

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 28<sup>th</sup> May, 2019

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

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

### PRAYER

### COMMUNICATIONS FROM THE CHAIR

#### REPLACEMENT OF SENATORS TO THE MEDIATION COMMITTEE ON THE IRRIGATION BILL, 2017

**The Speaker** (Hon. Lusaka): Hon Senators, as you may recall, in concurrence with the Speaker of the National Assembly on the constitution of a mediation committee in accordance with Article 112(1)(a), 112(2)(b) and 113 of the Constitution, I appointed the following Senators to serve in the Mediation Committee on the Irrigation Bill (National Assembly Bills No. 46 of 2017);

1. Sen. Peter Ndwiga, EGH, MP
2. Sen. (Dr.) Christopher Langat, MP
3. Sen. Falhada Iman, MP
4. Sen. Judith Pareno, MP
5. Sen. Fredrick Outa, MP

Hon. Senators, upon further consultation with the leadership of the Majority and Minority, I have appointed Sen. Ochillo-Ayacko, MP, and Sen. (Rev.) Naomi Waqo to replace Sen. Fredrick Outa, MP and Sen. (Dr.) Christopher Langat respectively.

I urge the mediation Committee to move with speed and deal with this important assignment.

I thank you.

#### VISITING DELEGATION FROM BONDENI PRIMARY SCHOOL, MAKUENI COUNTY

Hon. Senators, I have another communication. I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Bondeni Primary School in Makueni County.

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

I thank you.

*(Applause)*

Kindly proceed Sen. Wambua

**Sen. Wambua:** Mr. Speaker, Sir, I thank you for this opportunity. I join you in welcoming the students from Bondeni Primary School in Makueni County. I encourage the students to spend their time in this Chamber well. They should be inspired to learn how legislation takes place and to look forward to being seated in this Chamber one day, representing the great people of Makueni County and this country at large.

On behalf of the people of Kitui County and on behalf of my colleague, the Senator for Makueni County, I welcome the students from Bondeni Primary School.

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I thank you for giving me this opportunity to join you in welcoming the pupils and teachers seated in the Public Gallery to the Senate Chamber. I encourage them that it is only a matter of time before those who are interested in politics can join us.

My advice to the pupils is that discipline is core to advancement in any career and the life of an individual. Yesterday, together with other politicians, I attended an education forum in a county of this Republic. As we were leaving the school, I was so surprised to hear pupils in standard six and seven telling us that we did not give them hand-outs to prepare the ground. I was so shocked and lamented the directions that our young children have taken.

Teachers have a huge task in shaping the destiny of these particular children. The pupils were addressing some Members of Parliament (MPs) as if they are age mates. Among the Kalenjins, 'Wei' is a word that you can only use to address your age mates. However, the young kids were addressing us using that word. I regretted on the morals of our children. I reflected on the moral decay that we have been witnessing lately, for example, the axing to death of the girl from the Moi University, School of Medicine.

Mr. Speaker, Sir, I would like to tell the teacher who has accompanied these students who are seated here today to take more time in shaping the moral aspect of our children.

**Sen. Pareno:** I thank you, Mr. Speaker, Sir, for allowing me to join you in welcoming the students from Bondeni Primary School. I thank them for coming here to see what we do in Parliament. I hope that they get the inspiration that will lead them to being good students and leaders.

Their Senator, Sen. Mutula Kilonzo Jnr., may not be here but we can all speak for him. He is very energetic, articulate and always there to serve the people of Makueni County here in the Senate. I would like to urge the pupils to emulate him. Please be alert, upright and take your studies seriously because you will be in this House in future just like we are here today. Many years back, we did not know that we would be here today. Similarly, you may not know whether you will end up here in the next few years.

However, if you work hard, and ensure that you do well in your studies, you will be proud of yourself. We welcome you here. Take time to learn from the best.

**Sen. Kasanga:** Mr. Speaker, Sir, I thank you for allowing me to welcome the students from Makueni County. I would like to remind the students together with their teachers that education is the most important tool that they have to plan their future with. It is only through education that they can make a livelihood for themselves and transform the societies that they come from.

As the students watch their leaders debate, they should remember that we are looking at them as the future of our nation. As the Senators who spoke ahead of me said, their moral standing should be upright and that they must be a good example and inspire everyone else when they go back to school.

Mr. Speaker, Sir, I would like to remind my fellow Senators that today is the Menstrual Hygiene Awareness Day. We need to support our girls so that they can attend school without missing any classes or feeling less of students.

I thank you and, once more, I welcome the students.

**Sen. Mwaura:** Mr. Speaker, Sir, I join you in welcoming the students from Bondeni Primary School. I would like to inform the students that their dreams are valid. Sometime back, while attending a similar Session – I remember the Chair at that time was hon. Gitobu Imanyara – I could not help but admire and feel that I belonged to the august House. Indeed those dreams were valid because I am now in my second term.

If the students have a dream of becoming Senators, Members of the National Assembly or any other leadership position, they should continue pursuing it. They should learn by example. The only thing that I ask of our young children and learners is not to take up the bad manners that have made this country to not move forward.

Mr. Speaker, Sir, as Sen. (Dr.) Langat said, we use school for political mobilization to reach out to communities, the students have learnt that they need to be given money. It is not a wonder that when you are in the villages of this country, children ask you for *pesa ya macho*. If this country is to grow, we depend on the students to partner with us, for us to emancipate our country from the doldrums of corruption and ineptitude.

I congratulate the school for coming here to see what we do and that they may take the lessons with them to go and teach the others on how this country needs to be great.

I thank you.

**Sen. Linturi:** Mr. Speaker, Sir, I join my colleagues in welcoming the students from Bondeni Primary School to Parliament. I wish to encourage them that just like Sen. Mwaura has said, young people dream while old people tell tales. I can assure them as the young people of this country, depending on the way they work hard and the efforts that they put in their studies, they can make it because it all depends on them.

If they are focused on becoming legislators, this is an opportunity to learn briefly on what the requirements and the duties of MPs are. By and large, they will also need to put a lot of effort in their studies because education is important. My advice as a parent is that education is the best gift that we can give to our children. We want them to be

properly intellectually endowed and get the necessary training for purposes of facing challenges in the future.

Mr. Speaker, Sir, I wish them well in their studies and welcome them to Parliament.

**The Speaker** (Hon. Lusaka): Finally, Sen. Boy.

**Sen. Boy:** Bw. Spika, najumuika na Maseneta wenzangu kuwakaribisha wanafunzi kutoka Kaunti ya Makueni. Kama wanafunzi wanavyo tuona hapa katika Seneti, tunawakilisha makaunti 47. Wanafunzi wanapaswa kujua kwamba wakitia bidii wanaweza kuwa viongozi wa nchi hii. Nawasihi wawe na bidii. Nawatakia siku njema na wajifunze mengi watakayo yaona hapa.

Karibuni.

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

## STATEMENTS

### STATUS OF GAS YETU PROJECT

**Sen. Nyamunga:** Mr. Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Energy on the status of Gas *Yetu* – ‘The *Mwananchi* Gas Project’ a Government project initiated by the Ministry of Petroleum and Mining.

In the Statement, the Committee should-

(1) Give details on the status of the project implementation including the findings after the piloting of the project in Kajiado and Machakos counties. The number of households that benefitted and the budget allocated so far.

(2) Explain the procurement process used in procuring the gas cylinders, indicating the person or company contracted to supply the cylinders and confirm if all the cylinders were in their optimal working conditions.

(3) Explain the method or parameters used to identify household beneficiaries and table a list of beneficiaries.

(4) Explain why the project has stalled and indicate when its implementation will resume.

### THE NEGATIVE IMPACT OF MOBILE PHONE-BASED LENDING PLATFORMS

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order 47(1), to make a Statement on a matter of general topical concern.

The mobile phone-based lending platforms have taken the Kenyan lending space left by traditional banking since the law capping interest rates was introduced. Instead of the proliferation of digital loan platforms improving lives, many Kenyans have become prisoners of these systems. The rise of the digital credit market has raised concerns about the risk of excessive borrowing and over-indebtedness among---

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

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

**Sen. Nyamunga:** Mr. Speaker, Sir, I have read a Statement and it has not been committed to any Committee yet we have moved to the next Statement. Is that in order?

**The Speaker** (Hon. Lusaka): These days, it is automatic. Continue Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir. The rise of the digital credit market has raised concerns about the risk of excessive borrowing and over-indebtedness among lower income households because these loans are easy to obtain; they are short term, carry a high interest rate and are available from numerous banking as well as non-banking institutions.

This growing unhealthy appetite for quick loans is best illustrated by the phenomenal growth of 'Fuliza'; the new Safaricom overdraft platform which, within a month of its launch, had splurged Kshs6.2 billion; Kshs29 billion in three months and a whopping Kshs45 billion in six months to borrowers. What makes the credit situation serious is that a majority of those who have developed a huge appetite for borrowing through the multiple mobile phone-based platforms are jobless youth and low-income earners who either do not have clear repayment plans or only have irregular income. It is a big concern that most of these vulnerable borrowers usually need a quick fix for food, housing, school fees and even betting.

If not kept in check, the situation will soon reach boiling point, given that an average Kenyan these days has at least five or more accounts, ranging from the banks, Savings and Credit Co-Operative (SACCOs) and a number of mobile phone-based platforms. Some of these Kenyans accumulating debt and are unable to repay may soon find themselves uncreditworthy. According to the Kenya National Bureau of Statistics (KNBS) and other stakeholders, there are indications that the borrowed money is mostly used for consumerism; borrowing to spend on food, recreation and other basic recurrent expenditure and not for investment, hence the consumers of such credit do not get value from what they borrow.

There is an emerging trend of many borrowers resorting to dodging their financiers and even worse, in a typical survival tactic of robbing Peter to pay Paul; borrowing from one platform to pay another. Others take flight from the creditors by registering multiple mobile numbers for use when they feel cornered by their creditors. Therefore, many of the vulnerable have found themselves blacklisted because of poor credit scores.

My appeal, therefore, is that-

- (1) This House urges the Government to regulate these mobile lending platforms.
- (2) An oversight authority be formed or created that would have the mandate to scrutinize the lucrative interest rates and penalties applied by the digital loan providers with a view to putting in check predatory lending practices.
- (3) A consumer awareness and education programme be put in place to create awareness on the cost of digital credit and terms and conditions of the loans as well as to train the populace on the effective use of credit from such facilities.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I urge our Committee on Finance and Budget to seriously take up this matter. If you listened to that Statement, you will realise that we have two problems.

When the Kenya Banks Reference Rates were introduced in July, 2014, banks were supposed to charge the interest at a certain percentage above the Central Bank Rate (CBR). However, they were given a leeway, which we call the K rate, that would enable them to give every individual a different credit rating based on their risk profile. Nevertheless, the banks behaved as if they were in cahoots when it came to setting up the interest rate. The CBR would be 10 per cent but the banks would charge 26 or 28 per cent which made the last Parliament to put a capping on the interest rates with the hope that the normal Kenyan and the Small and Medium-Sized Enterprises (SMEs) would be able to get credit.

The Government has now locked out most of the SMEs because they cannot borrow from the bank which has made Kenyans to look for alternatives such as shylocks, *Fuliza*, Fintech and the other mobile lending platforms. An interest of 10 per cent per month comes to 120 per cent a year and that is too high. A lot of Kenyans are in debt and they are being auctioned because of this.

