they can serve for 10 years and then they leave.

Mr. Deputy Speaker, Sir, Clause 22 is very dangerous. It says that the board can delegate its power to either the chairman or one member. If you have a board that is inept and lazy, they are likely to delegate the authority of the board to one member and sit away only to come, log in, earn allowances and go away. I would rather an agency as important as this must be subjected to the rules of ordinary board meetings where they have rules of quorum and when there is no quorum, they do not transact any business. You cannot delegate one member to do the work of the board.

Mr. Deputy Speaker, Sir, this is when we get abuses and lazy members to just sign. Like there was a school in my county where members of the board went and signed the cheque book and left it with the headmaster and told him that they trust him. They told him he could withdraw money when he needs it. By the time they realized, the school was bankrupt.

Mr. Deputy Speaker, Sir, with regard to Clause 23, I support the therapeutic committee and the members who have been appointed if they will be acceptable. If you look at Clause 23 (2) (c), an international athlete who has since retired even if it is an athlete who did not have the opportunity to go to school, can sit on this and the main board as well.

Mr. Deputy Speaker, Sir, I support the keeping of the register in Clause 25.

Mr. Deputy Speaker, Sir, Clause 42 creates a series of offences most of which have to do with when a person fails to do something that the agency wants. Not enough offences have been provided for agents who lure athletes into this dirty game. Clause 42(6) which provide for such agents states that:-

“An athlete or athlete’s support personnel who commits any of the prohibited activities under Clause 26 commits an anti-doping rule violation and shall be handled in the manner set out under this Act”.

In the general penalty, the provision is a fine of Kshs1 million or a prison term of one year. This is totally inadequate for the likes of John Velzian and others who have been leading our athletes into temptation and failing to deliver them from evil. These people need a penalty of not less than Kshs5 million to Kshs10 million, banned from coming into Kenya or interacting with any Kenyan athlete and kept away completely. This is because none of our young athletes will go out of their way to look for drugs or enhancement substances. It is these agents who see athletes as a tool of trade and means of income. When they are found, we should declare them *persona non grata* in our

country, keep them away completely and never allow them to interact with our athletes in whatever way or whatsoever manner that one can think of.

Mr. Deputy Speaker, Sir, I want to encourage Sen. (Prof.) Kindiki to separate Clause 42(6) and create two levels of offences and punishment. In the case of an athlete who is found to have committed an offence, and there is a strong mitigating factor that such a young person did not know that he or she was taking a banned substance, we cannot impose a fine of Kshs1 million on them or send them to jail for one year. We need to rehabilitate them. I know there is a therapeutic committee, but we need to play more towards rehabilitation than punishment, unless there are serious circumstances that the athlete went out of their way to take drugs.

After separating athletes, we should then deal with the offenders who introduce the drugs, for example, the people who destroyed the career of a young girl called Ms. Pamela Jelimo, the first Kenyan girl after Mr. Moses Kiptanui, to win the Grand Prix Circuit of US\$1 million. When she came back, a young police constable who married her introduced her to all manner of agents and within one year, the US\$1 million was gone. In another year, she was taken to run when it was clear that she was not fit to do so. This kind of misuse of our athletes is what we must be punishing. I want to encourage Sen. (Prof.) Kindiki to deal with that firmly.

Mr. Deputy Speaker, Sir, let me finish by saying the following general things. One, athletes have brought great fame to this country. In 1964, the first Kenyan athlete at the Olympics won a medal and Kenya went on the world map. In 1968, Mr. Naftali Temu, Mr. Kipchoge Keino, Mr. Amos Biwott and others brought even more fame. In 1972 when Mr. Robert Ouko, Mr. Ezekiah Nyamau, Mr. Amos Biwott and Mr. Julius Sang beat the Americans in Munich, it was a great event.

I remember Mr. John Ngugi who went to the Seoul Olympics. When he came back, he said that since he did not have a finishing kick, he made sure that he was running 100 metres ahead of the pack, so that even those who would come to the final lap, however hard they ran would not catch up. He brought two gold medals to Kenya. However, we know he fell sick and that has not been provided for here. He was practicing in Nyahururu when a man from Switzerland came to him without introducing himself or through the local agent and said that he wanted to test him. Mr. Ngugi asked why he wanted to test him, yet he did not even know him. He went ahead and wrote a report that Mr. Ngugi had refused to be tested and must be banned. Mr. Ngugi was banned and his career plummeted there and then, for such a promising athlete.

Mr. Deputy Speaker, Sir, we need a provision that will provide that those who carry out random tests must have a proper introduction from the athletics body that manages athletes, so that the athletes can know whether or not they are conmen, quacks or terrorists.

Finally, I want to encourage this House which is the custodian of counties and county governments, that anybody and everybody can be a good athlete. When you hear of Lionel Messi earning an income of US\$350,000 a week or Yaya Toure earning £250,000 a week, sometimes, you wonder whether you are in the wrong business.

*(Laughter)*

Yesterday we saw the money that our governors are pumping into an amorphous organisation called the Council of Governors (CoGs); it is a shame. If that money was used in our counties to develop talent, it would make a big difference and a great contribution to nurturing, exploiting and promoting the talent of our young people. It is regrettable that this Bill came this late and so, we cannot *chambua* it properly. However, I encourage that we support it and hold the Senate Majority Leader to his word that the issues we are pointing out will be brought after the event, so that we can make the Bill even better.

Mr. Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

*(Sen. Wetangula stood up in his place)*

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, please, protect me from my own leader.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage, I am sure your leader will do you no harm.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, doping is an issue that is recent and not indigenous to Kenya or African countries. I wish the Anti-doping Bill had been expanded to also include other groups of people like public servants and Members of Parliament (MPs) who misuse drugs for one reason or another. Unfortunately, the focus is only on athletes or sports.

As the Senate, we have not had time to study and execute this Bill. However, I hope that it will not be an issue similar to what I saw when we had a referendum on the Constitution where it was said: "If our leader has read the Draft Constitution, we do not need to read it, it is good." I hope that His Excellency the President has read this Bill or his readers have done it for him.

Mr. Deputy Speaker, Sir, we are convinced to pass this Bill because of two reasons. First is the urgency under which this Bill has been brought to this House; in view of the international requirements for our athletes. Secondly is because we have the mandate as a Parliament to amend it when the time comes. It is important for us to protect our athletes especially because of the upcoming Olympics in Rio De Janeiro. Therefore, we have no option but to pass this Bill despite the few shortfalls that there may be in its write-up.

This opportunity gives me a chance to congratulate all our athletes and especially our rugby team which did so well and made us proud. Although we expected the President to receive them as he had promised, only for him to send his Cabinet Secretary. It could be because he had a Cabinet retreat. I hope that he did not ignore the team. We know that there is a lot of talent hidden out there that can be harvested with the success of this team because they will have very many sponsors. Therefore, they will be able to identify many hidden talents as a result of their success.

Mr. Deputy Speaker, Sir, this Bill, amongst other things, establishes the Anti-Doping Agency whose description has been adequately explained by the two leaders of this House. They are the administrators and enforcers of the law as suggested in this Bill. They will also deal with dispute resolution. This is a situation that would have saved Mr. Ngugi if this part of the Bill was available then.

The financial provisions are also well discussed and fully expounded in this Bill. The other general provisions include confidentiality, offences, general penalties, transition and savings provisions. Clause 41 of this Bill may be a problem because some of these people might hide under the rule of confidentiality to hit on innocent athletes. All the same, I think that this can be rectified when we make amendments to some of the serious flaws in this Bill.

It is interesting to note how the world has changed in the use of drugs especially in muscle enhancement in athletics. However, it is also important to note that sometimes, some individuals who are under medication may be labelled wrongly because of the metabolites of the medicine that they use for doping drugs. This issue must be looked into in detail to know the life history of an individual before he or she is condemned to be in that category of individuals. Therefore, the establishment of an Anti-Doping Agency, which comprises of many professional individuals makes a lot of sense. I am happy that we have some doctors and pharmacists included in this team who will answer some of the questions.

I beg to support.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, it is with great joy and a lot of satisfaction that I rise to support this Bill. For every medal that we win in the world championships or Olympics, at least 80 per cent of the athletes are from Elgeyo-Marakwet County. For many years, Elgeyo-Marakwet County has retained the record for the 3,000 steeple chase from the days of Mr. Moses Kiptanui to Mr. Ezekiel Kemboi who incidentally is my neighbour back home in Marakwet.

Most of the marathon runners come from Elgeyo-Marakwet County or train there. These include Mr. Mo Farah, Ms. Paula Radcliffe and other global athletes. Iten is known as the home of champions as well as an international training centre with their coach being our former teacher, Brother Colm O'Connell, who has trained so many athletes including the latest, Mr. David Rudisha who is one of the students of the renowned Irish who should be a Kenyan by now and lives in Iten. Brother Colm has lived in Kenya for over 30 years.

I had a discussion with him recently concerning the current events in so far as sports are concerned. Doping was a problem that was removed from us because it was alien. Doping is something that happened out there in the United States of America (USA) and other countries. However, it is now next door. It is now in Iten, Eldoret and many other parts of this country where our athletes are being lured by unscrupulous business people who do illicit business and want to make money from the brand that sports is in this country.

Mr. Deputy Speaker, Sir, this country has raw talent. With the little investment that we have put in sports, we have produced the best athletes for many years. Those who have come to ruin this sector are not Kenyans; most of them are foreigners who collude

with the agents who are also foreigners. There are also other agents in the country who are aiding and abetting this kind of crime. Therefore, this Bill is very important. For a long time, there have been discussions that there is a lot of doping going on and this is threatening our sector. There are people who wanted all of us to bury our heads in the sand but it is important that when you want to solve a problem, you first recognize it. It all starts with our values.

For many years, people like Mr. Kipchoge Keino, Mr. Moses Kiptanui, Mr. Moses Tanui, Ms. Catherine Ndereba and Mr. John Ngugi lifted the flag of this country without using any banned substance. Some of them even ran barefooted. For instance, I remember the late Mr. Richard Chelimo, who was from Elgeyo-Marakwet, one time somebody stepped on his shoe but he ran barefooted with one shoe for 10,000 meters and he emerged third position. We have good and raw talent in this county but it is being threatened by the doping phenomenon.

I, therefore, appreciate the effort that has been put in place by the Ministry in working together with the stakeholders to come up with this Bill which is very important. The main function of this Bill is the creation of the Anti-Doping Agency. One of the greatest benefits of this Bill is the fact that it promotes the participation of sports, free from doping, and creates awareness on matters of doping. I am attracted to the provisions of Section 7(c) which is to develop a national strategy to address doping in sports in collaboration with the Ministry. The Constitution puts on the national Government the responsibility to promote sports while county governments do the actual sports development.

Mr. Deputy Speaker, Sir, we have a responsibility to ensure that we have a strategy that provides a clear framework for dealing with doping and create awareness as provided for here. We lack values. The greatest challenge is convolution of our values. People are being told that they can win using the wrong strategies. We must address this. Yesterday, we received news that our under-20 football team has been banned from participating in the African Competition on an account of cheating on age. We have players who are 25 years old being passed off as 20 year olds. The same situation applies to doping. Therefore, we need to have an institution that will reinstate our values and ensure that schools have incorporated matters that relate to clean sports in their curriculum.