Let us look at this issue. People are now betting and getting involved in all manner of things because we cannot provide an alternative source of money. I am sure that many Members get distress calls from their constituents because someone has debt. The Members may not know that the Central Bank of Kenya (CBK) has no regulations for the Fintech industry when it comes to mobile lending. They are not regulated because they say that they are not banks. All they need to operate that business is a letter of no objection.

We want legislative frameworks that can protect all Kenyans who take loans because the rates are too high and the deposits that they are putting in are not protected or guaranteed. We do not want a situation where people put money somewhere just for them to lose it. I thank Sen. Milgo for raising that important issue and I wish that a Member or the Chairperson of the Committee on Finance and Budget can take up this matter because many people are getting lost in debt.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mwaura.

**Sen. Mwaura:** Thank you, Mr. Speaker, Sir. Picking up from where Sen. Sakaja has left, this new way of lending money and raking in huge profits is something that the world is grappling with.

Last week, I was privileged to hear a similar conversation with the head of Intec from the Bank of Hong Kong. They have power to regulate these non-traditional banking systems. They also monitor, not just the mobile money transfer and lending, but also online payments. This is the only way they are able to properly regulate and protect their people from exploitation.

Mr. Speaker, Sir, it is true that the way finances are transferred nowadays is not the traditional way we knew of legal tender such as hard cash or withdrawing money from the bank and so on. We need to call for new regulations and innovations to control all of these kinds of entities. We all know banks are doing a lot of business with mobile

phone companies and raking in huge profits. Some of the banks circumvent the law to make those profits because their interest rates are not capped.

I know of someone who in the normal manner of asking for help from Members of Parliament has borrowed money from *fuliza, tala* and many other lending apps in the social media. These debts are pushing some of them to the wall. They cannot even afford to buy food or do anything beneficial to them because they have over-borrowed from these apps. It is not right for some people to make huge profits from the misery of our young people because they are the ones who are tech savvy and easily access this kind of money.

We, as a House, need to seriously relook into this matter and find a lasting solution. We do not need to re-invent the wheel because the CBK monetary policies and regulations by the Capital Market Authority (CMA) can rein in these new transactions. We need a rethinking of our monetary system, so that we do not allow sharks to make huge profits from gullible Kenyans. These money lenders are looking more like formal shylocks. In fact, they are worse than shylocks because they are mortgaging lives of Kenyans. We cannot discuss national debt without addressing the domestic and individual debts.

Mr. Speaker, Sir, this Statement calls upon this House to rein in on this issue. As the Vice-Chairperson of the Senate Committee on Finance and Budget, we are willing and ready to prosecute this matter expeditiously.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for allowing me to contribute to this Statement. I join my colleagues in thanking Sen. (Dr.) Milgo for bringing it here.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Hon. Senators! Please, consult in low tones, hon. Members.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir. We have become a country where we are borrowing from Government to individuals, even from mobile phone apps. How are these mobile lending platforms taxed in the first place? Are they in the tax bracket of the Kenya Revenue Authority (KRA)? How are they monitored and how much do they make out of this?

I agree with my fellow Senators that this mobile phone lending apps are just like shylocks. They have replaced legalised shylocks. Where there is no regulation, members of the public who are vulnerable will be taken advantage of.

Mr. Speaker, Sir, I agree with my fellow Senators in terms of having a regulation or even a law to regulate these people. We should not only regulate mobile apps, but ask ourselves whether all these people who do business online pay taxes? That is why we are not meeting our tax threshold. The KRA is, probably, falling short of tax collection because these people do not fall under any tax bracket. Who is taxing these people and what is the framework? How do they even know how much they have made through these apps?

This House is known to be addressing issues that are affecting our counties. There has been a gap pending too long and it is high time this House addressed it.

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As a Member of the Senate Committee on Finance and Budget, I also support Sen. Mwaura that we need to dispense with this issue as of yesterday.

**Sen. Wetangula:** Mr. Speaker, Sir, in the old days we had a law called the Money Lenders Act. It was repealed and its contents consolidated in the Central Bank of Kenya Act. The point raised by the distinguished Sen. (Dr.) Milgo is so important and I enjoin colleagues who have spoken to it. In this country today, almost every household owes money to somebody in formal lending, online lending, shylocks and all manner of people who are practicing unlawful acts of lending money to others.

As Sen. Sakaja has said, when one computes what they eventually get from the borrower, it is sometimes over 200 per cent. I have seen some transactions where people are charging 10 per cent per month on any money borrowed. The monies look small, but this cumulative total for a person who is paying at 10 per cent per month is 120 per cent in 12 months. A regulation must be done.

Mr. Speaker, Sir, this is a matter that, probably, the Senate Majority Leader should consider bringing a Bill to look into the repealed Money Lenders Act. I remember we used to go to court and lenders used to leave court in tears because they were not allowed to cream off money from unsuspecting citizens. However, people now live at their mercy. They take your car, television set, cow and everything and walk away with it.

This is a very opportune Statement. As a House and protector of individuals in each country, we need to get into this matter and bring proper regulation. The CBK has not been able to bring regulations to regulate even lending by big companies such as Safaricom. There is no regulation. They just get what they want from the people who are suffering immensely.

I congratulate Sen. (Dr.) Milgo and hope that the Statement will not come to our Committee and be dealt with and be left there, but that we move to legislation to protect *wananchi*.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir. I also concur with my colleagues on this Statement. As Sen. Wetangula said, this practice without regulations has opened many loopholes for shylocks to exploit our people and, more so, students. Majority of students today in universities and colleges have resorted to getting easy money from these apps. As a result, they are so exploited.

It is my appeal that the CBK comes up with proper regulations and more avenues so that Kenyans can easily access money from the banks. We need to regulate these digital platforms so that we reduce exploitation of our citizens.

Mr. Speaker, Sir, the Statement is very important and timely because Kenyans are being exploited.

I support.

#### DEMISE OF HON. FREDRICK ODUYA OPRONG'

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir, for giving me an opportunity under Standing Order 47(1) to bring to the attention of the House of the passing on of a former Member of Parliament, Hon. Fredrick Oduya Oprong'.



Mr. Speaker, Sir, the late Hon. Fredrick Oduya Oprong' was a Member of Parliament (MP) for the then Busia North constituency, which later became Teso Constituency. The passing on of hon. Oduya Oprong', is important because he is among the five living, now four left, Members of the First Parliament of the Republic of Kenya. The only other living Members of the First Parliament remain mzee Moi, mzee Kibaki, mzee Njonjo and mzee James Osogo from Busia.

Mr. Speaker, Sir, the late hon. Oduya Oprong' shall be remembered as a man who brought everlasting peace and tranquility between communities in Western Kenya, that is the Luhya and the Iteso. He shall be remembered as one of the MPs that rose from the ranks of trade unionism. He was the secretary general of the Kenya Mines and Quarries Workers Union before I came to Parliament. He served his people with distinction, having been voted out twice or thrice but came back. He served for two terms, beginning with the First Parliament. Then he went out, came back and went out again. We served with him in the Seventh Parliament. The only Members in this House who served with him at that time is Sen. Orenge, Sen. Khaniri, Sen. Ndwiga and Sen. Ongeru and myself.

Mr. Speaker, Sir, we mourn the passing on of Oduya Oprong', who unfortunately, in 1994 was attacked and shot by a gang of thugs and a bullet was lodged in his brain until he passed on Monday. I thank the former President Moi for trying his best. He took him to London and United States of America (USA) but the lodging of the bullet was so delicate. They said that if they removed it, it would be the end of his life. So, he has lived with this bullet.

However, more importantly, I talked to the family of the late hon. Oduya Oprong', and I was shocked to learn that a man who served four terms has been earning a pension of Kshs9000 a month. That is what he has been living on and his children have been unable to go to school.

I urge the Government and the Senate Majority Leader that we should bring a Bill to this House so that even those who were unable to make a major contribution towards their pension those days can also be factored in some way through the budget so that leaders of this country can be given some decent sunset.

Mr. Speaker, Sir, when you look at our former colleagues who come to this House, the only two with a difference were the late hon. Martin Shikuku and hon. G.G Nthenge, who came here and left without bothering any Member. Hon. Shikuku had an opportunity to prepare and tile his grave. He also kept six bulls for people to eat at his burial. However, we have buried former colleagues in very abject situations.

Mr. Speaker, Sir, I urge the Government that former leaders - not that they are any more important than ordinary citizens - should be given some honor, respect and support so that when they come to the end of their lives, they can leave behind a legacy and families that people can look at.

We shall remember the late hon. Fredrick Oduya Oprong' as a man of peace and few words. However, above all, as a man who, as an MP, made a big difference in his constituency of Busia North then later Teso Constituency which has been represented variously by the late Achiya Echakara, Pancras Otwani, the current governor of Busia, Ojamaa Ojamong and of course, Ojamaa Ojamong's father who died in a road accident in 1971 having defeated the late hon. Oduya Oprong' during his first term.

Mr. Speaker, Sir, may the good Lord rest his soul in eternal peace. May we all emulate the peace loving attitude and politics that the late hon. Oduya Oprong' practiced in this county. May we live to see that those who are still living in those days, for example, Nathan Munoko and Gitu wa Kahengeri who was in the first Senate and a few others - they are a reservoir of knowledge and ideas that can help this country. These great Kenyans did not act in a tribalistic manner, contrary to the way things are today. We have things to learn from them.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I also join the distinguished Senator for Bungoma County in expressing my condolences to the family of the late Oduya Oprong' and the people of Busia.

I thank Sen. Sakaja for hosting us to see the family of the late Oduya Oprong'. It was quite a visit. The comments that were made by the family and friends were touching.

Mr. Speaker, Sir, if there was a true Kenyan patriot, the late hon. Oduya Oprong' was one of them. It is in this House that Jaramogi Oginga Odinga talked about the release of Jomo Kenyatta. 'No independence without Jomo Kenyatta'.

One of the leaders who really spearheaded the campaign for the release of Jomo Kenyatta was Oduya Oprong'. As a mark of gratitude for Oduya Oprong', when Jomo Kenyatta came out of prison, the first rally he addressed in what is now Western Province, was in Malaba. Also, at that time, it was possible for a Member to cross the Floor and join the opposite party if he or she disagreed with a party.

In March 1966, Oduya Oprong' was one of the more than 80 Members of Parliament who crossed the Floor to join Kenya People's Union (KPU). When Kenya African National Union (KANU) brought an amendment that Members were to face re-election for them to properly cross the Floor and remain in the new party, Oduya Oprong' was one of the few who were elected to remain with the new party, the KPU.

When he went back to his constituency and fought for re-election, he was one of the few MPs who succeeded in coming back to Parliament as a Member of the KPU. However, the friendship that he had with the nationalists, Jaramogi Oginga Odinga and Jomo Kenyatta and other patriots like the ones I have mentioned went on throughout his life.

Mr. Speaker, Sir, I am glad that His Excellency the President has sent his condolences for the loss of this great patriot. However, to me Oduya Oprong' taught me one thing; that in leadership, it is always good to stand for matters of principle and the truth. If there is anything to emulate about him, it is his principled stand on any issue. The debates in the National Assembly at the time would count on his strength and the commitment to issues of principle.

In fact, despite the fact that he had a good relationship with Jaramogi Oginga Odinga and Jomo Kenyatta, there is an incident where he went with Jomo Kenyatta and Jaramogi Oginga Odinga to an event in Machakos. The late President Jomo Kenyatta gave a contribution to an impromptu *harambee*. Those were the days when the *harambees* were not a matter of standard practice as they are today. The President gave his contribution in Machakos and asked his Vice President to contribute, similarly. Then, he called upon Members of Parliament (MPs) who were there, including Hon. Oduya Oprong', to give their contributions.

Hon. Oduya Oprong' did not say anything in Machakos. When he came to Parliament that afternoon, he rose on a point of order, like the distinguished Senator for Bungoma rose today, and castigated the President and the Vice President for embarrassing the MPs by calling upon them to contribute to a harambee without notice. In fact, he criticised the idea of harambees. People did not imagine that Hon. Oduya Oprong' would say anything against Mzee Jomo Kenyatta or Jaramogi Oginga Odinga.

There was another incidence when he had an exchange with a Minister whom I shall not mention. Hon. Oduya Oprong' had alleged that he saw that Minister give another MP money in one of the toilets in Parliament. He came to the Floor of the House to say that money was being given out to MPs. The Minister protested and when the matter was taken to the Speaker, because the two of them were honourable Members, the Speaker said that he would leave that issue for the House to decide what to make out of those allegations. Without doubt, he was a true Kenyan patriot.

As Sen. Wetangula has said, yesterday when we visited his home with the Rt. Hon. Raila Amollo Odinga and Sen. Sakaja, it emerged that many members of his family are in a dire state. We have people who have given all to this nation but they are hardly remembered. I hope that in the future, we will find a way of remembering those who fought so hard like Hon. Oduya Oprong'.

I thank you.

**Sen. Khaniri:** I thank you, Mr. Speaker, Sir, for the opportunity. Let me take this opportunity to thank my elder brother, the Senator for Bungoma, for bringing this issue on the Floor of the House, so that we eulogize our departed former colleague.

I join him, on my own behalf and on behalf of my family and the people of Vihiga, in conveying my deepest condolences to the family of our departed former colleague, *Mheshimiwa* Oduya Oprong', the people of Teso Community, the people of Busia, and the people of Kenya in general.

Mr. Speaker, Sir, I had the privilege of serving with the late Oduya Oprong' in the Seventh Parliament. When I came to Parliament, he had just been shot and he was recovering from that although he still had the bullet lodged in his head. He was a true patriot, a humble and friendly man. He struggled to continue serving his people through the difficulties that he had with the bullet lodged in his head. I remember he used to attend Parliament sessions regularly and even answered questions from MPs as the Assistant Minister then. This is one of the few first generation MPs that were still living. I believe we have less than 10. It is sad that we are losing that generation of leadership. These are the people that we should be tapping wisdom from.

My only complaint is that I have been reading so much about him. He has been suffering without any medicare from the Government that he served dutifully earning a meager pension of less than Kshs10,000. In this era and age, living on a pension that is less than Kshs10,000 is unimaginable. It is unfortunate that we only do this when such occurrences happen. We should take care of our heroes; these are people who fought for this country and the freedom that we are enjoying now.. We must make sure that they live in some comfort for the services they offered to this country.

As I sent my condolences, we wish the family peace and strength at this difficult time as they mourn the patriarch of the family. May God rest his soul in eternal peace. Rest in peace, comrade.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir, for this opportunity. On behalf of the people of Nairobi and on my own behalf, I would also like to send condolences to the family of the late *Mheshimiwa* Oduya Oprong', his friends and former colleagues. He lived in Nairobi for many years and his family had a big impact in Mariakani and Eastlands. So, it is not just the people of Busia to whom we should send condolences but also the people of Nairobi, Mariakani and other parts of Eastlands.

*Mheshimiwa* Oprong' was a close friend of my father and I got to know about him when I was very young. Of course I was not as close to him as I would have wanted to. However, everybody who I heard talking about him described him as a diligent man, a principled public servant and a leader who was humble and stood his ground on whatever position it was. Sen. Orenge has just told us how he had the moral authority to resign from his party and move to another one, even at the cost of a by-election. He is a man who stood by what he believed in, despite how difficult it could have been in those days. He was humble and not self-seeking.

Yesterday I had the honour of hosting the former Prime Minister, Hon. Raila Odinga and Sen. Orenge for lunch before we went to the late Hon. Oprong''s home. You should have listened to the kind of sacrifices leaders of that generation made since the First Parliament. You can check the HANSARD records. I encourage Members to go to the HANSARD and read the debates of the First and Second parliaments and you will see how lively they were. He is the only one who could take on the late Tom Mboya on the Floor of the House.

Mr. Speaker, Sir, there is a different culture of public service that used to be there. I urge my colleagues, especially the young Members like Sen. Malalah, Sen. Kasanga and the rest of us who consider ourselves, if not considered by others to be young, to find one of the "older" leaders and sit at their feet.

In the previous Parliament, I had formed a habit of having lunch with the late Hon. G.G. Kariuki at least once every two weeks. The amount of wisdom I gleaned from him cannot be found in any school and it would take me years. The late Hon. Oprong' was one of the leaders who would take time to sit with younger people to mentor them. I hope that is something we can pick up as we try to get into their shoes since the baton of leadership should be passed because we will not be here forever. We will also leave leadership to other young leaders.

Finally, the late Hon. Oprong' left a big family of more than 25 children, many of whom are unemployed. Some just got employment recently. As we interacted with them yesterday, we could see the level of desperation. What will happen to them once we lay him to rest?

I hope that Parliament still considers heroes like him and will help us find a suitable sendoff for him and his family will live with some dignity. As he served Kenya, we took him away from his family and many of us go through the same. They were contributing monthly despite not having income.

We should stand with the family even for those who do not know him. It should be a tribute especially for the first and second generation of leaders. I hope that we will send a good team to Busia County to give him the sendoff that a true Kenyan deserves.

I thank you.

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. I join my colleagues in mourning the death of the former Member of Parliament for Amagoro Constituency, hon. Fredrick Oduya Oprong''. I must admit with all honesty that I did not interact with the late MP, but I read about him in history. By the time he was elected as a Member of Parliament and joined this august House, I think I was still an idea or concept and had not even surfaced on this land.

I have read in the annals of history that this was a great man. Being a man who emanates from the larger former Western Province, as the Senator, and on behalf of the people of Kakamega County, I take this opportunity to mourn this great man. From what I have read about the late MP, he was among the first leaders who met Mzee Jomo Kenyatta when he was released from detention. He was one of the leaders from Western Province who influenced Mzee Kenyatta to visit the larger Western Province.

I take this opportunity to remind everyone that when Mzee Kenyatta visited Western Province, upon the invitation of hon. Fredrick Oduya Oprong', he gave the larger Western Province an additional constituency called Busia North Constituency. This is just one of the things that the late MP contributed towards developing our region.

Mr. Speaker, Sir, much has been said about the welfare of a person who served as an Assistant Minister in the Ministry of Economic Planning and National Development. It is high time we relooked into the regulations and policies governing the welfare of Members of Parliament and any other leader who has served this nation. It is sad that a former Member of Parliament and even an Assistant Minister can earn a pension of Kshs9,000 only. This reminds me that we have many other leaders in this country who are living in abject poverty. Recently, we passed a resolution in this House that former councillors be paid a stipend, just to help them live a decent life. However, up to now, nothing has been done as pertains the implementation of that resolution.

As I finish, I encourage the family with a Bible verse from Psalms 73:26, which says:

“That my flesh and my heart may fail, but God is the strength of my heart and my portion forever.”

May his soul rest in eternal peace.

**Sen. Ndwiga:** Thank you, Mr. Speaker, Sir, for this opportunity. I had the privilege to serve with the late hon. Oduya Oprong'' in the Seventh Parliament. I join my colleagues who have talked about him and his sacrifices during his time.

As a nation, we seem to be taking for granted the heroes who brought us where we are today. We seem to assume that all things have been like this since the beginning. That is not true. It is the sacrifices of the likes of hon. Oduya Oprong'' that have brought us to where we are. I remember in that Seventh Parliament – which was very acrimonious, having been the first multi-party Parliament – we had a situation where some Member of Parliament from different parties would not shake hands. It took the likes of hon. Oduya Oprong''--- At one time we were having tea and he would come and

say: “I do not know what is wrong with you young people. This country will suffer leadership if you become like potatoes in the market.”

Those who were with us during those days, especially those of us who were in the Opposition, will remember that every weekend, the entire Parliament was somewhere in the country campaigning because somebody had defected or had been bought by the then ruling party, Kenya African National Union (KANU). That is the way it was. Hon. Oduya Oprong” would say that if we were going to have leaders who have no principles and do not know why they were elected and just think about their own welfare, this country would get nowhere.

Mr. Speaker, Sir, I, therefore, join my colleagues who have championed the cause of looking at the welfare of those people. Their welfare ought to be looked at. Can you imagine that, today, the elderly people in our constituencies get paid Kshs2,000 a month and those who have suffered and sacrificed for this country like Hon. Oprong” get less than Kshs10,000? These are people who served in this House for 20 years and yet they get Kshs9,000 every month and the *cucu* next door gets Kshs2,000. We need to wake up and rethink our priorities.

I also echo the sentiments of Sen. Malalah. Our former councillors who were also leaders – just go to your constituencies – live in abject poverty. This House has addressed itself to that situation to look at their welfare.

On behalf of the people of Embu County, we send our condolences to the family of the late hon. Oduya Oprong”.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. I also join the rest of the Hon. Members of the Senate in passing my condolence to the family of the late Hon. Oduya Oprong”. I knew him very early in the years of the struggle for Independence. He was one of our most astute politicians at the time of KANU; somebody who would stand up, call a spade a spade and not spare the language. Transitioning from the colonial era to an era of Independence required men of outstanding ability to liberate this nation from the yokes of colonialism. I remember him and the late Hon. Zephaniah Anyieni, who were very great friends.

When we finally became Members of Parliament together, he was one person who stood for the truth. The people of Mt. Elgon will always testify that he is such one person who stood up for their welfare and always made sure that people from that area were well catered for. Particularly, where they were lagging behind in the area of education, he made provisions and assisted as many as he could to gain gainful education.

Mr. Speaker, Sir, we have lost somebody of an outstanding character and ability. It is a pity that he died the way he did, with a bullet lodged in his head. It is a pity that as a Government – whichever Government that has been in power – we were not able to do something for people who fought gallantly for this nation. They spared no energy of their own except for Kenya. We should do something for the retired Members of Parliament whose pension is a mere Kshs10,000 a month. The councillors’ Petition went through this House and it will only be fair for them to be considered too if we do not want them to be in this kind of misery.

I, thank you, for this opportunity and please accept the condolences of the people of Kisii County, my family and myself. I knew Hon. Oduya Oprong'' and his family. God bless his family.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I would like to join Sen. Wetangula and those who have spoken before me in sending a message of condolence to the family of Hon. Fredrick Oduya Oprong'', who served this country as a Member of Parliament and an assistant minister. I did not meet him but I have listened to the testimony shared by Sen. Wetangula, Sen. Orengo, Sen. Khaniri, the Senator for Embu County and the people who served with Hon. Oprong''. As the Bible says in the book of Hebrews, that is a cloud of witnesses that witnessed the heroic acts and leadership of Hon. Oprong''. Therefore, on behalf of the Senate, the people of Elgeyo Marakwet County, my family and I, I send my condolences to his family.