Mr. Deputy Speaker, Sir, another thing is the implementation of the world anti-doping code and association of international standards and gazettelement of those standards every year. This will ensure that everybody is aware of what substance can be used and the ones which are banned. Unfortunately, most of our athletes identify their talent at a very young age. In my neighbourhood, we have a girl who participated in athletics the other day; she was in Class 7 or 8. She won a junior championship. Owing to that young age, they begin to earn money and, therefore, most of them do not take their education seriously. Most of them may not even complete Form Four or if they do, may not get good grades.

So, because of lack of proper education, most of these characters prey on them. They deceive them that the substance is an ointment for treating injuries, as a massage and is good for relaxation. Some of the substances are used without the knowledge of the

athlete. The agent has hopes of earning from the athlete from agency fees. So, he or she has every incentive in place to ensure that because he or she will get a percentage from the athlete, he or she does not inform the athlete that the substance is banned or amounts to doping. Therefore, the athletes need protection. They need an institution that will create awareness and protect them.

I agree with the Senate Minority Leader. Although, this law has provided very stringent measures or defined the crimes, we still need to perhaps, enhance the penalties at an appropriate time. There are penalties of Kshs100,000 fine. This is insignificant for someone who will earn Kshs20 million or Kshs50 million at ago in participating, for example, in two or three Grand Prix. They win and make a lot of money. Kshs100,000 as a fine is very little. What is Kshs100,000 to a foreigner from Europe? He or she has already ruined an athlete like the case of Ms. Rita. Then he or she is fined Kshs100,000 and goes back to his or her country and again has a chance to ruin the lives of other people. We must make it extremely punitive for any person who will engage, assist or be an agent of doping.

Other than that, I totally agree that this Bill is very important and urgent. It is vital to remind hon. Senators that the Government has been requesting for an extension. We have the last extension which expires next week. By then, the agency must be in place and have officials. So, it is important for us to show the world and this country that we take our athletes seriously. They have made our country proud. It is only during sports that we are united.

There are many people who say that we are a divided country and that the level of tribalism cannot be reversed. However, when the Kenya Rugby Sevens Team won in Singapore, beating Fiji in the finals for the first time – most of those players come from the western part of the country; Kakamega, Bungoma or even if they live in Nairobi, their origin is either in Kisumu County, Siaya County or that part of the country but when they won, we did not think about the tribe. We did not need to ask who Humphrey Kayange, Collins, Omondi or Odoyo is. Most of those athletes give us a sense of unity, even if it is momentary. We completely forget about being from this or that tribe and think we are Kenyans. They leave a good example.

They create a very good precedent for us as politicians. We must also create a country that, when Sen. (Dr.) Khalwale wins in Kakamega, there are celebrations in Elgeyo-Marakwet. When he becomes governor on the other side, they say: “There goes an anti-corruption champion,” and that, Kakamega is a better place to live in. If Sen. Mutula Kilonzo Jnr. wins the senatorial or gubernatorial seat of Makueni in the next elections, that, the celebrations will be across the political and ethnic divide because a good man has won in the elections.

We need to nurture this kind of culture that comes with sports. When Mr. Ezekiel Kemboi dances to the tune of “Emily Chepchumba,” every Kenyan is happy; nobody wants to know whether he is a Marakwet, Kipsigis, Luo or Luhya. It is a moment of national pride. It is important for each one of us to protect this sector.

Therefore, I am so happy that all the hon. Senators are here. Yesterday, I said, what benefit would it be, for one to go to Meru - for example, Sen. Njoroge - only to be subjected to embarrassment; having to seek for a sitting space or for the Speaker of the

Senate to go there only to struggle to even have a place to place his water. There was no table before the Speaker, for example. On the other hand, there is such an important Bill that needs to be passed by hon. Senators in this House.

As I said, Sen. Murungi can go back to Meru a proud man and say, we passed the Anti-doping Bill but also we passed the Miscellaneous (amendment) Bill which hopefully, we will pass by tomorrow, that creates an opportunity for our *Miraa* farmers to be protected and cushioned from the adverse challenges that come from market access in other countries. So, as Senators, we are proud to do our job for the best interest of the country. We do not need time to sit in a corner to assess whether we are doing the job or not. We do not have time to do so; to waste Kshs1 billion in associations. Our time is to be spent to ensure that this very important Bill becomes law.

I would like to differ a little bit with the Senate Minority Leader on the presence of the Chief Executive Officer (CEO) of the anti-doping agency in the Board. The Senate Minority Leader needs to be reminded that CEOs of all parastatals are board members by virtue of being *ex-officio* and secretaries to the board. The secretary to the board who is the CEO is the link between the management and the board.

So, the board cannot discuss anything in abstract. In the day to day management of the institution, one person must deliver management reports, take board's decisions and ensure that they have been implemented by the management. Therefore, it is perfectly in order in law, fact and terms of practice for a CEO of any agency, including, this anti-doping agency to be part and parcel of the board as the secretary to that board. He or she takes minutes and facilitate implementation of the policy decisions of the board.

Mr. Deputy Speaker, Sir, I also disagree with the Senate Minority Leader. It is not true that the President has appointed people from only two communities to public offices. Even if the Senate Minority Leader did not mention which communities he was referring to, it is not true; whether it is the appointments that took place the other day in the Ministry of Energy and Petroleum where a CEO called Mr. Fernandez was appointed. He comes from the western part of the country. Another example is the Kenya Electricity Transmission Co. Ltd (KETRACO), the CEO comes from the eastern part of the country. The same applies to the Geothermal Development Company (GDC) and so on.

We also have so many appointments that are going on, for instance, in universities where we have many vice chancellors appointed by this Government, for instance, in Masinde Muliro University and many other universities. The appointees come from different communities. I request my colleagues on the other side to give correct facts. I echo the words of President Uhuru Kenyatta who said that we have a Nationalist Covenant. It is important not to misrepresent facts.

Mr. Deputy Speaker, Sir, even if they do not agree with it, it is good to remain nationalists.

Therefore, for those reasons, I support the Bill.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I support this Bill. First, I am happy to be in Nairobi. The doubting Thomases went to Meru and found that, that is where Judas was supposed to go. The people who are selling devolution are in Meru.



Mr. Deputy Speaker, Sir, this Bill is important particularly for this nation because I am convinced that the athletes in Kenya need protection from the people who are doing the doping trade. This business is conducted by the bigwigs and fat cats because they have money. Therefore, the young athletes in Kenya from Elgeyo-Marakwet County and occasionally from Machakos County, among other counties, cannot engage in doping. The importance of this Bill is that, it will protect Kenyans who are using their talent to win races.

Sen. (Dr.) Machage asked a question which must be answered. As we discuss the Bill, we must inform the public that the doping that is referred to in the Bill is not doping in athletics. It is the use of prohibited substances and methods in any sporting activity. This includes doping in any sporting activity whether competitive or recreational in order to artificially enhance performance. It includes weight lifting. The problem about doping is that, it is going to move from athletics to football, basketball, rugby and there will be no end to it.

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

*[The Temporary Speaker (Sen. (Dr.) Machage) took Chair]*

Mr. Temporary Speaker, Sir, legislating on doping is for the benefit of everybody. They include those who are doing it on the *mtaa* in Kariobangi and other places in Nairobi. They should be told that whether they are doing it for professional services or recreation, doping is banned. It is doping either way.

Clause 9 is giving me discomfort because I cannot understand it. It is causing a lot of ambiguity. It provides that:-

1. Pursuant to the Anti-Doping Code and the United Nations Education, Scientific and Cultural Organisation Convention Against Doping in Sports, the agency and the committee shall not require consent of any person or authority to commence investigations.

2. Not be under the direction of any person.

Mr. Temporary Speaker, Sir, the clause on the board provides at Clause 14 that:-  
“It shall control or supervise and administer the assets of the Agency.”

It appears that there is a contradiction.

Mr. Temporary Speaker, Sir, the Agency and the committee are not subject to control by anyone. The Board is supposed to control the Agency.

*(Sen. Murkomen and the Senate Majority Leader  
Sen. (Prof.) Kindiki consulted loudly)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senators! You may raise points of information.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, it is clear that they shall not act under any direction yet the Board is supposed to control the Agency. It appears

the two clauses are contradicting. However, I stand corrected as to what they mean. The committee referred to in Clause 23 as Therapeutic Committee is not clear.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Mutula Kilonzo Jnr., do you want to be informed?

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Temporary Speaker, Sir.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, I am sure the Senator is a football fan. He knows that athletes are not warned when they are being investigated on doping. They are investigated at any time as long as they are active in sports. By not requiring their consent, it is in so far as the doping investigation is concerned. It is not in terms of management.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, if the law required something to be clear, it should clearly provide so. In this one, it appears there is an ambiguity and it should satisfy that it is in reference to matters of doping.

The side notes indicate:-

“Independence of the agency and therapeutic use exemption committee”

Mr. Temporary Speaker, Sir, the wording should be changed to reflect investigations and not to cause contradiction. I propose that in the proposed amendments - that are to come later - these banned substances come through pharmaceutical and licensed businesses.

At the first instance, the licensed businesses are the ones that are doing illegal actions. The Board established in this Bill should have a member from the Pharmacy and Poisons Board. The Senate Majority Leader should take note of that. In most cases, banned substances are coming through registered and licensed organisations and pharmacies. The body that regulates the pharmacies and their operations is the Pharmacy and Poisons Board. This board should have a member of the Pharmacy and Poisons Board. The offences perpetuated are done by these legal businesses.

Mr. Temporary Speaker, Sir, it reminds me of someone in the City Market who used to sell cabbages but when you check at the back, you will find all the alcohol in the world. This is the same thing with doping. There are certain drugs that are lawful for purposes of medicinal use but have got substances that are banned. There is a substance called ephedrine which got Maradona in trouble. In some cases, they are used by people who practice in gymnasiums. It is also used for medicinal purposes. Some substances are banned in so far as doping is concerned. Therefore, the Bill - instead of being too ambiguous - should list what the banned substances are for purposes of sports.

Mr. Temporary Speaker, Sir, Maria Sharapova who played tennis was banned.

*(The Senate Minority Leader consulted loudly)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, the Senate Minority Leader. You may be useful a little but let us be orthodox.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, doping is not rampant in Kenya. We are legislating this for purposes of complying with the international standards. May I tell the Senate Majority Leader that his arguments about treaties and especially Article 2 (5) and (6) of the Constitution are applicable. We are a world community and when we talk of the International Criminal Court (ICC), we should remember what we are doing today. It is the same thing because we are complying with the international standards. When we talk of the ICC treaties the Senate Majority Leader should treat it the same way we are treating this Bill. We should deal with persons who are doing doping the same way we deal with criminals.

I am not satisfied about the agency. I do not know how you define the agency in terms of who is supposed to be in it because I have not seen that. I am not sure whether it will be left to the discretion of somebody as to who will sit in the agency. This is because Clause 6 gives the agency immense powers and directions. It is not possible because you are creating something akin to a police organisation and also an investigative organisation. The composition of the agency is not very clear because it has been left ambiguous. Therefore, I would like the Senate Majority Leader to check that, so that it is not left to the people we know who will play around with the agency because of what we know and what Sen. Wetangula was referring to.

Mr. Temporary Speaker, Sir, I entirely agree with the proposal that we should not allow them to receive gifts because we know what will happen when they start receiving gifts from organisations. Therefore, the part on gifts also needs to be looked at. In terms of the protection that we need to give to this agency, I thought Parliament will be given a role. Since it has not been given a role, there is no way of insulating the Board from politics. So, it will be left to the whims of anybody.