One of the touching attributes of Hon. Oprong'' that we have been told was his forthrightness and ability to speak the truth on issues that were affecting the people of this country. We have been told that he would speak the truth even if what he said went contrary to his party's position or what one would call collective responsibility. Unfortunately, we do not tell people the truth when they are alive. Hon. Oprong'' must have been viewed as a rebel or someone who was not loyal to KANU Government at that time and I am sure that Sen. Orengo and Sen. Wetangula can prove that.

Unfortunately, some of us go through the same things. If one, who is viewed to be in the party that is in power, raises an issue against a Cabinet Secretary because they are not doing their work, they will always be asked to leave the Government. Those people do not ask the Cabinet Secretary to leave the Government. It is easier to chase a Cabinet Secretary than a leader who was elected to speak on behalf of his people.

The dictatorship behaviour and mannerism that is being used to stop leaders from carrying out their responsibilities on behalf of the people who elected them should cease. Some of us would love to be remembered as the people who spoke forthrightly to the people we stayed with and the people we served with, in or outside this House for that is a virtue.

We talk about the welfare of leaders because of the burden that they carry on behalf of the people. The newspapers write stories about leaders wanting to enrich themselves just to appreciate the leader when he dies. Some people go to the extent of saying that the leader was good because he attended *harambees*. That is just pretence and they do so because they do not want to offend the dead. We must have a standard mechanism of appreciating and protecting those who serve this country and that should not just apply to political leaders. We should also protect and appreciate the soldiers who serve this country diligently and the civil servants who give everything to this nation. Civil servants earn meagre salaries yet they offer services to the people of Kenya. People who sacrifice for this country must be given the respect they deserve.

I pass my condolences and wish the family God's grace at this time of grief.

**Sen. Mugo:** Thank you, Mr. Speaker, Sir, for the opportunity. On behalf of my immediate and larger family and on my own behalf, I would like to send our condolences to the family of Hon. Oprong''.

I may not have worked closely with him, but I know that the leaders who served in the first cabinet were very committed. If they were holding leadership positions at the moment, all the nasty things happening in our country would not be there. As the current leaders, we have a lot to learn from them even as we lead the way for the leaders of tomorrow.

The biggest tribute that we can give to this hero and the others who have gone before him is our change of attitude towards our country. We should be patriotic in the true sense of it for tomorrow's leaders to say the same of us. The leaders of yester years are dying in poverty yet they contributed a lot. These leaders brought freedom to our country and as the law makers, we should not be crying about it.

We ought to come up with a Bill that should be passed in this House and the other House. That Bill should state how those leaders, who have gone before us, can be taken care of. I hear that they are about eight or less. Surely, we can take care of them. The 'Super' Senator or any other person can come up with a Bill and I will greatly support it. We can then challenge the Government to take care of those people. I strongly support this Motion and I am happy that we have given tribute to such a great son of Kenya and son of Africa.

**Sen. Mwaura:** Thank you, Mr. Speaker, Sir. I rise to pass my condolences to the family of this great Kenyan. I confess that I belong to the younger generation of Kenyans and the only memory that I have of Hon. Oduya Oprong'' was his name being mentioned on Kenya Broadcasting Corporation (KBC) radio. I also remember mentioning his name when we were listing the names of Members of Parliament from each constituency.

Hon. Oprong'' is not just a parliamentarian. He was a unionist who founded the Quarry and Mine Workers Union. That shows that he had the desire to serve his electorate. From the examples that we have heard from those who served with him, it is clear that he did not allow himself to be gagged. He was not a leader like us, who tend to be victims, yet we have what it takes to change the situation that affects many Kenyans.

Most of the time we are challenged, but it is important to take that action collectively as Sen. Mugo has said. A case in point is the fact that, as leaders, we are candidates to become former Members of Parliament; majority of who are living in squalor because our citizenry does not appreciate that the work of a Member of Parliament is just like any other scheme of service. Conditions may have improved for those who may serve for more than one term, going forward.

There have been efforts to help former Members that have come a cropper. There was about Kshs10 billion that was set aside in the Eleventh Parliament. His Excellency the President spoke about it in the 2013/2014 State of the Nation Address, but nothing much was done in that regard. If you, for example, look at the issue of medical care for those who leave Parliament, including those who were with us in the Eleventh Parliament, it is quite a task.

Kenyans should appreciate that the work of a Member of Parliament is a job like any other and that people have responsibilities. Most of the time there will be blame games here and there; that maybe you did not manage your resources, but with the kind of work that we do, which includes the informal element of being a social welfare dispenser, it is extremely difficult for Members to properly save, especially, as



Sen.Orengo would say; for a politician of conviction, such as the late hon. Oduya Oprong’.

Mr. Speaker, Sir, when you look at it clearly, many of those who have given themselves to public service so that they can serve Kenyans have ended up in a lot of difficulties. He is not the only one. We bury and glorify them in their deathbeds but it is time we did something so that they can also inspire that kind of leadership among the aspiring politicians and leaders of this country.

Mr. Speaker, Sir, I mourn this great fallen Kenyan.

**The Speaker** (Hon. Lusaka): Hon. Senators since the late hon. Oduya Oprong’’ served in Parliament and we have passed our messages of condolence, I ask that we be upstanding for one minute in his honour.

*(Hon. Senators stood up in their places and  
observed a minute of silence)*

I thank you.  
Next Order.

## **BILLS**

### *First Reading*

THE NATIONAL MUSEUMS AND HERITAGE (AMENDMENT)  
BILL (SENATE BILLS NO. 7 OF 2019)

*(Order for the First Reading read - Read the First Time and  
Ordered to be referred to the relevant Committee.)*

### *First Reading*

THE CANCER PREVENTION AND CONTROL (AMENDMENT)  
BILL (SENATE BILL NO. 9 OF 2019)

*(Order for First Reading read - Read the First Time and  
Ordered to be referred to the relevant Committee)*

### *Second Reading*

THE NATIONAL COHESION AND PEACE BUILDING BILL  
(SENATE BILLS NO. 35 OF 2018)

*(Sen. Pareno on 22.05.2019)*

*(Resumption of debate interrupted on 22.5.2019)*

**The Speaker** (Hon. Lusaka): Sen. Pareno, you have 46 minutes.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir, for allowing me to continue from where I left when I started off with this Bill. I was just saying that we seem to be having a department in the Office of the President that deals with some kind of principles on national cohesion and values and then we have the National Cohesion and Integration Commission (NCIC) that deals with integration and cohesion.

We were informed, as we consulted stakeholders, that the NCIC gets less funds because most go to the Directorate. This Bill talks about coordination, better planning and programming of national cohesion and integration issues. It is time we had proper coordination right from a commission that is rightly in place and probably bring all these issues on values and cohesion under the same umbrella. This Bill seeks to provide a mechanism for the proper coordination and implementation of interventions aimed at promoting national cohesion and peace building.

Mr. Speaker, Sir, the distinction between this Bill that seeks to repeal the initial law that was passed is that, in this Bill, we have introduced peace building as a separate aspect. As I said earlier on, it seemed we were handling peace building and cohesion separately. I do not know how we intend to handle these two separately. If we are serious on national cohesion and integration, then all integration and peace building issues should be brought on board under this Bill. They cannot be separated.

The NCIC looks at the index that is brought about after a survey is done in our counties amongst our people. It is done to see how many counties are complying in terms of how we are integrating our people in employment and services to this country. This Bill provides a framework for promoting all these national values and principles and to ensure that we have good governance.

There are issues that tend to disintegrate us. For example, how much are we dealing with intolerance and providing for laws that deal with it amongst us? How much are we dealing with discrimination when it comes to employment, resource allocation and distribution? How much have we done as a country to look for those signs that show we are disintegrating and early warnings that we are not going in the right direction? How much are we dealing with sharing of this power that always brings us to almost near collapse? Those are issues that are core to the integration of this country.

Mr. Speaker, Sir, this Bill seeks to bring all these programmes together so that we are able to have early warning signs that show that we are not going in the right direction in terms of cohesion and that we have tolerance amongst our communities. It is also to ensure that there is balance of power that we fight for at all times. We should have mechanisms to ensure that we take steps to ensure that we do not disintegrate as a country.

At times I wonder whether this NCIC has enough teeth to perform. I once saw a clip of a Member of Parliament making inflammatory remarks. I waited to see what action would be taken against that Member, to ensure that nobody else utters those inflammatory utterances that are so intolerant of one other, but nothing was forthcoming from the NCIC.

I remember that clip where a Member of Parliament said that it is time people knew that certain tribes can fight; that they can sustain war, and that other tribes can just

run, throw stones and that is it. Such utterances are so bad that stern action should have been taken. As the Senate, we should ensure that this Commission really works towards a more coordinated effort.

This Bill seeks to bring more teeth and force. It seeks to allocate, not necessarily resources, but give more strength for this Commission to perform. I wish that at that particular time, we will see the National Cohesion and Integration Commission (NCIC) coming so strongly to deter such utterances that can bring friction among ourselves.

Mr. Deputy Speaker, Sir, the functions of the Commission have clearly been provided for under Clause 6 of the Bill which provides that the functions of the commission are to-

(a) formulate and implement strategies, plans and programmes for promotion of national unity;

(b) collaborate with institutions and stakeholders to give effect to the policies relating to cohesion and integration;

(d) identify factors inhibiting the attainment of harmonious relations among social origins and put in place measures to address this problem.

Mr. Deputy Speaker, Sir, a little bit of teeth has been given to this Commission. Clause 7 indicates that the Bill will provide for powers of the Commission which will include the right-

(a) issue prohibition notices, directing persons or entities involved in actions or conduct contrary to national cohesion, integration and peace building, and give notices within seven days for such persons to cease from such utterances or actions;

(b) summon witness and call for the production of books, plans and other documents and to examine witnesses and parties on oath;

(c) publish names of persons or institutions whose words or conduct may undermine or may have undermined or contributed towards undermining good ethnic relations or who are involved in ethnic discriminations or propaganda of ethnic hatred.

Mr. Deputy Speaker, Sir, we have always kept saying that in this country, in this age and era, we should not just be naming and shaming these persons or institutions. There should be more. We should see more prosecutions. Of course, not in the manner that we saw some time back when one utterance is made by one political divide, the other political divide is included just to balance the persons arrested.

Mr. Deputy Speaker, Sir, it should be on evidence from witness. I hope that with this provision, the Commission will perform its duties in a better manner than what we have seen before.

Mr. Deputy Speaker, Sir, I wish we could, at the end of the day, have more provisions that can give more teeth and not just give notices to cease or summon witnesses but will not have the powers to prosecute.

Mr. Deputy Speaker, Sir, I also submit that in Clause 8, this Bill provides that even though we have the headquarters in Nairobi for the Commission, we should provide for branches throughout the country. This will monitor issues on cohesion, integration and peace building at all times. We cannot afford conflicts or see what we saw the other day in Matungu Constituency or what is happening in Marsabit right now.

Mr. Deputy Speaker, Sir, if we had more branches in counties monitoring the activities that can compromise our integration, cohesion and peace, it would provide better what we intended to have in terms of the national cohesion for this country.

Mr. Deputy Speaker, Sir, this Bill seeks to provide for branches within the counties so that we can easily and closely have these services right with the people and make this Commission more effective.

Mr. Deputy Speaker, Sir, this Bill has departed from the provision that was there in the original Bill where there was no clear mechanism of how to appoint the commissioners of the NCIC. This is the only Commission where there is no panel to vet, approve and then send the names of commissioners to Parliament. In fact, we have a case in court which was concluded although I am told there is a notice of appeal where the court said that the manner in which we pick the commissioners of NCIC is wrong. This is because for the rest of the commissions in this country, we normally have a provision to have a panel that vets the appointees and recommends to Parliament then finally, Parliament recommends to the President to make the appointment.

This Bill in Clause 11 provides for a panel that consists of representatives from the following bodies that will help with the vetting of these NCIC commissioners.

Clause 11 (2) states that:-

“The Selection panel convened under subsection (1) shall consist of one person from each of the following bodies-

- (a) the inter-religious council of Kenya;
- (b) the Ministry responsible for national cohesion;
- (c) the Ministry responsible for matters relating to devolution;
- (d) a representative from the Law Society of Kenya;
- (e) a representative from the National Council for Persons Living with Disability;

and;

- (f) the Public Service Commission.

Again, this is a new provision that seeks to address the concerns that were in the court case and also the concerns that arose where one commission has its Members appointed in a different manner from the rest of the constitutional commissions that are provided for under our Constitution.

Therefore, Mr. Deputy Speaker, Sir, this Bill introduces the selection panel which will be guided by the procedure set out in the First Schedule. Once the names are approved by Parliament, the Bill requires that the President appoints the chairperson and members within seven days by notice in the gazette.

Mr. Deputy Speaker, Sir, we have also come up with a new term of office after consultation with the stakeholders in this matter. The chairperson shall serve for a term of six years which is non-renewable and the members shall serve for a term of five years non-renewable. This is departing from the initial provision in the parent Act that we seek to repeal.

Mr. Deputy Speaker, Sir, we have also reduced the numbers of the commissioners and it is accordingly provided for. It is meant to make it more effective and also cost effective in terms of the high wage bill that we keep referring to.

Mr. Deputy Speaker, Sir, we have provided for a non-renewable term for the secretary to the Commission which is renewable once and provided for the qualification of appointment and also for the Chief Executive Officer (CEO) and accounting officers of the Commission. So, there is slight improvement in terms of what was provided for and what we are proposing in this Bill that seeks to repeal the original Act 2012 that has been in place.

Mr. Deputy Speaker, Sir, Clauses 32 to 42 have provisions that deal with discrimination, hate speech and negative ethnicity. When we talk about cohesion, the first thing that people think of is hate speech. That is where the Commission has really been trying to show that they are working or stamps their authority. They have dealt a lot on hate speech. However, we would want to see them empowered to deal with many other things. Dealing with discrimination is one of the things that can cause friction in this country.

On the issue of negative ethnicity, for example, what I just said and the clip that I mentioned about a Member of Parliament (MP) and dealing with ethnic discrimination is one acts that if we dealt with it as a country, then, we will deal with the issue of inclusivity and at the end of the day, we will have less friction, which means more cohesiveness in this country.

There is also the issue of inclusivity in terms of appointments. This reminds me of appointments to the Cabinet in 2013 and 2017. There was a public outcry that some tribes and ethnic groups were not included in the new look Cabinet. It is only after an outcry by sections of this country that sometimes a balance is done. It should be automatic. People should not cry for space. All ethnic groups should have room and their share in this country. It should not only be observed when there is an outcry.

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

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

Mr. Deputy Speaker, Sir, we should not have ethnic imbalance or discrimination in terms of appointments and employment. That is what this Bill seeks to address. We should try as much as possible to hold this country. We should not wait for pressure from people to demand for a balance in opportunities or a share of something for rightfully being Kenyans.

Clause 38 is about discrimination in access to and distribution of public resources, which I have already talked about. Clause 38(2) states that-

“It shall be unlawful for any State or public officer, while in charge of public resources and without justification, to distribute resources in an ethnically inequitable manner.”

I have already talked about that, and I hope these provisions will be of guidance, noting that in this country, it is not lack of provisions but implementation and observance of our own laws. Most of the times, we have the right laws in place but we disregard them sometimes with impunity.

Clause 41 is about ethnic or racial contempt. Clauses 41(1) and (2) provides that-

“A person shall not utter, publish, write or post words or images intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person;

A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.”

It could deter people from doing certain things if only we observed some of the provisions.

Having said that, Mr. Deputy Speaker, Sir, this Bill has come at the right time when we are talking about building bridges that should bind us together as a country. We need to move forward without any conflict relating to elections or what we see happening amongst our communities. We have boundary disputes between counties, and sometimes we have conflicts that arise out of struggle for resources among pastoralists and others. Sometimes it is because of sharing what people think is rightfully theirs.

I am happy that this Bill will cement our new call in this country that we need to build bridges. We can only do that if it is based on a law. This is one such law that will hold and improve our cohesiveness and make us proud as one country and one Kenya.

Mr. Deputy Speaker, Sir, having moved the Bill, I request Sen. (Rev.) Waqo to second.

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, I stand to second this important Bill.

As we all know, national cohesion and peaceful co-existence are among the most important things we should have in our nation. Currently, there are clashes in most parts of this country but it seems like we are not able to solve some of the challenges that we have.

Currently, there is the National Cohesion and Integration Act which establishes the National Commission and Integration Commission (NCIC). The Commission has the overall mandate of facilitating and promoting harmony and peaceful co-existence between persons of different ethnic and racial backgrounds in Kenya.

When I started, I said that we have conflicts in almost all parts of this country. This Bill will assist to solve the problems that we face. From history, anytime we get closer to elections and afterwards, we have challenges because the ethnic groups in Kenya keep on fighting and pushing one another.

The Commission has, over the years, experienced challenges in carrying out its mandate. The challenges have arisen due to lack of proper definition of the parameters within which hate speech operates as well as lack of proper guidelines on identification of hate speech. In an attempt to monitor hate speech, the NCIC, in 2010, came up with guidelines for monitoring hate speech in the electronic media in Kenya to offer reference point to presenters, editors and all persons working in the media in order to guard against hate perpetration in their work. This was, however, not in enough. We, therefore, hope that the passing of this Bill will address some of the challenges we have faced before. This Bill, therefore, seeks to repeal the existing National Cohesion and Integration Act 2012.

Mr. Deputy Speaker, Sir, much has been said by the Sponsor of the Bill but I would like to zero in a few clauses of the Bill. One of the major changes between this Bill and the existing Act is the inclusion of Part IV on Page 683 that exclusively deals with hate speech and negative ethnicity. We know well that Kenyans are notoriously known for hate speech. Sometimes, people compose songs while others come up with poems just to attach or criticise one another or demean the other group. Despite Article 33(2) of our Constitution clearly stating that freedom of expression does not extend to incitement, violence or hate speech, hate speech has become prevalent especially with the escalating use of social media platforms.

I come from Marsabit County, and, currently, we have ethnic clashes. We have two groups that have been fighting for many years. There are other small clashes but the major one is between the Gabra and the Borana communities. The destruction that has been caused by social media is huge. Part Four of this Bill explicitly defines what amounts to ethnic discrimination, victimization, discrimination in employment, discrimination in membership of organisation, discrimination in access to public resources, discrimination in property ownership and ethnic or racial contempt. This definition will reduce the ambiguity in trying to ascertain what falls within the category of the envisaged offence.

Mr. Deputy Speaker, Sir, on the matter of investigation by the National Cohesion and Peace Building Commission (NCPBC), the Bill places the investigative mandate on an investigative Government agency or public officer. The current Act places the investigative mandate under the Commission. This may have posed enormous challenges as the Commission may not have had the requisite capacity to undertake investigations. With this proposal together with what the Mover has already said, the investigations will be placed squarely under a competent investigative agency or public officer, therefore, increasing the credibility of the outcome of the investigation. This is definitely a plus for the Bill.

Mr. Deputy Speaker, Sir, as the Vice Chairperson of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration, I confirm that we facilitated public participation on the Bill on 13<sup>th</sup> March, 2019. We listened to various views from the public and at an opportune time, we shall move amendments at the Committee Stage to enrich it.

I, therefore, urge my fellow Senators to support this Bill because of the benefits that we have already mentioned and also which the Mover has passionately mentioned as she moved the Bill.

I beg to second.

*(Question proposed)*

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to add my voice to this Bill. I want to commend Sen. Pareno for coming up with this Bill.

The Bill comes in handy at a time when we are talking about building bridges and how we can speak in oneness as Kenyans. Peace building is paramount for this county and any other especially with regard to development. There can never be development

without peace in a country. I thank Sen. Pareno for coming up with this visionary kind of Bill that looks into the issue of peace and seeks to address issues of discrimination.

National cohesion is important. There are so many Motions that have come to the Floor of this House at one point. A number of Senators have brought Motions and also Statements concerning insecurity in some parts of the country. I am also among some of the Senators that have talked about insecurity and the need to ensure that there is peace in all parts of the country.

This Bill really speaks to us as leaders; that there is need to ensure that we push for legislation so that there is peace in all parts of the country. When people are at peace, they are able to communicate and interact with each other. When people interact with each other for the sake of the country, then the country moves forward. In the event of any conflict, there is a way in which conflict can be resolved in a peaceful manner.

Mr. Deputy Speaker, Sir, this Bill has come at the right time because no amount of development can be achieved without peace. As the Senate, we have to ensure that this Bill sees the light of day and does not just stop at the Senate but it must work for us, as leaders, of this country. Recently, there has been talk about the handshake. It is the handshake that is making us cross from one house to another and one place to another. We are communicating without inhibitions between us because of peace.

I am happy that this Bill has gone through public participation. The stakeholders have come, listened to the Movers of the Bill and given their input. When it becomes law, it will become acceptable to the public. This is because the public was involved in this Bill, they gave their take, said what they were not happy about and it was acted on. This Bill should be enacted into law. When it comes into law, it will be very effective.

This Bill also gives effect to Article 10 and 27 on promotion of national unity and national discrimination. As a nation, we have national values. As leaders, we must defend the national values that are enshrined in the Constitution. As defenders of the Constitution and leaders, we must ensure that we walk the talk. We can walk the talk if we ensure that we stand against any form of discrimination and marginalisation in terms of job placement, promotion and work atmosphere.

Mr. Deputy Speaker, Sir, this is a wonderful Bill that we need to support as a House. We need to ensure that this Bill sees the light of the day and becomes law for the purpose of the people that we are leading in this country. This country belongs to Kenyans and they have all the powers. They have spoken to the Bill which means that they have given the go-ahead that this Bill should go a notch higher.

I support this Bill.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill.

We do not lack laws in this country but implementation. This is a very well-thought-out Bill. My only worry is whether it will ever be implemented to the letter.

Where I come from, conflict, unfairness and discrimination perpetrated by people who hold office is just part of the norm. People from Northern Kenya always support whichever party is in power and yet many atrocities have been committed against them like the Wagalla Massacre. Sometimes we think that if we do not support the current establishment, we may be worse off than where we are. The contract of the immediate



former CEO, of the Ethics and Anti-Corruption Committee (EACC), Halake Waqo, ended in January this year and up to now, he is just there.

His deputy got another job when he was still working. I have worked with Mr. Waqo and I know that he is competent. That is the reason as to why I always wonder if he was a victim of ethnicity. People notice these things and that is the reason why our Government must address the glaring discrimination or the perceived discrimination. I have nothing against the former deputy Chief Executive Officer (CEO) because I know that he is competent. These two gentlemen are all competent. The only difference is that one got a job when he still had one while the other one's contract ended early.