The Cabinet Secretary for Sports, Culture and the Arts could wake up and fire the chairman, change the agency or do what he feels like. So, the insulation of such an organisation that has international status is critical in terms of anchoring it firmly in the law and ensuring that the removal of the person sitting in the Board such as the Chief Executive Officer (CEO) and the Board are insulated or vetted by Parliament. One of the two would ideally satisfy my fears that a new Government could come and change people and do the usual things that we do in this country that we are famous for doing.

Mr. Temporary Speaker, Sir, other than the suggested list of banned substances, the persons who trade in them or people who sell the drugs, the Bill itself complies entirely with the Constitution in terms of audit, reporting, what they should do and activities of the Board. I pray that the board and this Bill will put Kenya back into the spotlight where we want it to be. We regret those instances where some of our athletes have been found to have been trading in the banned substances.

We encourage the youth and people from all counties to become athletes and join sports because we realise the importance of sports. I agree with Sen. (Prof.) Anyang'-Nyong'o; it is a joke and an abuse to give somebody who has put us on a map USD1,000. If the gentlemen who won the Rugby Sevens Series were in the Middle East, they would be instant billionaires because rugby profession and sports is an industry. People are making money by becoming professions. Sen. (Prof.) Kindiki, how do we ensure that our

Kenyan athletes who are now citizens of Qatar or rugby players are not poached? We should reward them well.

I was disappointed to see our Rugby Sevens team using the Qatar Airways. I do not know who arranged all those things because the sponsor was missing in action. Ideally, I support this Bill. I thank you.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I agree with the Senator for Makueni who is also known as “Junior”. He has said that this Bill is about domesticating international law or convention. In the preamble, it says that this is an Act of Parliament to provide for the implementation of the UNESCO Convention. So, we are domesticating an international protocol to regulate sporting activities. Therefore, we must be prepared for the consequences because when you talk of the international community, it is like referring to the western nations. By any stretch of the imagination, we should never think for one moment that we are part of the international community. These words, quite often, refer to the western nations. They set standards by which they judge you and determine who is to be punished and who is to be tested for doping.

Two days ago, after this Bill was passed in the National Assembly, the head of the anti-doping agency in New Zealand said; “It is not enough and Kenya must follow up this law with action. Otherwise, it is just another piece of paper.” In other words, they do not even believe that it will make any difference after we pass this Bill. He said that 40 Kenyans have failed doping tests since 2012 and that it is “common place in Kenya.” They hold the perception that we win athletics, rugby and all other sports because we use drugs. That is why when we won in the Olympics last year, the media, particularly in the United States of America (USA) was completely silent on our victory. In fact, we got absolutely no coverage. *The Washington Post* and *The New York Times* mentioned how their countries perform well towards the last paragraphs. At the bottom, they said that---

*(Sen. Wetangula spoke off record)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula. You are getting used to this kind of theatrics.

**Sen. Billow:** Mr. Temporary Speaker, Sir, as we make this law, we must be alive to the fact that we are signing an international convention. Therefore, we must be cautious that our interest is taken care of and we do not fall victims of those who think that performance, victory and being number one in the world is only a reserve of the developed countries.

Going through this Bill, I am concerned about some of the inconsistencies about who an athlete is. It defines an athlete as a person who competes in sports at the international level. At the same time, Clause 42 provides for penalties for a person who participates in recreational sport such as in a gym or a fitness club. If we are dealing with issues about athletes and those who compete at international level, I am concerned with young men who decide to test their abilities by taking the traditional or prescribed substances not for competition or for sports but for recreation in their own villages in little gyms in Kakamega or Makueni because it will be an offence. There are some things

I do not understand. What will happen tomorrow if folks in the village tried their abilities by taking some of the substances?

The Senator for Tharaka-Nithi is here. They went all the way to London to express their concerns about the ban of *miraa*. Some European countries have banned *miraa* in their countries. Where will we get recourse if the WADA includes *miraa* in the list of prohibited substances because it enhances performance since it is a stimulant? I am concerned that the Bill does not really have protection for our own as a nation. When we have concerns, there is no protection provided for. There is no role for Kenya as a state in determining the list of banned substances.

There is no role for Kenya, as a State, in determining that list. That list is determined by the World Anti-Doping Agency (WADA). You are not party to that institution. The criteria are only two and they are defined here. The criteria for determining a substance to be put on that list is; one, it enhances performance. Two, there is an actual or potential health risk. That is what they will look at. So, what stops those people in Western capitals tomorrow from determining that some traditional plant that our folks in Iten might use does, in fact, affect their health? Or, there is a potential risk to their health and, therefore, list it. I think that there needs to be a provision somewhere in this law to safeguard national interest.

Let me also mention the issue of penalties in this Bill. Section 42(2)(a) of the Bill says:-

“A person or body who unlawfully transports or transfers prohibited substances, --  
\_”

I mean, it does not talk of the intention which is critical. I am not a lawyer but when you do something inadvertently --- Your truck could be hired but you do not have the intention to transport a substance like this. You are just providing your vehicle for transportation. I think there is need to restrict that Section. I think “with intent” has to be provided. Otherwise, you will punish ordinary Kenyans who may be using their transportation for one reason or the other.

The same goes for Clause 42(4) which says:-

A medical practitioner, pharmacist, veterinary surgeon, dentist, nurse, physiotherapist, traditional herbalist or any other health related professional----

They are including a traditional herbalist. All the other professionals like dentists and nurses may know and may be privy to the law in prescribing any of these drugs. Traditional herbalists, in our case in a country like Kenya, are not people who are all licensed. They are unaware and they have not been sensitized to those things. They may be out there in the bushes of Makueni County prescribing one thing or the other to enhance performance.

(Laughter)

They normally engage in those substances that enhance performance of men. That is their primary business. If, tomorrow, they discover that, in fact, there is a substance in the Amazon Forest that will enhance the performance of the men of Makueni County, those herbalists will run into serious trouble under Clause 42(4). I think we need to be cautious

in the list that we are including in this in order not to end up with fines of Kshs3 million that many of our people cannot pay.

It is timely to have this Bill because of the concerns. There are people out there who think we perform because of these substances. It is a shame for anyone to think so. This is the perception in many of the Western countries now. They think our performance in all these sports, particularly in athletics, is because --- The way they are writing “is commonplace”. That it is Kenyans who are just winning. I do not think the sons and women of this country are on this substance. They have been running for the last 50 years since Independence and have been winning these international championships particularly athletics. It would be unfair for Western countries to judge African nations on that criteria; that, we are not fit to beat them internationally.

I think it is time we looked at those sports for which we have the distinctive comparative advantage to win. We need to focus on athletics, rugby, swimming and others. Let us not spend time on those sports that occupy --- We have not gone beyond East African countries in soccer, for all its glory in this country. I think there are sports where we need to invest. Investment is not only about national Government. In fact, one of the things that we need to do is to even prescribe how much percentage of our national revenue should go to the development of sports. We should do that for county governments.

This House has the single opportunity to determine how county governments spend their money. We can state that some of the money that goes as sharable revenue to county governments should be a conditional grant for the purpose of development of sports. That will help our youth and enhance our competitive advantage in sports. Sports is about tourism. It brings business, money, tourists and development in the hospitality industry. The whole world is about visibility of your nation. I think we can and we should determine a percentage of resources that should be invested at both national and county level in the development of sports.

There is also a wrong perception in this country that the people who can run only come from the Rift Valley, for that matter, from the Kalenjin community. This is wrong. It is about those people who have held the leadership of athletics in this country. They have created the perception that the rest of us cannot run. This is wrong. We need to identify talent across the country, give the opportunity equitably to everyone across the country and then you will see. Who, for instance, doubts what a Kalenjin can do in running, a Maasai cannot do? Who says what a Kalenjin can do in matters of running, a Somali cannot do?

Athletes like Mo Farah who win for the United Kingdom (UK) and beat Kenyans some times are all Somali material. I think there are opportunities. Who said Luos cannot engage in those competitive sports if they are given the opportunity? It is just that for many years, the athletics leadership has been managed by leaders from the Rift Valley community. So, the perception is that it is only Kalenjins who can run. We can run and beat Kalenjins. Let us invest. We have the talent in this country, in fact, to do much more.

Lastly, I thank our athletes, particularly, those who have always made us proud. We also thank our rugby team, other teams and many of our performers in sports who have made this country proud. I think they are not being adequately recognised. Our

former athletes, boxers and sports leaders are languishing in poverty. Watch on television the lives that the Congestinas of this world and others are living today. The moment you leave the stage, that is the end of the story. You are no longer recognised or get support and you live a miserable life, yet you have performed and made this country proud. They went to the airport to receive you, we went on live television to say that you have done us proud and that is the end of the story. I think there is need to encourage them by providing for them in future.

I support.

**Sen Sijeny:** Thank you, Mr. Temporary Speaker, Sir. I also wish to support this Bill, taking cognizance of judicial notice that Kenya has performed very well in athletics. Our brothers and sisters have made us proud. So, this is an area which we need to protect, safeguard and ensure that we always get the glory. It is sad that once we have celebrated and sung the National Anthem, then you hear that the medal has been taken away from the athlete. This is something which is new to us as Kenyans because it is the last thing we expected that would affect us.

Mr. Temporary Speaker, Sir, as the saying goes, the globe has become a very small place and many things do spread, interferences are there; there are more hungry men and women who venture into our territories and want to make quick bucks out of our people, hence the need for this long awaited Anti-Doping Bill.

Mr. Temporary Speaker, Sir, I am happy because this Bill is domesticating an international instrument; meaning the whole world is concerned. When we look at the provisions of the Bill, I am glad that there is an establishment of the Anti-Doping Agency. It clearly states what the functions and the powers are. The fact that it will be working with some sense of independence is very important because there should be no interference. Again, nobody is indispensable because it gives the provisions of how a board member is supposed to be removed.

Mr. Temporary Speaker, Sir, even though I know there was a rule on reduction of these independent boards in Kenya; this Bill brings the important aspect and the need for enhanced, monitoring and evaluation. Therefore, we applaud the existence of the board and the functions which are stated there.

What I like about the Bill is in Part III on administration and enforcement. This indicates on the prohibited activities. It is important but it should be clear that since it is domesticated, we should not rubberstamp those international laws. We should also look at the unique instances that do exist which are normally performed within the African setup, particularly in Kenya. Those traditional things that we look for; I know like the Maasai's have herbs and many others.

There are some herbs that are used to strengthen bones and other things. We should be clear that they are not harmful to the parts of the body, which are useful and important. It talks about the human body; an area which I am very passionate about. It ensures that someone's health is paramount.

Mr. Temporary Speaker, Sir, when we look at the other parts of the Bill on dispute resolution, this will encourage and ensure that disputes, if any, are concluded on time. We will avoid wasting time in court. Being a lawyer, I know the way cases can take forever and for most of these people, this is their only livelihood. So, if there is an issue,

it needs to be dealt with quickly and that person moves on. If he or she is clean, he goes back to the field to continue earning his or her living. If there was a problem, it should be sorted out within a certain time to allow the athlete to move on. There is a code of conduct which means everybody must adhere to the rules and regulations as enforced in the Bill.