How I wish that ethnicity did not exist in this country for it causes a lot of destruction. This Bill speaks to some of us because we know the ills in this country. A CEO will always want to recruit people from his community and when corruption thrives in that institution, there is no independent person to report the issue. People do not realise that ethnicity is affecting this country negatively. Ethnicity is contributing to corruption. If we do not stop corruption in the next few years, we will not have money and the have-nots will overrun this country. I believe that ethnicity is the root cause of these issues. I am glad that this Bill is addressing it.

Hate speech is the other thing. I know that it is being addressed but I at times feel that it is not being addressed adequately. Last weekend, one of the opinion leaders in this country said that Somalis are ruling this country through *wazungus*. That is a careless statement that should not be made by an opinion leader. Somalia is a sovereign country but people forget that we have Somalis who are Kenyan citizens and they are in this country by right. We are not anybody's guests.

Some prominent politicians make sweeping statements such as; 'they take over businesses or they do this and that'. Unfortunately, the Boranas, who look like the Somalis, have been victims of such classification yet they are Kenyans. The colonialists found Wajir where it is at the moment and it is not my fault that the British placed the border where it is. We have Somalis in Somalia, and there are some Somalis in Kenya. We should look at some of these things based on how they impact people's lives.

Clause 3 of this Bill talks of giving effect to Articles 10 and 27 of the Constitution. This Senate protects the counties and their governments. We have pronounced ourselves by creating legislations, protecting counties and bringing the articles of the Constitution to life.

Article 27 of the Constitution is also addressed by this Bill. Clause 6(f) of this Bill states that:-

'The functions of the Commission are to—

(f) Investigate complaints of hate speech, ethnic or racial contempt and discrimination on the basis of ethnic, clan, religious and racial origin and make recommendations to the Director of Public Prosecution or other relevant authority on the appropriate measures to be taken where such complaints are valid.'

The issues that I have addressed explain the reason as to why I resonate with this Bill.

Clause I talk about the Commission doing research. Without research, you can never generate data. For one to put their arguments forward, they need well researched documents and that applies to law making.

The Bill also talks of early warning systems and response to conflict. Many people die and destructions are caused by conflict between clans or tribes. It is sad that this is allowed to happen yet warnings are always there. We have cases where the law enforcement officers have intelligence about impending conflict but they fail to use that information to address the underlying issues so as to prevent the conflict.

This Bill is good because it talks about proactiveness and it provides for the establishment of mechanisms for early warning system to prevent brewing conflict from turning into fully-fledged conflict.

Clause 7(2)(c) states that;-

‘(2) Without prejudice to the generality of the foregoing, the Commission shall have power to—

(c) publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discriminations or propagation of ethnic hatred.’ That is good, but it is not enough to publish the names of those people because most of them are shameless. In fact, they are the ones who publish hate speeches and ethnic hatred on social media. Therefore, publishing their names will not have a significant impact. We need to take drastic measures to deter people from publishing hate speech, ethnic profiling, discrimination and propaganda. For us to thrive and develop, as a country, we need an enabling environment where every Kenyan can work and use their brains. Kenyans should not be discriminated because of their ethnic background.

Clause 7(e) talks about control, supervise, administer the assets of the Commission in a manner and for the purposes that best promote the purpose for which the Commission is established.

When such a thing as stated in that clause happens, it creates sustainability for the Commission, so that there is always accountability within the institution.

Mr. Deputy Speaker, Sir, Clause 8(2) says:-

“The Commission shall ensure that all its services are accessible to all parts of the country and may establish branches at any place in Kenya as it may consider necessary.”

Mr. Deputy Speaker, in my county, there was an incident where somebody talked about getting rid of a specific sub-clan from a specific region. That issue was even reported by the Nation Media Group on *NTV*, but nothing happened. If these people will be in that local branch, then this *mama* will have an opportunity to walk there and complain about the conduct of that individual.

I am talking about politicians. As much as we are the representatives of the people, we must be very careful with what we say. This is because for us to be elected to a position of authority, we command a certain level of influence. When we utter those utterances, then it is like we are instructing them on what to do. If they do what we told them to do, then we cannot say that we did not tell them to do it.

Having those branches in every part of this country, we will be giving our people a platform to report and complain about those issues. I had discussed earlier regarding proactiveness and an early warning system. This is because somebody can report these issues earlier and action be taken at the right time.

This Bill reminds me of a teacher who resonated with me very well. The late Deker Ibrahim; a great teacher. She stopped a conflict that was ongoing for five years by just mobilizing women. We, as individuals and leaders, can do small things that can influence the society in a major way, so that our people stop fighting each other. I am sorry because I get emotional when I talk about conflict. What do people gain when they propagate messages that causes conflict and death? That is the question I always ask myself.

Clause 9 talks about constitution of the Board. I believe the quorum of four commissioners is not good enough. Here we are talking about three commissioners and one chairman which makes them four. If they disagree, there is no mechanism to balance and ensure there is one extra person when they cast their votes. If two are on this side and the other two are on other, then there will be a stalemate when they are taking vote.

I am making that recommendation because the kind of people we nominate to these commissions sometimes may be busy with other things. Getting a quorum where there are only four people may pose a problem. As much as we are thinking about the wage bill and being efficient with resources, we have to think about the practicality of the issue. Let us have at least five or at most nine commissioners, just like any other commissions.

Mr. Deputy Speaker, Sir, in terms of the procedure for nominations, given what happened in court in the other nominations process, I am happy Clause 11 of this Bill is speaking to it. That is clarified in terms of the selection process for those commissioners. We are leaving it to Parliament to nominate and vet. What are they vetting? They are the same people who nominated.

I am running out of time, so I am skipping so many things. Let me comment on Clause 33.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You better skip as much as possible; you have two-and-a-half minutes.

**Sen. Farhiya:** Mr. Deputy Speaker, Sir, Clause 33 says:

“A person discriminates against another person by way of victimization if the person carries out an act that is injurious to the well-being and esteem of that person by treating that person less favourably than other persons on grounds that the person discriminated against intends to or has—”

There are several issues addressed by this clause. Basically, there is a lot of thinking and research that went into this Bill unlike most other Bills. There is ethnicity in terms of constitution of public offices. Currently, it should not be more than 30 per cent of one ethnic group. I think that is even too high. It should be reduced to 20 per cent.

One time, there was an issue that was brought to the Senate Committee on Delegated Legislation in terms of a regulation. There was a committee where all the nine members came from one ethnic group. When we inquired, we were told there were almost like four or five other institutions that were nominating independently. However, all of them happened to be from the same ethnic group. This country belongs to 44 tribes. Let us address this issue exhaustively because that is why our people fight.

Mr. Deputy Speaker, Sir, I think this issue needs to be addressed adequately. I am very happy that the Bill is addressing some of those issues. I thank you for giving me an opportunity.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Proceed, Sen. Madzayo. Use the Dispatch Box.

**Sen. Madzayo:** Asante, Bw. Naibu Spika, kwa kunipa nafasi hii pia nichangie Mswada huu.

Kwanza, ninamshukuru sana dada yetu, Seneta Pareno, kwa kuleta Mswada huu wa marekebisho ambao hatimaye ukiwa sheria utasaidia vitengo vingi sana katika Kamati ya Uwiano na Utangamano.

Kwanza, tunazingatia amani. Tunakumbuka baada ya uchaguzi, nchi yetu ya Kenya ilikumbwa na taharuki za aina nyingi ambapo tulipoteza maisha ya watu wetu. Hakukuwa na amani na biashara nyingi za watu zilizoroteka. Hali ya kutojua kesho itakuwa namna gani ilikuwa imetanda kote nchini.

Hivi sasa, naona mambo mwafaka ambayo dada ameyaleta hapa na marekebisho mengi ili kuona taasisi yetu hii itakuwa na sheria mwafaka zitakazoweza kutuongoza katika mambo ya uwiano na utangamano na watu wazidi kuishi kwa amani.

Ni muhimu kukumbuka nyakati kama hizo tukiangalia katika sheria hii ambayo imewekwa hapa, katika ukurusa wa 683. Mswada huu unaweza kuzingatia zaidi mporomoko wa maneno ambayo yanaweza kuleta chuki na makabila kukosana.

Mswada huu utatulinda haswa tukizingatia ya kwamba kumekuwa na mwelekeo mwema ulioanzishwa na Rais Uhuru Kenyatta na 'baba' Raila Amollo Odinga walipopeana pambaja na kusalimiana vizuri. Tumeona ya kwamba, hivi sasa, tuko na ndugu Maseneta ambao wanaenda kila mahali katika nchi na kuwahimiza watu wetu kukaa kwa amani na ushirikiano ili nchi ipate kuwa na mwelekeo na maendeleo.

Yote haya yakijiri, yatasaidia katika ugawaji wa mambo kama vile kazi. Hatutalalia upande mmoja ya kwamba kabila fulani limepewa nafasi na makabila mengine yamekosa. Hivi sasa, kama ni chakula katika nchi yetu ya Kenya, Rais anaweze kuchukua wakati wake kuona ya kwamba kila makabila yote 43 yameweza kupata ugavi huu wa keki ili kila mtu katika jamii aweze kujihisi kuwa yeye kuwa yeye ni Mkenya.

Bw. Naibu Spika, tumeona ya kwamba matusi au matamshi ambayo yanaweza kuleta chuki na fitina za kikabila yanaweza kutukosesha sisi miundo msingi ya kuishi kama Wakenya tunaependana. Hapo awali, nimetangulia kusema kwamba tumekuwa na hali ya sitofahamu. Hatukuweza kuona ya kwamba sisi kama Wakenya, ni lazima tuwe na sheria ambayo itaweza kutuleta karibu na kulinda masilahi ya kila Mkenya.

Kwa hivyo, nikimalizia, Mswada ambao tunautazama ni umuhimu sana kwa mambo ya uwiano. Kisheria utaleta Wakenya pamoja na kukosoa utangamano.

Katika Bunge la Seneti, sisi tunaunga mkono Mswada huu. Iwapo utapita, utaleta maendeleo ambayo tunatarajia, kama vile kuona Wakenya wakiishi kama jamii moja.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Asante Sana. Sen. Madzayo. Proceed, Sen. Seneta.

Sen. Seneta is not there. Proceed, Sen. Halake.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. You caught me off guard.

I rise to support this important Bill that has been brought to the House by our sister, Sen. Pareno, who is well vast in the whole issue of cohesion and peace building.

This Bill has been well thought through as has been mentioned by my colleagues. However, I wonder if creating more commissions is the answer to do away with negative ethnicity or bring ourselves as one nation with one ethos, values and without the negative ethnicity that we experience.

I keep wondering if we really look at the root cause of our problems, for example, the ethnic antagonism that we see around elections and other resource conflict. While this is important, we look forward to having a very strong Commission that would flex its muscle. However, we have seen the work of commissions in this country, what they have done and not done.

This is such a noble idea. However, will we really achieve the objects and outcomes we seek as a nation with regards to having an inclusive society that has shared prosperity and values that will guide us whether or not there are policemen around which are basically the commissions that we are putting in place?

Therefore, I hope that this is one of the ways in which we will look for deterrence. However, as a nation, we need to put in place other mechanisms that will do away with what it is that ails us with regards to our lack of Kenyanness where we retreat back to our ethnic, regional groups and tribes. Within the tribes, we do not stop there, we go down to the clans, sub clans, windows and the doors. So, it is a big cancer that we need to deal with.