Mr. Temporary Speaker, Sir, concerning accountability, the sports world attracts a lot of money. All the international athletes like Michael Jordan and the rest are always trying to support many causes. The philanthropic people will always ensure the world of sports is well remunerated. Therefore, accountability should be there. There should not be an issue like when the agency is disbanded or the board, nobody can account for the assets and you find that you still need to engage an authority to come and look at the assets. That will not be in order.

Mr. Temporary Speaker, Sir, I can see that there is a lot of strictness. It has been put in general but I know the time will come that we can look at the relevant amendments which we can put and ensure that it is air-tight and friendly to the Kenyan situation.

Mr. Temporary Speaker, Sir, the authority that is going to be established should ensure that once the Bill is passed and it becomes a law, can we have the people concerned; be it the board members, Cabinet Secretary in charge of Sports, Arts and Culture or the Ministry to do proper dissemination of the law? Awareness or sensitization to all Kenyans is necessary in all languages that everybody can understand. It should even be translated in *Kiswahili* to avoid misrepresentation. We have seen instances where the Bill is clear and written in black and white but other people interpret it in their own way and give different meaning. This should be avoided. As we know, in law, no one should ever plead ignorance.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. Okong'o?

**Sen. Okong'o:** On a point of order Mr. Temporary Speaker, Sir, from the look of things, it is clear that if we all utilize our maximum minutes in contributing to this Bill, we might not all contribute. I am requesting under the directions of the Majority Leader that we reduce the contribution time to five minutes so that most of us can add our input to this Bill.

*(Question, that the contribution time be reduced  
to five minutes, put and agreed to)*

**Sen Sijeny:** Mr. Temporary Speaker, Sir, I hope I am protected because I was still on my feet.

**The Temporary Speaker** (Sen. (Dr.) Machage): You are protected.

**Sen Sijeny:** Thank you, Mr. Temporary Speaker, Sir. I was winding up when I said dissemination and awareness creation should be done so that we do not have instances where athletes are not aware of what is prohibited and what is not. They then end up messing up with their careers.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Machage): All the other contributors will now have five minutes. Sen. Okong'o!



**Sen. Okong'o:** Thank you, Mr. Temporary Speaker, Sir. From the outset, let me take this opportunity to congratulate the proponent of this Bill, Hon. Wesley Korir, who two days ago became number four in the Boston Marathon where he set a record in 2010. That record has never been broken.

Secondly, Mr. Temporary Speaker, Sir, this Bill is timely considering that we have threats of sanctions from the western countries. This mistake is not of their making but it is because of the laziness of the Cabinet Secretary, Mr. Hassan Wario who has good credentials with a PhD, but lazy in complying with some of these issues.

Mr. Temporary Speaker, Sir, I have looked at this Bill extensively but I have realized that one thing is missing and I request the Leader of Majority to consider. We do not have to be talking about headquarters in Nairobi especially this time of devolution. This agency should have its headquarters in Elgeyo-Marakwet, where we have abundance of athletes, and not necessarily in Nairobi. This is a matter that we need to consider as we go to the Committee of the Whole stage.

The issue of penalties has been discussed. We need to have punitive measures such as life imprisonment against crooks who mess up our young athletes. As we prepare for the Olympics, I am surprised that the Cabinet Secretary, Dr. Wario, has given powers to one Mr. Muthee, to be in charge of a committee dealing with matters of athletics. This is wrong because he does not have the qualifications to lead our team. These matters need to be taken into consideration. As we comply with other relevant laws, the Cabinet Secretary in charge of sports, culture and arts needs to hear the cries of athletes in this country, who are requesting that he reconsiders the decision of appointing somebody who is learning rugby to be in charge of their activities.

Mr. Temporary Speaker, Sir, I heard Sen. Billow talk about world powers that are interested in interfering with our country's internal affairs. Kenya has been a powerhouse in athletics for over 50 years and there is a well orchestrated move by western countries to curtail her interests of dominating. If we are not keen, as we domesticate this Bill, we might fall prey to these world powers. They are looking out for countries that are doing well. You saw what they did to President Muammar Gaddafi, who had protected his country's interests and was advocating for the unification of Africa. They killed him and left the country in shambles.

There is only one President in Africa who stands before world powers, because he has the institutional memory, and speaks against them. Although some of us think that he has been in power for too long, he tells them what they need to be told, clear and square. President Mugabe is the only remaining President in this world who has the institutional memory and understanding about the orchestrated move by western countries which want to interfere with our countries.

Mr. Temporary Speaker, Sir, since the Senate Majority Leader and Senate Minority Leader have spoken eloquently about this Bill, I rest my case and beg to support.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, the Bill that we are discussing is important in the sense that Kenya has dominated in most athletic events out there. Most countries which have failed to compete with Kenya could be thinking that the success

story behind Kenya is through doping, which is not true. But since it has been done elsewhere, we have to pass this Bill as soon as possible.

Mr. Temporary Speaker, Sir, history repeats itself. In 1945, Mr. Lee Evans was the best in 400 meters, but Hitler could not allow that to happen. When he realized that it was a black American, he refused to hand over the medal. It has been a tradition for the Europeans to think that they are the only ones who can win in some fields, but Kenya has proved them wrong even in rugby. I stand here to congratulate the team, having been a rugby player at one time. In fact, we should have declared a national holiday to celebrate the victory of the Kenya Rugby Sevens. The Kenya Rugby Sevens victory and other victories of the kind had never happened since Independence.

The reasons they are happening now is because the running of those bodies seems to have improved. We are trying to improve things further by passing the anti-doping regulations. Some agencies and agents are like people who participate in examination irregularities, not knowing that the results might affect them. This should be stopped because some of the athletes are innocent and may not know what is happening. However, the agents know that when these athletes win, they will get a certain percentage of the loot and that is where they get most of their riches from. It is important that we discourage this and this Bill is a step in the right direction and should be supported.

Mr. Temporary Speaker, Sir, it is also important to discuss more about the organisation of the boards. As Sen. Bilow said, athletes do not come from only Elgeyo-Marakwet and Uasin Gishu; they could also be from Kisii. Nyantika Maiyoro at one time ran bare footed and won a gold medal, but the Kisii community was not encouraged to continue doing the same. We have other communities that can do well in athletics, but members of the boards that manage athletics, the organizers and members of the Kenya Amateur Athletics Association (KAAA) all come from one region. Since they know that athletics is a lucrative business, and they have been involved in the sport for a long time, they will bar any other person.

This Bill should come up with the membership of the board. I hope that it will not consist of members from one family, community or region. If that happens, we will have a disaster in sports. We have people whose talent can be developed in other fields apart from athletics. This happened in the case of Julius Yego, who is good at javelin. People from the Maasai community can also do the same. We should support other sporting activities that the people from coast can participate in, for example, yachting and swimming. Let us encourage every community to do their best.

I support.

**Sen. Madzayo:** Asante, Bw. Spika wa Muda, kwa kunipa nafasi hii ili nichangie Mswada huu wa kupambana wa madawa ya kulisimua misuli. Ningependa kuwapongeza na kuwapa heko ndugu zetu, wanamichezo, wote katika nchi hii. Inajulikana ulimwenguni kwamba Kenya inajivunia riadha. La muhimu zaidi pia ni kuwapongeza wachezaji wetu wa mchezo wa raga ambao una wachezaji saba kila upande. Nawapongeza sana kwa ushindi walioletea taifa letu la Kenya.

Wachezaji hao wanafaa kuigwa na vijana wetu wote kwa kushinda timu ya Fiji na kuiletea sifa nchi yetu katika mchezo wa raga. Si vyema kuona Serikali yetu ya Jubilee ikishurutishwa na kitengo kinachosimamia mambo ya madawa ya kulevya au ya

kusisimua misuli. Serikali yetu imesukumwa hadi pempeni. Tumeambiwa tusipopitisha Mswada huu kwa haraka, wanariadha wetu hawataruhusiwa kushiriki katika mashindano ya kimataifa.

Ni jambo la aibu kuona taifa letu linalosifika sana katika michezo ulimwenguni likishurutishwa kuupitisha Mswada kama huu. Huu ni mfano mbaya kwa sababu tunaonekana kama tulikuwa tukiunga mkono mambo haya. Si lazima tushurutishwe kupitisha Mswada hapa. Tungeshughulikia Mswada huu hapo awali bila kushurutishwa na shirika lolote. Ijapokuwa naunga mkono Mswada huu, umechelewa sana kuwasilishwa hapa.

Wiki iliopita, tulishuhudia wachezaji wetu wa kandanda wakitolewa katika mashindano ya Afrika kwa sababu ya udanganyifu na mazoezi duni. Lazima tuwe na sheria kali zitakazopinga hatua kama udanganyifu katika mambo ya michezo. Ghadhabu iliowekwa katika Kipengee cha Sita cha Mswada huu lazima izingatiwe kufa kupona. Kipengee cha 42 kinasema kwamba ikiwa mtu amekataa---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senator! Your time is up!

Sen. Sang, you are supposed to be the next contributor yet you are still standing next to me.

**Sen. Sang:** Mr. Temporary Speaker, Sir, I was almost tempted to contribute from the Speaker's microphone.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Senator! You are a Member of the Speaker's panel. You know that is impossible.

**Sen. Sang:** Mr. Temporary Speaker, Sir, I rise to support this Bill. I take this opportunity to congratulate the leadership of this House led by Sen. (Prof.) Kindiki and the Senate Deputy Majority Leader, Sen. Murkomen, for ensuring that this Bill found its way here in the Senate. For a very long time, we have seen a lot of discussions in the National Assembly that seem to disregard the constitutional mandate of this House. Sports is a devolved function. We know the immense contribution of sports in the economy of this country. I come from a county where sports is one of the major contributing investments to the county and the economic wellbeing of the region.

We have seen many young people winning in athletics. By passing this Bill, we will be able to preserve a sport that has engaged thousands of young people in my county. I congratulate the President for negotiating with international institutions to allow more time to pass this Bill. We, as Senate, must expedite the passage of this Bill so that our athletes are not disadvantaged in any way. Many county governments have improved their sporting facilities. For example, in the last three years, Nandi County Government has allocated more than Kshs360 million for the refurbishment of Kipchoge Keino Stadium. However, it is a pity that all you see there is a perimeter wall.

Mr. Temporary Speaker, Sir, we, as a Senate, must be serious if we have to promote sporting activities that engage many young people in this country. Whereas the national Government, the National Assembly and the Senate are doing their part in ensuring that the necessary legislations are put in place, county governments must devote resources and ensure sport facilities are improved. By now, I hoped my county would have established more training institutions to train young people. We must ensure

training of the young ones is done professionally. Unfortunately, we see a lot of mismanagement of resources in the counties.

When we say that we, as a House, need resources to carry out our oversight role, it is shameful to hear the kind of arguments that were being made in the National Assembly a few minutes ago. It is sad to hear Members of the National Assembly casually dismissing and making very nonsensical comments towards the same. As the CORD coalition rework and try to jumpstart the process of the *Okoa* Kenya Initiative, yet there is a Motion on our Order Paper day in, day out, to set up a committee to rethink the constitutional dispensation of this country. We need to address this issue so as to have a Senate that functions properly.

**Sen. Wako:** Mr. Temporary Speaker, Sir, this is a Bill which, as it is clearly stated in the in the preamble and Clause Four, is to give effect to the Anti-doping court and the United Nations Educational, Scientific and Cultural Convention (UNESCO) against doping in sports. Therefore, I take it as given that most of the clauses which are in this Bill are those that have been really debated at the international level and which the member states are under obligation to give effect to.

However, as much as we domesticate the international standards, one must also take into account the local situation. To me, this Bill has not addressed the issue of prevention in terms of what the Senate Minority Leader stated; agents who come from overseas. I am sure that it is the agents who come from overseas with their motives for profit that have caused our young people to turn to the doping drugs unwittingly. Most of our athletes are people who have just finished primary school. Some of them enter into this field bare foot. They are not exposed. Therefore, we have this hoax that comes in from outside and takes advantage of the natural talent of our youth. They are naïve and, therefore, are introduced to this scene by international agents.

*[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]*

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

I am disappointed that the definition of “agent” is not in this Bill. We should have it. We should also have a clause tying those agents to certain ethical standards, and then, under another clause, the Cabinet Secretary will be mandated to make regulations to regulate agents who manipulate our youth and make them take the drugs, unwittingly.

I say “unwittingly” because before the practice of doping, Kenya was already well bound. In fact, at that time, many of these people came here to study, for example, what the Kalenjin eat, which areas they stay and what makes them win. In other words, they acknowledge that there are natural abilities in our athletes; from Kenya and Ethiopia. It is only later on, that this became a profit making machine through doping. Therefore, the agents must be involved.

Secondly, it appears that this is a legal issue. I hope it will be taken care of in the amendments. In the definition of clause, we have what is called Therapeutic Use Committee which is established under Clause 23. It just says, “there shall be established a committee.” Under the functions of the agency, particularly, Clause (7)(1)(j) states that

the agency will oversee the processes of that committee. However, nowhere does it state who will appoint that committee. So, there is a lacuna. At the Committee Stage, we need to close in on that lacuna.

The other one is the issue of independence. I believe the comments that Sen. Billow referred to when he said that somebody said, “Okay, even if they pass that, in practice, how far will this agency be independent?” Whereas Clause 9---

*(Sen. Wako spoke off record)*

**The Temporary Speaker** (Sen. Sang): Order, Senator. Your time is up.

**Sen. Wako:** Mr. Temporary Speaker, Sir, is that five minutes?

**The Temporary Speaker** (Sen. Sang): Yes. I will add you 30 seconds because you are a senior Member.

**Sen. Wako:** Mr. Temporary Speaker, Sir, whereas it says, “independence,” I am a bit worried about appointments of the various people. Although the qualifications are specified, without any hindrance, powers have been given to the Cabinet Secretary to make appointments. So, how can the agency be independent when all the appointments in different categories are done by one person called the Cabinet Secretary? There is a lacuna. We need to look at that to secure the independence of this agency.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to support the Senate Majority Leader that the Anti-Doping Bill (National Assembly Bill No.6 of 2016) be read a Second time. I have only two points.

First, I propose that we look at Clause 6, where the headquarters will be in Nairobi. We do not want to find this thing again, where, for example, we the sugar cane farmers find ourselves. We do sugar cane farming and when we want to sort out our issues; we end up coming to Nairobi as the headquarters. I am not saying that athletes are only in certain parts of the country but since the people who have demonstrated excellence happen to come from one corner of the country, let us allow the headquarters to be in Iten so that the spirit of devolution is also captured.

Secondly, this amendment concerns Clause 10 on the composition. There are two things here. If you look at sub-clause (e), we have given the power of appointing these five people to the Cabinet Secretary. In view of the fact that sports is fully devolved, it should not be the Cabinet Secretary. We should give this role to the Council of Governors (CoG). They can identify these five people. What is more? If you go back to Clause 2; it speaks to administration of the agents. It clearly states that the only exemption is where a substance is being administered from bona fide medical personnel. If in Clause 2, we have seen the wisdom of allowing substances that are given for medicinal reasons and other things by bona fide medical personnel, then, it is important that a member from the Kenya Medical Practitioners and Dentists Board (KMPDB) should also sit on the panel to guide them; that, for example, this substance is ordinarily given for treatment of asthma or some other condition.

Mr. Temporary Speaker, Sir, my second and last point is to thank the President for the effort that he has taken to ensure that we have come where we are. Otherwise, our athletes were going to be locked out. As we thank him, we would like to remind him to

apply the same vigour that he has demonstrated on athletes on soccer. The Government should sort out the mess in soccer. Secondly, he must also learn from other countries, for example, Cuba. I was in Havana and had an opportunity to go to their hall of fame. It has a very strong world history on leading in boxing. They have a hall of fame where they have captured all their former athletes who did well in boxing. I do not see why we cannot have the same in Kenya so that great people like Mr. Nyandika Maiyoro, the first Kenyan to win an Olympic medal bare foot could be on record. In that hall of fame, you would find none other than Sen. Obure, the position 10 of Harambee Stars of those days. You would also find Mr. Joe Kadenge, Mr. Levi Kayati, Mr. Jonathan Niva, Mr. Chogo Ouma, Mr. Elija Lidonde and many others.

The President has been a big let down to the youth in terms of sport. He promised our youth that he would build five stadia across the country; one at Garissa, Nairobi, Mombasa and another one in Eldoret. The President has failed the youth. He should have built these stadia.

Mr. Temporary Speaker, Sir, I beg to support.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I support this Bill. I thank the Senate Majority Leader and his deputy for ensuring that the Bill is brought before this House. This is a Bill to provide for the implementation of the United Nations Educational, Scientific and Cultural Organisation Convention against Doping in Sports.

We thank God for the young talented sportsmen in this country. However, there is an emergence of coaches from Europe who are in a competing spree. They are using different supplements to ensure boosting in sporting activities. Therefore, we have experienced challenges on the use of these substances. The athletes use them without knowing their effects. We should create awareness on the use of these substances and the effects of doping.

Mr. Temporary Speaker, Sir, we need to look at the penalties that we have put in place. This is a Bill that we are domesticating from international law. Therefore, most of the amendments will be done after it is enacted. We should look at the established agency and how it will run its activities *vis-à-vis* the authorities that are established in the sports sector. This is to avoid overlapping mandates among these authorities.

Mr. Temporary Speaker, Sir, how shall we penalise a person who comes to our country to coach and abet doping? This has caused many athletes to be banned for things that they did not know. We have to encourage the country to draft a Bill to ensure that our mechanisms protect our sportsmen. Weightlifting and boxing are areas where substances are abused because of the nature of the sport.

In the administration and enforcement regime under Clause 26, there are many issues that have been raised. Clause (g) is on trafficking or attempted trafficking in any prohibited substances or prohibited methods. We do not need trafficking of substances that are used for doping. Our sportsmen are earning from sports and we need to protect them.

Lastly, I support Sen. (Dr.) Khalwale on the establishment of the Anti-Doping Agency headquarters in the Rift-Valley and especially in Iten, Elgeyo-Marakwet County.

(Applause)

Mr. Temporary Speaker, Sir, Rift Valley is where most of the athletes are from. We have to be proud of them because they have made Kenya shine on the world map. We do not need the headquarters in Nairobi.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, this is an important Bill. It is no doubt that sports have enhanced the reputation of our country. It has made us proud. It is also a source of employment and wealth creation for our youth.

There is a perception that Kenya is benefiting out of doping. We are aware of some athletes who have done well in the international sports including Olympics, but they were later denied medals because the winners were later discovered to have engaged in doping.

Mr. Temporary Speaker, Sir, under the definition Clause, the United Nations Educational, Scientific and Cultural Organisation Convention against Doping in Sports is a Convention that Kenya is a signatory to. Therefore, when Kenya is pushed to enact legislation, it is an imposition because we are a signatory to an international law. Under our Constitution, we conform to the international laws. It was not necessary to push us to enact a law. Nevertheless, we shall enact it so that we are facilitated to participate in international sporting.

Our sovereignty as a nation and the dignity of our athletes must be protected. Once we enact the law, we may be signing away certain rights which are, otherwise, protected by our Constitution. The athletes may be subjected to inhumane and undignified treatment by being ambushed and their privacy interfered with.

Mr. Temporary Speaker, Sir, the Bill provides that it is only the laboratory accredited by World Anti-Doping Agency that will carry out doping investigations. We have laboratories in this country and if they are not there, we shall establish them. I suggest that we amend this Bill so that the World Anti-Doping Agency can only accredit on consultation with the local agencies.

On the qualifications for one to become a member of the board, the management of athletics has been by the former athletes who only have secondary school qualifications. One Isaiah Kiplagat and Kipchoge Keino have done a good job. Why are we disqualifying such similar athletes from participating? At the end of the day, self regulation is the most effective way. We are creating an agency to regulate a sector but we are not giving the sector the powers to self regulate.

We should have an amendment that provides that the former sportsmen are included.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, on a point of order. Is Sen. Ndiema - a Member who was elected through the party of the presidential candidate in this House - in order to allege that there is no self regulation? The agency is part of the self regulation of the sports sector.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, in the composition of the board, there is no slot for representatives of the regulating agencies. So, what we are saying is that if this board should---

**The Temporary Speaker** (Sen. Sang): Give him a half a minute.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, sports is a devolved function. There should be a representative from the counties in this Agency. It is our responsibility as a Senate to ensure that they are represented.

Do I still have a minute?

**The Temporary Speaker** (Sen. Sang): No, time is up.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, because my microphone is still on, I want to say that managers must be registered by this organisation so that we know them and we can follow them up to ensure that they do not mislead our athletes.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. Ndiema.  
Sen. Elachi.

### PROCEDURAL MOTION

#### RESOLUTION TO EXTEND THE DAY'S SITTING

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I stand pursuant to Standing Order No.33 to move:-

THAT the Senate resolves to extend its sitting time until the conclusion of business in Order Nos. 13 and 15 on today's Supplementary Order Paper.

**Sen. Obure** seconded.

**The Temporary Speaker** (Sen. Sang): I now wish to propose the question.

*(Question proposed)*

This is not a matter concerning counties. Therefore, it is a voice vote.

*(Question put and agreed to)*

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, thank you for giving me this chance. I also rise to support this Bill which is important, especially to some of us who come from counties like Kericho where athletics is one of our homestay. It is worth noting that the first Kenyan to win an Olympic medal - I should have said this when the Senator for Kakamega was here because I heard him make a factual error that the first Kenyan to win an Olympic medal is someone whose name I cannot remember - was Wilson Kiprugut from Kericho. You can google to confirm that.

*(Sen. Wetangula spoke off record)*

I can see you are worthy of being a presidential candidate because you know these things.

*(Laughter)*

I support this Bill because it protects one of the greatest assets that this nation has. That is our success and dominance in athletics.



Mr. Temporary Speaker, Sir, you know very well that one thing that Kenya is known for the world over is our success in athletics. It is a national brand and image and it has sold our image abroad. At some point, we should do a study and understand how much in terms of branding revenue our athletes give to this country. It is good that we are dealing with a Bill which will protect our very sacred sport and will give good sense of direction.

It is a great honour for this House to also make its contributions. I thank the effort of the Senate Majority Leader and the team that worked to ensure that we also get a chance to give our opinions and thoughts to this process. I hope that this is the beginning of reforming the almost defunct or moribund sports industry in Kenya.

Mr. Temporary Speaker, Sir, you are aware that sports has the potential to employ very many of our young people, if only we could reform many of the so-called associations that have been a big let-down to this country. I hope with the coming of this Anti-Doping Bill, the same will apply to football and many other sports that are loved by our young people. However, because of cartels and cocoons by greedy people who do not care for the fame that sports bring to this nation, that has not been properly followed. I hope this is the beginning of good things. It is a sign that we are beginning to take sports very seriously as a country and that good things are coming.