I know that people like Sen. Pareno have dealt and worked on these issues. Therefore, I hope that she does not stop at putting in place the Commission through this Bill, but looks at other underlying issues that drive and fuel negative ethnicity that we see.

Sen. Pareno and I come from tribes that are proud of their heritage. We live it every day. We have such good things. Tribalism is such a good thing on a good day. It is not wrong for a person to subscribe to a certain tribe or a country to identify with a tribe. It is the negative aspect of it where the political class or may be, the social classes feel like they have a lot to gain by putting people together in a certain way, that drives these kinds of ethnicity. For example, the resources that they are trying to marshal or barricade, the power they are trying to amass or the influence they are trying to protect.

The driver of this thing is the fact that there is so much poverty and lack of education in certain parts which fuels this. There are people who say that so-and-so has read for us the Constitution and therefore, whatever they say is the gospel or koranic truth.

Mr. Deputy Speaker, Sir, I support this Bill. I look forward to its implementation and to the day that the institutions that exists, for instance, the public sector will work for us. I am seeing a proliferation of commissions that are filling the gap of something that should have been done by something that already exists. I know that Sen. Pareno has already seen the gap. I have no doubt about that. However, beyond that, I hope that we will make our institutions and values to work and raise the right families that will uphold the rule of law and look at themselves as good citizens of this country.

Mr. Deputy Speaker, Sir, I also noticed that as Senators who are mandated to protect counties, these commissions are national in nature. I wish that we would look at commissions at a lower level so that our approaches are grassroots and county based as opposed to having one more commission that is headquartered in Nairobi.

I do not know if, Sen. Pareno, there is a way in which this Commission can cascade to the counties so that we look at the problems at the grassroots level. As you know, every commission that we have in this country is based in Nairobi with very little, if any, cascading to the counties or to the levels that provides services at the grassroots.

Other than that, I like the fact that the principles and the functions of the Commission are also well laid out. I hope we will not have any duplication of roles carried out by other commissions and institutions of Government because sometimes that is what we do. We create systems that are parallel and conflicting which becomes a source of inactivity or non-performance so to speak.

This Bill seeks to address issues of discrimination in terms of ethnicity, participation in different economic sectors, employment and victimisation or ethnic profiling of some of the ethnic groups. I am aware that there are people of certain religions or tribes that are victimised for various reasons.

The other day, I saw an advert of people of Somali or Borana origin at Nyayo House. They had gone to apply for their passports but the way it was portrayed, it was as if the only people that apply for passport are the ones that I have mentioned. Passports are not luxuries. They are travel documents that we have a right to. Such adverts are satirical and can make you laugh but there is the underlying ethnic profiling. When you go any airport, somebody that looks like me is checked thoroughly. I hope we will have an end to discrimination and victimization in different areas of employment.

I am glad that Sen. Pareno thought of this because there is no rule that applies to everything. Issues of discrimination and affirmative action have been looked at in the Bill. So, this Bill is comprehensive, and I congratulate the Senator for bringing it. She has educated most of us on it because most of us had questions around creating another parallel system. I am happy and impressed that she has gone out of her way to ensure that certain exceptions have been made with regard to how the Commission will work. This is pretty different from what we have in place, and I hope it will not be defeated here. My worry is that sometimes when you put in place some of the institutions, we assume that they will be like a magic wand.

There is a lot of work that needs to be done. I hope that this House will work with commissions and other agencies of the Government to ensure that we do away with discrimination, victimisation and ethnic profiling that makes a section of Kenyans feel “less Kenyans” and disenfranchised. We have those who have nothing to lose. We have witnessed insecurity and people joining terrorist groups since they have nothing to lose because they do not feel that they belong here.

Mr. Deputy Speaker, Sir the people living in North-Eastern part of Kenya bear the brunt of ethnic profiling. I was telling somebody that for me to get an identification card in 1990s, I had to wait for long. At some point, I had to travel to Nairobi because at that time, they felt that the area chief did not know me quite well. Although he knew my parents, he insisted on being paid. Such kind of victimisation, discrimination and people

having to be vetted because they dress differently should stop. I hope that will be a thing of the past. The work will begin when we have the Commission properly put in place.

I hope this House will realise that it will be a new beginning if we pass the Bill, which I hope we will. We will support it fully because we know that a country is as strong as the institutions that it has. However, those institutions cannot be strong if we do not have the right people and the right systems in place and provide resources for them to achieve their mandate.

As I congratulate Sen. Pareno, I look forward to working towards ensuring that we eliminate the vice of negative ethnicity so that we become an inclusive nation.

I thank you.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to make my opinion known on this Bill by Sen. Pareno. I am also glad because I had concerns that it would contradict the NCIC that is led by Hon. Kaparo.

This Bill seeks to repeal the existing one to make the Commission stronger and better in terms of performing its duties. We have seen how they look toothless when they are required to respond on issues of ethnic discrimination and hate speech. They always complain that they are unable to act to the detriment of this country.

We know that lack of cohesion and peace building led to deaths and displacement of people in 1992, 1997 and the worst was in 2007. This Bill therefore seeks to give the Commission teeth, so that we ensure tolerance and cohesion in Kenya.

The Bill also seeks to correct certain areas, for example, nomination of members to the Commission. Initially, it was the National Assembly that advertised, conducted interviews and vetted people. That is a conflict of interest. With the establishment of a selection panel, it will ensure that the right people are given jobs in the Commission.

The Bill will also give the Commission teeth in the sense that funds will be allocated directly to the Commission and not just directorates. They have been complaining about budgets and having no funds to move around. According to Clause 27, funds will be allocated directly to the Commission.

Under Clause 18, the Commission will co-opt members or hire expertise because no one has monopoly of knowledge. Therefore, they will be able to co-opt other Kenyans to assist them in this noble duty.

I also request the sponsor of the Bill, Sen. Pareno, to consider amending it in terms of the membership to the Commission. We have the chairperson and three other persons. That gives an odd number. If there was a decision to be made, there would be no one to break the tie. I request that we have a chairperson and four other members or reduce them to two members because too many cooks spoil the broth.

Clause 32 also clearly spells out the definitions of the terms “discrimination,” “hate speech”, “negative ethnicity” and “ethnic discrimination.” This will remove the ambiguity that we have been facing when people are arrested for hate speech. When they go to court, they find a loophole in terms of the definition of hate speech and get away with it.

This Bill includes the important aspect of peace building; something that was initially lacking. We neglect this aspect, as a country, and leave it to Non-Governmental Organisations (NGOs) when in essence, the right to security and peaceful co-existence is

enshrined in our Constitution and should be the work of the Government. By having peace building as an aspect in this Bill, that will ensure that all issues of cohesion, integration and peace are in one place and are managed properly.

Mr. Deputy Speaker, Sir, with those few remarks, I thank you for the opportunity. I also thank the sponsor of this Bill who is very well versed with issues of integration in this country.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Were. The remarks are, indeed, few.

Sen. Sakaja, are yours few or many?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, on this topic, I can talk for a day. Unfortunately, there is a limitation on how much I am allowed to contribute. So, I will make the best use of the time allocated.

Allow me to commend the effort by Sen. Pareno to try to codify and legislate on this matter. This is one of the things that we least speak about in this country – cohesion and peace building – yet it is possibly the most important ingredient in building our nation. For so long, we have concentrated on the hardware in Kenya – railways, buildings and physical development – yet many times we forget the software – the values, love for one another, national ethos and our cohesion.

Just the other year, we saw the railway line that was built hundreds of years ago only took three hours to uproot, and buildings that have been built over years take only one day to burn down. This is where our focus must be as a country. I am glad this is where the focus of His Excellency President Uhuru Kenyatta is together with the former Rt. (Hon.) Prime Minister in terms of building bridges.

In the last Parliament, I was the Chairperson of the Committee on National Cohesion and Equal Opportunities of Parliament. It was one of the only two Joint Committees. I had 15 Senators. In fact, Senators alone constituted a quorum and then there were 15 Members of the National Assembly. When we started our work – I am glad that the successes of that Committee include Sen. Pareno among others – we had a huge task ahead of us because for the first time, we were defining such a Committee in Parliament. Earlier on, it was not joint because, of course, there were not two Houses, and it focused mainly on marginalised groups like youth, women and so on. However, we felt that the issue of national cohesion was extremely important.

We dealt with matters of cattle rustling and even proposed pieces of legislation like amendments to the Penal Code for the first time in years. We focused on public appointments and the share of opportunities in public offices and county governments. The County Governments Act says that not more than 70 per cent of those employed within a county should come from the same community.

We traveled a lot and I do not think any other Committee – possibly the Committee on Budget and Appropriations in the National Assembly because it divides itself up – has been able to cover as many counties in one term. We went to 34 counties and had meetings and *barazas* with *wazees* and the youth.

We signed up to six peace agreements between communities that had been previously antagonistic and had been fighting; from the Samburus and Turkunas in



Baragoi in Samburu County; to the Pokots and Turkanas in Lokwar-Nakuse and Turkwel; to the Tugens and Pokots; and the communities in Tiaty. Many of those have never gone back to the ways that they had. In fact, one thing that really moved us was a joint meeting in a place called Nginyang or possibly Loruk, where we met the actual warriors from the two communities.

The discussion started in a tense way. In fact, they could not allow the area Member of Parliament to speak because some of them felt that he was the one causing division. After the discussion, we slaughtered livestock and they hugged each other. To date, the former warriors of the two communities patrol jointly and do peace caravans.

When we went round, we found that in this country that covers 583,000 square kilometres and was made a Republic in 1964, many Kenyans lack a sense of belonging. Majority do not see themselves as Kenyans first. Many of us look at ourselves as Kambas, Luhyas or Kikuyus first and then Kenya. It is lack of a sense of ‘Kenyaness,’ which has been contributed by a number of factors.

Secondly, we realised that in many places, we do not see boundaries as bridges but walls. As you might have seen in the last Parliament and even in this one, many petitions keep coming on boundary disputes; that a certain community has crossed our boundary, as if there are limitations as to where Kenyans can live despite what our Constitution says. Every Kenyan has a right to respectfully live in any part of Kenya. We realised that conflicts have been created because of scarcity of resources. The scarcity of water, especially during famine and drought, has caused a lot of conflict.

I dare say that our greatest challenge as a country today – which I like to call the challenge of our generation – is to unite our people. It is to do all that appertains to that work including legislating, putting together institutions and programmes like the Building Bridges Initiative (BBI) that will make us feel Kenya. That is why what Sen. Pareno is doing is really the hallmark of a legislator; to bring up a Bill from scratch and take it through the motions. It will take you time and it is not easy, especially in this bicameral Parliament. However, take heart knowing that what you are doing is not a favour to yourself or this House, but a great service to our nation.

This country has had different generations that have played the roles. Our first generation of young Kenyans together with old Kenyans from whom we draw much inspiration like the Tom Mboyas and Mwai Kibakis who worked with the Kenyattas *et cetera* – traversed this country from the north to south and east to west, with the Jaramogis and Kaggias. They were imprisoned because they knew the cause of their generation was to free us from the shackles of imperialism and help us get a country’s independence. They did all that it took for them to get that and they did it.

Our second generation was also in tune with its season during the Moi times. I do not know where many were. The time for some of us had not come. I am not sure where the Deputy Speaker was.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should account for yourself, Sen. Sakaja.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I was very young when the fight for multiparty democracy happened in this country in the late 1980’s and early 1990’s,

spearheaded by the Matibas, Kibakis, Railas, Orenegos, Muites, Nyong'os and others. They fought a system that did not want them to survive.