Lastly, there is an issue I wish to draw your attention to which many Senators have talked about. I hope the Senate Majority Leader will take note so that we deal with it during amendments on the Bill. Under Part IV which is about General Provisions, Clause 42(1)(d) talks about a person or body who fails to comply with any lawful order or directions of the Agency. This is an ambiguous Clause because it could as well be an order for a person to be called upon to check if they are participating in criminal activity of either peddling some of the performance enhancing drugs or using them.

For such a serious crime, you would expect that the drafters of the Bill will put very stringent penalties. The penalty is only a paltry Kshs100,000. I think that is an error that should not be left to go. It is something we have to be concerned about. Otherwise, people will say that after all, it is only Kshs100,000 that they need to pay and they may as well not appear before the Agency. When somebody knows that it is clearly written in the Bill that you may as well fail to comply and the punishment is clearly stated as a fine not exceeding Kshs100,000.

In conclusion, there is an aspect that probably the Bill may not capture because laws, by their very nature, do not capture every aspect of a habit or solve a problem. It is an issue to do with values. This should set a good example for many of our young people to know that for anything that you strive for and want in this life, you must earn it with dignity. This is a good Bill and I hope that it will pass the same message to them to know that many world stars and athletes that we see each and every weekend earning good revenues and improving---

Thank you, I do not want to be out of order.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. Cheruiyot.  
Sen. M. Kajwang'!

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, I support the Bill. If it were not for the very convincing words from the Senate Majority Leader, I would have supported

it with certain amendments. However, I am convinced that following the process that this Bill has gone through, it is important that we fast-track its enactment.

This Bill talks of a prohibited list. It says that it shall be the responsibility of an athlete to know what is in that prohibited list. You remember the story of Maria Sharapova. She was accused of imbibing or partaking of a banned substance. In defence, she said that she did not know that it was banned at that point in time. So, it is extremely important that the Agency that we are proposing to set up must be involved in doping education. This needs to be integrated in the national curriculum because it is in primary and secondary schools that we start developing and nurturing future athletes and sports persons.

Mr. Temporary Speaker, Sir, one Member talked about the issue of *khat* or *miraa*. *Khat* is a banned or prohibited substance according to the WADA. If you recall, sometime back, Mo Farah, the great runner from Somalia who is now a citizen of the United Kingdom (UK) mentioned in an interview that he had chewed *khat* in Somalia at some point and it raised global uproar. In fact, the people he had vanquished in athletics started claiming that he was winning because of *khat*. So, we need to remember that there is that limitation that *khat* is viewed as a banned substance even as we want to promote its export.

You may find many sportsmen in Kenya using it. This is not backed by empirical evidence but observation, particularly for some of us who went to school in the Eastlands part of Nairobi. You will find a lot of games where chewing *khat* or smoking cannabis is seen as a norm. I still do not understand why we have banned cannabis in this country when other countries in the Americas and Europe have legalised it. Let people smoke cannabis because it does not cause any harm. If we do now want to smoke it in Kenya, then, at least we should allow growers or certain areas---

For example, in Gwasi which is in my county, cannabis grows as a wild crop. It was never introduced by anybody. Why could we not harvest and export it abroad? However, it is still a banned substance.

Mr. Temporary Speaker, Sir, the section on the General Provisions, Part 6, Clause 42, is extremely dangerous. I know we are attempting to domesticate an international law but it talks about doping in recreational sports like golf, tennis, badminton, cycling, *et cetera*. If you look at the list of prohibited substances, this Bill tells you that if you go for Karate and you have taken some cannabis, you can be arrested and fined not less than Kshs100,000 or be jailed for not less than one year.

If you go for a round of Barclays Open golf tournament after a few shots of whisky, you can be arrested and jailed for one year. We need to re-look at that section on the use or aspect of doping in recreational sports. Otherwise, you will be opening up a Pandora's Box. This section can be used to frustrate young people.

Mr. Temporary Speaker, Sir, if I want to "sort" out somebody whom I know loves going to the gymnasium and loves to chew *miraa* which is not banned in Kenya, then I can say that *miraa* is a prohibited substance and that you are doing body building. A combination of the two can land someone in jail for not less than one year. I think even if we were to put a penalty, we should not prescribe it in such a way that we do not give the

magistrate or the judge a leeway to prescribe something that is adequate. I hope that this is one of the clauses that we will amend as we go forward.

Now that we are discussing this Bill, I am sure that Kenya is going to the Rio de Janeiro Olympics. I urge this nation to develop a habit of learning from the past. In 2012 when we went to London, we came back disappointed because we only got two gold medals instead of the six that we got in Beijing. The President at that point made an order that we come up with a commission of inquiry into the performance of the London Olympics. To the best of my knowledge, that report has not been released. The same people who led the delegation to London are leading the delegation to Rio de Janeiro.

I urge that this time round when we go to Rio de Janeiro, we should stop this habit of carrying joy riders from the Government. Let us stop this habit of organizing away matches in Rio de Janeiro. There is a term that we use in golf called “forward caddies”. This is a caddie who is sent further in advance. Let us not carry forward caddies to Rio de Janeiro.

I support.

**Sen. Obure:** Mr. Temporary Speaker, Sir, let me start by paying tribute to our sports men and women who have brought glory and honor to our country. In athletics ---

**The Temporary Speaker** (Sen. Sang): Sen. Obure, because of your past engagement in sports, you will have an extra two minutes.

*(Applause)*

**Sen. Obure:** Mr. Temporary Speaker, Sir, thank you for that recognition. In athletics, we all recognise that Nyantika Maiyoro of Kisii County was the first Kenyan to win a medal in an international competition during the Melbourne Commonwealth Games in the 1960s. We also recognize Wilson Kiprugut of Kericho County who won the first medal in the Olympics Games in Tokyo in 1964. We recognise the late Naftali Temu of Nyamira County who won the first gold medal in the Mexico Olympics in 1968. In the same Olympics, Kipchoge Keino and Amos Biwott both won gold medals. I believe Kipchoge Keino is from Uasin Gishu County and Amos Biwott is from Elgeyo-Marakwet County.

The greatest event of all took place in 1972 during the Munich Olympics, where the amazing Kenyan quartet of Charles Asati and Hezekiah Nyamau both from Kisii County, Robert Ouko from Nyamira County and Julius Sang of Nandi County won the gold medal in 4x400 metres relay. This was perhaps the greatest sporting event many of us have ever watched.

I also pay tribute to many other Kenyan athletes who have been outstanding in various sporting events in the intervening years. I also recognise the achievement of our women who have, in fact, dominated the international athletics scene in world capitals in the recent years. I take this opportunity, in particular, to heartily congratulate our rugby team which conquered the world last weekend in Singapore. The names of these boys need to be listed in our Country Hall of Honour.

The purpose of this Bill is to protect the fundamental rights of athletes to participate in sports activities that are free from doping and, secondly, to put in place

coordinated and effective mechanisms to detect, deter and prevent the use of prohibited substances. This Bill has good intentions. We hope that through this Bill, we will help promote honest competition in sports. It will also guarantee a level playing ground for all competitors. However, there is need for us, as a country, to be committed to supporting and promoting all aspects of sports because Kenyans have a right to enjoy sports. Kenyans of all ages have the right to participate in all manner of sports. By participating in sports, we keep fit and, therefore, that alone helps to improve our health status.

Mr. Temporary Speaker, Sir, allow me to say something about the sorry state of Kenyan football. There is the story of this young child who complained to a court of law about his parents. When the court asked him why he was accusing his parents, he said, "They beat me." The court asked him: "Whom do you want to live with?" The boy said he wanted to live with Harambee Stars and the court asked him why. He replied: "Harambee Stars do not beat anybody."

*(Laughter)*

That depicts the state of our football in Kenya. Personally, I am passionate about football because I participated in football and became a football administrator. With Kenneth Matiba, we drafted the first ---

**Sen. Wako:** On a point of information, Mr. Temporary Speaker, Sir. He cannot say for himself. However, let me say that if Sen. Obure had been born in these times when it pays to be in sports like athletics and so on and not at a time when academia was emphasized more than sports, Sen. Obure would be one of the best footballers in the world today. We would be mentioning him as one of the best footballers.

**Sen. Obure:** Mr. Temporary Speaker, Sir, I am humbled by those remarks. I believe if I was born around this time, this century, maybe, I would be playing in those ranks. I believe that there is tremendous talent in football all over this country which can be nurtured and tapped. The problem of football in Kenya is poor organisation and management and inadequate funding and investment. We need selfless and committed leadership in football; a committed leadership with a vision to take the game to the next level. As supporters of football, we must accept the basic principle that in participating - that is a prerequisite in participating in a game of football - the referee's decision is final. If we continue challenging the referee's decision, we will see the kind of chaos we see in our stadia.

Mr. Temporary Speaker, Sir, going back to the Bill, what the proposed Bill will do is to give us the means to identify and isolate those who tempt our athletes into using prohibited substances.

I believe this is a very good Bill.

I support.

**Sen. (Prof) Lesan:** Thank you Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Bill.

First, I want to congratulate Senators for being in the right place this afternoon. Often, Senators have agreed verbally on things but this time they have taken a practical action and chosen to be in the right place, that is, in the Senate Chamber and not in Meru.

(Applause)

**The Temporary Speaker** (Sen. Sang): Sen. (Prof) Lesan, in other words, what are you saying?

**Sen. (Prof) Lesan:** Mr. Temporary Speaker, Sir, I am saying what happened last evening when the Motion for Adjournment was moved, the expression was made by Senators that they will not adjourn the House, they would stay and not attend the conference in Meru. This is one practical thing that Senators have done in unison and I think they have done the right thing. The message passed on the floor in the conference in Meru now is loud and clear as to the intentions of the Senators and what action they wish to take.

Along with that Mr. Temporary Speaker, Sir, I want to encourage Senators that we do agree---

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

**The Temporary Speaker** (Sen. Sang): Do you want to be informed by Sen. Wako?

**Sen. (Prof) Lesan:** Yes Mr. Temporary Speaker, Sir.

**Sen. Wako:** Mr. Temporary Speaker, Sir, I just want to congratulate the Senator because, being the Chair of the Sessional Committee on the Devolved Government, he was one person, apart from the Speaker, who should have been in the Devolution Conference because his Committee deals with that; but he chose to go along with all of us and he is here today contributing to this Motion.

**The Temporary Speaker** (Sen. Sang): Sen. Wako, was that a point of information?

**Sen. Wako:** Mr. Temporary Speaker, Sir, it was a point of information because I know he himself cannot say it.

**The Temporary Speaker** (Sen. Sang): That is useful information but it does not qualify as a point of information.

**Sen. (Prof) Lesan:** Thank you Mr. Temporary Speaker, Sir. I also want to congratulate a Member of the Devolution Committee for the sound advice that he gave to the committee.

I want to encourage this Senate to assist the Committee on Devolution to work on a legislative devolution conference which I am sure if we organize as Senators, we will be able to talk about the myriad legislative issues that we could do to remove us from issues that we have dealt with in the last one day.

Mr. Temporary Speaker, Sir, I want to congratulate the Rugby Sevens team which made us a proud nation. We have seen their persistence in the game. For the last four or five years, they have been participating in these events and they have won everything; the Spool, the Wooden Plate and this time they came with the final trophy. It is worthy for us as Kenyans, to congratulate them for having done so.

I also wish to support the Bill which is before the House and it is the best Bill which could have come about during this time. The life span of activities of a

sportsperson who has not used any doping drugs is between seven to 10 years. Athletes who use drugs will last for less than two or three years. It is important that we pass this Bill so that we can comply with some of the regulations which will save our athletes.

Mr. Temporary Speaker, Sir, most of the doping drugs are hormonal based. This means that the drugs affect the performance of a human body for a short or long time. It is, therefore, important that we consider the miscellaneous provisions in this Bill especially Clause 42 (2) which deals with those people who administer or provide these drugs to our athletes. I would suggest that this be the area where we will make a difference.

Mr. Temporary Speaker, Sir, there should be provisions for very severe punishment for those caught doing this because administering drugs is a deliberate action which requires a lot of thinking and intelligence. Therefore, this is the kind of thing that is done deliberately and the consequences are serious and the penalties should be serious.

In fact, we should not include the option of a fine. These are persons who should be sent directly to prison. They are individuals whose properties should be seized. Their licenses should not be temporarily suspended but be cancelled because of the harm they cause to individuals.

Mr. Temporary Speaker, Sir, the only thing that I get concerned about is the description of an athlete in this Bill. The description of an athlete recognizes one only when he or she becomes international. All international athletes start from somewhere. At the point where they start, there is the possibility of drugs coming up. I think this description must be widened enough so as to include those who do not go to the gymnasium like it is described. It should also be described that even a national runner is subject to abuse of these drugs and it should be catered for in this Bill.

Lastly Mr. Temporary Speaker, Sir, I want to wish the Kenyan team that is going to *Rio de Janeiro* in Brazil the best. We hope they will come with medals which have been earned without the use of any drugs in order to propel the name of this nation to stay where it is despite the suspicions by the international community.

I wish to support the Bill.

Thank you.

**The Temporary Speaker** (Sen. Sang): Sen. (Prof.) Lonyangapuo. You may wish to mention that there are athletes in your county.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I rise to support this Bill and tell you that we have many athletes that have migrated from West Pokot County to Nandi County. That is why Nandi and Elgeyo-Marakwet counties are a bit more famous than us.

It is interesting that every other time an African nation excels, a new hurdle arrives. What is this thing called doping and where was it? I am a bit surprised because our athletes are natural, especially where I come from. When I look at the permanently slim lady called Tegla Loroupe who ran her whole life and you see her today, she still resembles the way she was. They never encountered doping.

Mr. Temporary Speaker, Sir, when I read the Bill that there are some substances that have been banned that the athletes sometime take to enhance muscles, how do you just walk into a chemist and buy drugs?

Athletes do not know what substances they are using, but when they have flu, they quickly talk about it. We did not have it those days. As we address this Bill, I have questions why some of these hurdles are introduced along the way. For example, who brought this substance to Kenya and how did our athletes know about it? Foreigners must have interfered with our people. There are so many athletes camping in Iten, Kapsabet, Kapenguria, Nyandarua, Laikipia and many other places in Kenya. We need to know the people who come in the name of training our athletes, what they are introducing and the habits they are bringing as they come to run.

When you drive down the beautiful escarpments of Iten, you will see foreigners running very early in the morning and late in the evening. Are they the ones who are introducing our athletes to substances? Have bodies like the Kenya Amateur Athletics Association (KAAA) and the Kenya Football Association never come across this, to the extent that we are now creating a new body?

As we support this Bill, we need to ask ourselves hard questions. Why should we locate the headquarters of this proposed body in Nairobi? It should be in Nakuru or Eldoret because this is where our strongest resource is. We should have it there so that we can also address upcoming athletes. Eventually, when this Bill is passed, every county should have an office of the anti-doping body.

Mr. Temporary Speaker, Sir, the Bill talks about the qualifications required and the minimum period that the executive officer and chairperson can serve. However, there are varied views on the terms. Some say it should be five years for the Chief Executive Officer (CEO) and seven years for the chairperson. Some say a medical doctor should chair the therapeutic committee. We should harmonize it because parastatals have specific terms. Why should there be a variation?

**The Temporary Speaker** (Sen. Sang): Sen. (Prof.) Lonyangapuo, you have half a minute.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I appreciate. Lastly, when the CEO disagrees with the board, he can easily be removed. We need to relook at Clause 18 (1) (b). Somebody should not be sacked just because he is at loggerheads with his board.

I support.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. (Prof.) Lonyangapuo. There being no other interest to contribute on this matter, I now call upon the Mover to reply.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I thank you and my colleagues from the Majority and Minority sides. Sports is a unifying matter in this country. Even as we seek national cohesion and unity, this is one of the areas that can help us form certain things that bind us together.

I have listened to the useful remarks and comments that have been made. I take this opportunity to repeat and re-affirm the commitment that I made to my brother, the Senate Minority Leader and other colleagues who have given useful input that can improve this Bill. I will entertain, sponsor, process and support them in the future, but for now, we have to get this behind us. I am grateful and I do not take the cooperation that I have seen from my colleagues for granted.

I beg to move.

Mr. Temporary Speaker, Sir, if you allow me, pursuant to Standing Order No. 54(3), I request that you differ the putting of the question to tomorrow.

**The Temporary Speaker** (Sen. Sang): It is so granted.

*(Putting of the Question on the Bill deferred)*

Next Order!

## MOTION

### ADOPTION OF MEDIATION COMMITTEE REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (No. 2) (NATIONAL ASSEMBLY BILL No.33 OF 2014)

**Sen. Wako:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, the Senate adopts the Report of the Mediation Committee on the Statute Law (Miscellaneous Amendment) (No.2) Bill (National Assembly Bill No.33 of 2014), laid on the Table of the House on Wednesday, 30th March, 2016.

I will not go through the entire Report because of brevity of time. The Statute Law (Miscellaneous Amendment) (No.2) Bill (National Assembly Bill No.33 of 2014) originated from the National Assembly. When it came before this August House, we noticed that the many Bills that were contained in that Bill touched on devolved functions, yet the National Assembly had not taken into account that fact.

They included Bills such as The Agricultural Fisheries and Food Authority Act, The Livestock Research Act, The County Governments Act, The Urban Areas and Cities Act and The Land Adjudication Act. If you may recall, I stood on the Floor of this House and informed the House not to take that Bill casually. Every Committee was supposed to look at and examine those Bills and come up with recommendations on how the county governments' interests can be taken care of in those Bills and many amendments were made.

Mr. Temporary Speaker, Sir, in fact, I am pleased to inform you that all the amendments that the Senate proposed to take into account the devolved functions and interests of the county governments, particularly of the various boards established under those Acts were accepted by the National Assembly. Therefore, the National Assembly can agree with our amendments.

The only amendment that we proposed and was not accepted by the National Assembly was the one relating to Transition Authority (TA). We had proposed that where the county government meets the criteria for the transfer of functions, the TA shall propose the programme to support and strengthen the capacity of that county government, which would be implemented by the National Assembly in consultation with the county government. That is the only amendment that was declined by the National Assembly, hence the need to appoint a mediation committee whose membership is listed in the Report. I do not have to read that out.



I am pleased to inform you that on that issue, we reached an agreement - we were all lawyers - because at the time that we sat, the TA was no more. Therefore, we could not have an amendment giving further functions to the TA, when it was no more. We could not substitute another authority in place of the TA because it was a Statute Law (Miscellaneous Amendment) Bill that required that the Act, particularly the Inter-Governmental Relations Act should have been part of the substantive Statute Law (Miscellaneous Amendment) Bill.

Therefore, we agreed that the Clause that we had proposed should be removed. It was unanimous, legal and constitutional. Therefore, I submit that it be adopted by this House.

I beg to move and ask a Member of the Committee who has now been promoted to position of Senate Deputy Majority Leader to second.

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, first, I congratulate the Mover of this Motion who is the Chairperson of the Committee on Legal Affairs and Human Rights for his able leadership. As part and parcel of the Mediation Committee, it was natural when we met, that all other lawyers - we are all lawyers except Sen. (Dr.) Khalwale - submitted generously and automatically to the leadership of the senior counsel. He did a fantastic job in leading us in so far as the mediation of this Bill is concerned.

As Sen. Wako has said, the outcome of this Bill is what we had already debated here. There are very little new things that we can say were added to it because we had debated and passed it after making thorough amendments. Some of the salient features that people must know that we were dealing with were matters of land law, reorganizing the Urban Areas and Cities Act to give the definition of what a town or municipality is to become something that can be achieved. This is unlike the initial law that I was part of drafting which was more ambitious in terms of what a town or municipality was to be. This led to impossibility of designation of municipalities, towns and cities around the country.

Mr. Temporary Speaker, Sir, as the Chairperson mentioned, the Transition Authority (TA) was rightfully overtaken by time. We agreed with the National Assembly on that. I do not think that there is any quarrel any more even for us who had a contrary opinion and believed that the TA need not continue beyond the transition period; this issue sorted itself out in so far as time is concerned. It is also important to note that the Agricultural, Fisheries and Food Authority Act was amended to give effect to what already exists in the separation of various roles within the Ministry of Agriculture, Livestock and Fisheries as parastatals but to also ensure that we have proper capturing of the roles of county governments in these institutions.

We also have a very important amendment on the Crops Act which is very important for our brothers and sisters in Meru region in terms of designation of *miraa* as one of the crops. This will enable us to intervene. One of the things that made it so difficult for the Government to intervene on the *miraa* issue was the absence of its definition as a crop. That made it very difficult to give it allocation because it was not even under the administration of the Ministry of Agriculture, Livestock and Fisheries. It was just a plant hanging out there at the mercy of the farmers.

I was with Sen. Murungi earlier before he went for a very important engagement. He was very excited about the introduction of this amendment because it is more valuable than going to sit in Meru to consume information that is full of lies; misleading information in so far as our counties are being managed.

Mr. Temporary Speaker, Sir, this Motion heralds a very important time and it is a good indication of the working of a bicameral legislature. The fact that the National Assembly agreed to almost all our amendments is a demonstration that this House remains to be a very important institution in checking the quality of legislation that comes from the other House. The other House has a responsibility, where we have oversight, to also check on the quality of Bills that are generated from this House.

Therefore, the kind of juvenile debate that was going on at the National Assembly today ought not to be there because Parliament is a definition of both Houses. We, as politicians, sometimes have a very short memory because we think that our positions are permanent. It happens that if you do not like the face of the person sitting next to you or sitting in another institution, it becomes the basis under which you define that institution.

There is an imagination that ownership is attached to an individual to be in office for a particular time. I am the Senator for Elgeyo-Marakwet County but I am not Elgeyo-Marakwet. Tomorrow, the people of Elgeyo-Marakwet will elect another Senator, Governor and Member of County Assembly (MCA). Considering that we have only one year to go to the elections, our brothers and sisters in the “Lower House” must not be hysterical when debating matters that touch on the performance of this House. This House is very important.

For instance, when we leave, those who will come must find a tradition; that we have done our best to strengthen this House so that oversight of counties, resources, functions that we legislate to the counties is achieved for the benefit of the country, devolution and our counties. That is the driving factor that makes us who we are. That is why this House is bipartisan. We sit and negotiate. That is why we do not whistle, jump around or do press-ups in this House, apart, of course, from my friend, Sen. M. Kajwang who caught the bug of the “Lower House”.

This House has never seen any possibility of unruly behaviour from any Member because we respect the rules of debate. We believe that engagement on issues is very important. We believe that things must be done for posterity. As the Deputy Majority Leader in this House, I am proud of the work that has been done by the Chairperson of the Committee on Legal Affairs and Human Rights. I believe that we are on the right track to deliver for the best interest of this country.

I beg to second.

*(Question proposed)*

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I rise to support this mediated version of the Bill as presented ably by Sen. Wako, the Senator for Busia. As my colleagues have said, a lot of input has gone into it. We sent a good calibre of individuals to the Mediation Committee.

I beg to support.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I take this opportunity to congratulate the Mediation Committee and our representatives, chaired by Attorney General *Emeritus*, the Senator for Busia, my senior and friend, Sen. Wako.

This culture of mediation has taken a bit of time to develop. Initially, we had so many issues when we had differences of opinion between the two Houses but now, it is very clear, beyond adventure that, in accordance with the Constitution, when the two Houses have differences of opinion, the only way is not grandstanding, threats or cajoling. It is to sit down, mediate and agree on a version.

Mr. Temporary Speaker, Sir, I am also pleased to note that in the context of the mediated versions of Bills, so far, we have not lost any Bill. The law provides that if the Houses are not in consensus, the Bill is lost. That is a demonstration that the differences that occur do not occur out of trivialities.

Secondly, it is a demonstration that the Members in the Committees from both Houses take our national duty as the legislators seriously. We do not want the efforts that have gone into the Bill to go to waste because of the small differences.

May I say that the Statute Law (Miscellaneous Amendment) Bill is an important component especially to the people of Meru County. They have been struggling for a long time with the question of the classification of *miraa*. This Bill classifies *miraa* as a crop - notwithstanding what the Senator for Homa Bay said previously - this will be a duty on the Government to put resources like it does in coffee, pyrethrum, tea and coconut in order to also promote it. I am sure, today, the people of Meru County are happy.

Mr. Temporary Speaker, Sir, I am speaking on behalf of Sen. Murungi who just walked out to attend to some issues. We agreed that I hold his brief. Soon, once the Bill is assented to, the people of Meru County will be hearing the plans the Government has in promoting *miraa* crop in accordance with the new law. This will bring to an end the long struggle that the people of Meru County have had in the fight for recognition of *miraa* as a crop and its promotion like any other crop in Kenya.

I support.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I support this Motion. I also congratulate the Members who represented this House in mediation. The issue of mediation is a constitutional matter. Sometimes, I observe that when Bills originate from the National Assembly, and to the Senate, there are instances in which Senators are hesitant to make significant amendments that will put us in a position that we have to mediate.

One of the examples is the matter of the Division of Revenue. I recall that last year, there were issues when the Senators made proposals that went beyond what the National Assembly thought that the Senate was expected to do. The people of Kenya should know that when the Senate scrutinizes Bills from the National Assembly, it is doing so in furtherance of its constitutional duty.

Mr. Temporary Speaker, Sir, one of the roles of the Senate beyond protection and defence of devolution, is to provide quality assurance. In many other jurisdictions, what comes from the other House has to pass through this House. Most of the Senate Houses

have the best minds. I do not have any doubt that our Senate might suffer from that. Our Senate has good minds because we have professors of international repute. We have been told that were they living in the past, they would be the Didier Drogba's of this world.

Therefore, we have experience and knowledge. In this House, we have a Member who has got credentials and passion to be the President of the East African Community. He is the able Senator who led us in the mediation process. I applaud the former Attorney-General.

**The Temporary Speaker** (Sen. Sang): Order Senator. Can Sen. Wako confirm the allegations that you have made?

**Sen. Wako:** Mr. Temporary Speaker, Sir, I confirm that I addressed my county assembly last week. The Members of County Assembly (MCAs) and people from the county expressed their feeling that I should be the governor. So, I wanted to put an end to that speculation.

I asked them why I should go for a lower job of being a governor for a county when I had been an Attorney-General for over 21 years. The only thing I can run for is the presidency and that is already occupied. So, I can only aim at the Federation of East Africa (FEA) and I stand by that. If it comes on my side, I will take it. So, I confirm that I said that.

*(Laughter)*

**The Temporary Speaker** (Sen. Sang): Sen. M. Kajwang', proceed.

**Sen. M. Kajwang':** Thank you, Sen. Wako, because the next thing was the Chair to ask me to substantiate. Sen. Wako, I want to assure you that when and not if you run for that position, you will have my vote. That tells you something about the depth and breadth that sits in this House.

I encourage my colleagues that even as we look at the issue of division of revenue which I know is still in our Order Paper, let us not be shy to propose amendments. Sometimes when we sit with our brothers and sisters in the National Assembly, we joke and they say that if we change anything in the Bills that come from their House, we shall not get our money for oversight. You can see that the approval of the Oversight Fund seems to be deliberately delayed to see how we will react and behave on the Division of Revenue Bill.

The issue of mediation and the capability and ability of this House to have a second eye review on Bills coming from the National Assembly is a constitutional duty and we should not be shy away from that.

**Sen. Murkomen:** On a point of order, Mr. Temporary Speaker, Sir. Am I in order to request Sen. M. Kajwang' who comes from the same county with one of the fiercest critics of the Oversight Fund, hon. Milly Odhiambo who not so long ago enjoyed a whistle-blowing session with Sen. M. Kajwang' to use that comradeship to win us more supporters?

*(Laughter)*

**Sen. M. Kajwang':** Mr. Temporary Speaker, Sir, they say fire sometimes does not beget fire but ash. So, the fact that we come from the same county does not mean that all of us are made of the same component. However, I confirm the solidarity within the “*Firimbi* Movement” of which the Member for Mbita and I belong to. I confirm that the “*Firimbi* Movement” will be doing many things. I undertake that within the evening meetings of the “*Firimbi* Movement”, I will mention this to my colleagues, so that they look at it kindly.

Thank you.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. M. Kajwang'.  
Sen. Elachi.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I also support the Report of the Mediation Committee and thank the team. We know that it has been a learning process for the past three years.

I believe that the National Assembly understands why the drafters of the Constitution felt that mediation would be part of our process where you bond and learn from each other. In the mediation team, you will realise that everyone reasons the same. You will wonder why conflicts arise when we are in our respective Houses.

Mr. Temporary Speaker, Sir, having said that, I also thank hon. Kajuju, Sen. Murungi, hon. Linturi and the whole team from Meru who stood very firm when the challenges facing *miraa* started in this country. They even travelled to Europe to petition that Britain assists in ensuring that the crop continues being exported there. *Miraa* has contributed a lot to our Gross Domestic Product (GDP).

We need to support and ensure that there is a framework that will enable them to trade, not just abroad but they can also look at new places where they can trade. They can look to the East and see whether it can work. We can also now see other products coming out of the same *miraa* and not just chewing it. I believe that this is a product that can even give us juice. We also need to do more research and see how else it can be useful to us.

Mr. Temporary Speaker, Sir, the only challenge that I face - I now throw it to the Senate - is the issue of oversight funds. We only have one year to finish our term and I think it is time for the Senate to let go off this issue. We need to go back to court. I do not believe in the Constituencies Development Fund (CDF) where you find that the revenue that is being shared is accumulated before you even share revenue from the counties.

If, indeed, that is the fund for supporting national issues, then their revenue has to be driven from the national revenue after they have shared it. Therefore, it is only that Senators were being a bit diplomatic and sensible by saying that: “These are our brothers and they have had CDF for a while.” However, I think it is time for CDF to go. It is time the courts let us now finish the issue of legislators running funds. Let us all be equal and concentrate on our oversight role.

This House must lead by example so that we do not have conflicts and abuse each other as we debate. It is time we did the right thing according to the Constitution. I hope the Attorney-General *Emeritus*, Sen. Mutula Kilonzo Jnr. and Sen. Murkomen will look at that draft, take it to court and allow us to close this chapter.

Thank you.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Is my neighbour, Sen. Elachi, in order to mislead the House talking about oversight? That, we should go back to our counties and oversight using our eyes, feet and hands; what do you mean? Oversight is a role and it is supposed to be funded for you to work and safeguard the people of Kenya. Could you clarify what you meant by: "Go back to our work?" This is not a kitchen.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I meant that we should do what the drafters of the Constitution appreciated, that the legislative arm of Government will legislate without implementation as an executive role. I think they clearly defined what we are supposed to do. It is only that we have refused to go by that because we are the ones who amend and prepare laws. All I am saying is, when you look at how Members have just debated the Fund, you feel that it is time, as a legislative arm, to come out and deal with our legislative agenda.

I support.

**The Temporary Speaker** (Sen. Sang): Thank you, Sen. Elachi. There being no other interest from Members to contribute on this matter, I now call upon the Mover to reply.

**Sen. Wako:** Mr. Speaker, Sir, in reply, I thank all Members who have gone the extra mile as required by our Lord Saviour, Jesus Christ, that, when you are asked to meet up to 6.30 p.m., go on up to 7.30 p.m. if need be but finish the work. So, I appreciate their comments and support.

I would say that this mediation has shown the better side of the two Houses. It has shown that in most of the cases apart from those involving money Bills, when the matter is referred to a mediating committee, both sides have agreed in nearly all the cases. Common sense and reason have prevailed and there has been an agreement.

Therefore, the better side of the National Assembly and the Senate is reflected in the number of the mediated Bills that have been successfully concluded. This draws me to another conclusion born by long experience that in this country, we have many problems which we all know. Therefore, it is like both sides agree that in mediation, common sense prevails and the professional side of us prevails, then we all agree in an amicable way in the same spirit.

I am sure that if such an approach was done at the national level on the many problems that this country is confronting, particularly as we go to the next general election, our election laws will be in place. What do we do with the Independent Electoral and Boundaries Commission (IEBC)? What do we do with the Judiciary?

Mr. Temporary Speaker, Sir, this requires that we sit as Kenyans and see the way forward on the crisis confronting the Judiciary and the IEBC. I speak here because we have heard the reasonable voices outside us commenting on these issues. We have heard the churches commenting on these issues. Both the protestants and the Roman Catholics have been united on these issues yet we as the leaders of this country who are supposed to provide the solutions still sit in acrimony. A way must be found.

Mr. Temporary Speaker, Sir, using this example that you have seen, Parliament will quarrel and when it comes to a mediated thing, we sit down and reason prevails. I am

sure if those politicians who quarrel along party lines agree and we go and sit down together, reason will prevail and there will be a way forward for this country.

With those few remarks, I thank you all for the support that you have given to this Bill.

**The Temporary Speaker** (Sen. Sang): Sen. Wako, do wish to make an application, pursuant to Standing Order No. 54 (3)?

**Sen. Wako:** Yes, I wish to make an application, Mr. Temporary Speaker, Sir.

Mr. Temporary Speaker, Sir, I move:-

“That the vote be deferred to tomorrow pursuant to the relevant section of the Standing Order”.

**The Temporary Speaker** (Sen. Sang): Sen. Wako, your application is made pursuant to Standing Order No. 54 (3) requesting for the deferment of the putting of the question to tomorrow.

**Sen. Wako:** Thank you Mr. Temporary Speaker, Sir.

*(Putting of the Question on the Motion deferred)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Sang): Hon. Senators, that marks the end of our business for today. The Senate stands adjourned until tomorrow Thursday, 21<sup>st</sup> April, 2016 at 9.30 a.m.

The Senate rose at 7.00 p.m.