A few years ago, I was on a television debate as the Chairman of the TNA Party. On the opposing side was Prof. Anyang'-Nyong'o, who was then the Secretary-General of ODM. I had defeated him on many points in the debate until he asked me where I was in 1992, when they were fighting for multiparty democracy. I responded that I would have loved to be with them, but I was in Class Two. There was no way I would have been part of that struggle.

The point that I am making is that every generation in this country has its cause. There is nothing more powerful than that which is in tune with its cause. The cause and season that we have today is that of uniting our people. Our country will not hold further.

Mr. Deputy Speaker, Sir, from the time that I was very young and growing up in this City, I would hear Kenya being hailed as an island of peace within a sea of turmoil, because of what was happening in South Sudan when it was still Sudan; Rwanda, Uganda, Burundi and Somalia. We used to hold ourselves proud as Kenyans, because we host a United Nations (UN) agency, and that we were a country where the people loved each other. We had a mantra that President Moi had given us of peace, love and unity until 2007. We had small skirmishes in between. However, in 2007, we realized that what we had always called the 'fabric' that holds our country together, is just one election away from being torn from top to bottom like the veil, when Jesus Christ was crucified. We are just an election cycle away from tearing each other up.

Mr. Deputy Speaker, Sir, some madness descended on our country when brother turned against brother, and neighbour turned against neighbour. We have had hate in our political life cycle in this country and we must question why hate dominates our political life. Why is it that when somebody else gets into power who is not from my community, we feel that we must hate them, or that we are doomed for the next five or ten years? Unless we ask ourselves those deep questions and go to the root cause, we are doomed.

Since Independence, despite the issues that the other generations have had to deal with, have we, as leaders created, a Kenya where every Kenyan, no matter where they are from, feel as Kenyan as the other? What is the Kenyan identity? What does it mean to be Kenyan? Are we just over 40 million people who have found ourselves within certain borders, and because of our different ethnicities, we just need to get along; or is there an identity that we can create? I believe that every Kenyan, wherever they are and whatever they do, invariably want the same things; to go about their life peacefully, make something out of themselves and guarantee their children a future.

Mr. Deputy Speaker, Sir, I Chaired a Committee in the last Parliament that was called the Committee on National Cohesion and Equal Opportunities. Once we equal the opportunities so that Sen. Pareno knows that her child in Kajiado County has the exact same shot at life as Sen. (Dr.) Zani's child in Kwale; unless Sen. Murkomen's child in Elgeyo-Marakwet County has the same access to healthcare and school as my child in Nairobi County, everything that we do towards building cohesion cannot work.

Until everybody feels as Kenyan as they are, cohesion cannot work. Unless you know that even if you study in Kilifi, Lamu or Mandera, you will get the same quality of education and the same chance at getting a job as anybody else, cohesion will not work.

Those are the things that we need to focus on, as a country. We need to build a Kenyan identity.

Mr. Deputy Speaker, Sir, we must take responsibility, as politicians, even if we, as individuals, have not done it. I personally have stood strong for 'Siasa Safi' as my slogan, because I represent a county that is inhabited by all the 43 tribes. All the communities can be found here in Nairobi. There is no problem that affects Kikuyu that does not affect the Luo, Luhya or Kamba. There is no pothole that only affects the Luhya; lack of water that only affects the Kamba, or a garbage collection problem that only affects the Meru.

We only have two communities in Nairobi; the rich and the poor. The same pain that a mother in Meru feels when she cannot feed her child, is the same pain that a mother in Kisumu feels. Similarly, the same joy that a father in Turkana feels when his child succeeds, is the same joy that a father in Mombasa feels. However, for the longest time, we have divided our people along ethnic lines for our selfish political, economic and personal ambition. Those are the things that must be addressed by the institutions that we create.

Mr. Deputy Speaker, Sir, I have a problem in setting up this institution in the manner opposed to what the National Cohesion and Integration Commission (NCIC) is set up. The NCIC is a people's Commission, not one whose setting up is started by the national Government. It cannot and it should not be an appendage of the national Government. However, looking at how Sen. Pareno has designed it, I think that can be covered. It was supposed to be set up by parliamentary initiative by the representatives of the people.

As I move to conclude, Mr. Deputy Speaker, Sir, I know that we have had corrupt officials. Kenyans feel that if an office is led by someone from their community, they will be served best. When you go to public offices today, you will hear people proudly trumpeting in their vernacular languages. I remember when the Inspector-General (IG) of Police was being vetted, I asked him to affirm Kenyans, because the only friends of the Committee who showed up were from his ethnicity. I told the IG of Police that he might not be tribal himself, but his people will come and put him under siege, by telling him that he must remember that charity begins at home. They will tell him that his secretary and driver must be Kamba, as we have seen in many different offices. I am glad that the IG of Police, Mr. Mutyambai – who I have a lot of respect for – has hit the ground running. He has showed, time and time again, that he is an IG of Police for all Kenyans.

Mr. Deputy Speaker, Sir, very few Senators can proudly say that the biggest qualification for their members of staff is not ethnicity. Why should I feel that I can only trust somebody from my community, yet we are trying to build a nation of all communities? Why is it that most of our house girls and other domestic workers are from our communities? Your bodyguards are from your communities, yet you say that tribalism is only when it is on State appointments. That is hypocrisy of the highest order.

We, as legislators, must look deep into the issue of vernacular in public spaces, including in our television and radio stations. We fault Tanzania for many things economically, because they have not moved at the same pace that we have as an economy. However, in Tanzania, even in the depth of a village, if you try to speak in a

*matatu* in your vernacular, you will be frowned upon because they know what it means and how it feels to those who may be somewhere else.

Mr. Deputy Speaker, Sir, we must relook at the issue of vernacular in the media. Our Constitution recognizes only two national languages; English and Kiswahili, and there is a reason for it. When you come out of your vehicle after listening to Wimwaro FM or whichever station you listen to in Tharaka Nithi, do you come out feeling more of a Kenyan or more of a Meru? We are proud of our cultural heritage, but we are at a point where we must make very deliberate moves to unite our people. When Sen. (Dr.) Musuruve comes out of her car after listening to Mulembe FM and talking in Luhya with her Personal Assistant (PA), driver and aide, does she walk into the Senate feeling more Kenyan or more Luhya?

Former President Moi once said that multiparty politics will divide us. I believe in multiparty democracy, but we have changed parties into ethnic Balkans. Today, you can tell me what the Kikuyu, Luo, Kamba and Luhya parties are. That speaks volumes about the kind of country that we are trying to create. Our counties have become ethnic Balkans. Today, you cannot get a job in Bungoma County if you are not a Luhya, particularly a Bukusu. Tomorrow, you will not get a job in Nyeri County if you are from Kiambu, leave alone not being a Kikuyu. Did we create devolution to divide us further or to bring us closer as a country?

Mr. Deputy Speaker, Sir, as the Chairpersons of the Committee on Labour and Social Welfare, I am working very hard to set up a meeting with the Council of Public Service Boards on the 5<sup>th</sup> of June to create a county public service where we can do inter-county transfers. What happens to a young man called Wafula born in Eldoret, whose name does not sound like Eldoret, which is the only place that he knows, yet he is told to go get a job in Trans-Nzoia or Kakamega Counties, where nobody knows him?

Sen. Pareno, as you establish this institution, we need to have the proper ethos in the leadership and spirit to not just create jobs for the boys, but a Commission that will get to the root causes and make us feel Kenyan again. As Sen. Halake has said eloquently, this must cascade to the counties.

In every constituency, we put up peace committees that have never been funded since 2007. We have *wazee*, the churches, religious leaders and Imams who sit together but and cannot even afford to take a soda. Those peace committees must be funded.

Mr. Deputy Speaker, Sir, as I conclude, there is no greater cause for us today, as a country, than the building of bridges and uniting our people. I urge the President, His Excellency Uhuru Kenyatta; my good friend “*baba*,” the former Rt. (Hon.) Prime Minister, Raila Odinga, and all our leaders, that the truest legacy that we can leave this country for generations to come is a country where, no matter where you come from, you will one day feel proud to be a Kenyan. That way, tomorrow, an El Molo or Njemps can become President because of the kind of society we would have created, founded on love, peace and unity.

Congratulations Sen. Pareno. We support this Bill to the end and will help you get it passed.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Dr.) Zani:** Thank you very much, Mr. Deputy speaker, Sir. World over, the issue of equal opportunities is always critical. In fact, societies and countries' health index, in terms of the health of the nation and in terms of development, is based on the level of equality, inclusivity and how everybody feels that they are part and parcel of the system of the country.

That, in turn, contributes to the level of effort that they put in, in terms of actually building those countries and trying as much as possible to raise those countries to a better level. It always has to do with the real making of an effort. For example, you will find people in countries like Australia going out of their way to make the indigenous of that country – the Aborigines – feel part and parcel of the system. They do this by acknowledging those ancestors even before any speeches are made because they are important. Now, that is the format of doing things.

Mr. Deputy Speaker, Sir, you will find people in many countries looking at the Gini Coefficient to find out how unequal countries are, or what the level of inequality is. Many countries try as much as possible to move towards inclusivity. If you look at the correlations of inclusivity and development, I suspect they will be very high. This is because where everybody is happy and moving to a point, then we are doing very well.

We have had a Commission, the NCIC, in place for a very long time, and we need to even get to the level where we evaluate that Commission. Were they effective at the end of the day? Were they heard? Were they able to speak up when they needed to speak up? Were they able to speak up without being partisan or supporting only one side of a political divide by, for example, only speaking to reduce the voice of the other side? Did they speak fairly when they did speak? Did they interrogate the cases of discrimination where they happened? There seems to have been a gap; and I think that is the gap that Senator Pareno is trying to address by widening the scope and also looking at a very important component of peace building.

Mr. Deputy Speaker, Sir, as Senator Sakaja said earlier on, in the Joint Committee of the Eleventh Parliament, which I was a Member, did a lot of work in looking at different communities. They were addressing why they could not be able to have cohesion, work together and, in some cases, arbitration was done, and it was very successful.

We also found out that in many communities, the issues were very well known to them. They understood what the problems were, but when it came to addressing them and getting sustainable solutions, only some communities were able to do that. For the others who were not able to come to the table to identify and solve the problems, those problems continued for a very long time. It is, therefore, important to have a Commission that can address this.

Mr. Deputy Speaker, Sir, I also heard Sen. Sakaja say that we need people of high integrity and with true leadership skills in that committee to ensure that they take the task seriously. In the various Clauses of this Bill, the various responsibilities for the Commission and the Commissioners are well spelt out. Indeed, it gives the framework for actually assessing where a problem has occurred, the mechanism for addressing it and even involving officers in addressing it. This is very important in addressing all these specific issues. I think the first spot is an analysis of the NCIC, and I suspect Sen. Pareno,

in devising this Bill, must have met with various stakeholders and probably held that evaluation. Evaluation puts everything into place, which helps people to understand what is going on.

Mr. Deputy Speaker, Sir, Clause 5 states the guiding principles of national cohesion, while Clause 6 states the functions of the Commission. The commission will be expected to:-

“(c) Make recommendations to the National and county governments and any other relevant entities on-

- (i) the review and reform of practices, policies and legislation relating to cohesion and integration; review and reform practices, policies and legislations.”

Generally, they aim to achieve peaceful coexistence, tolerance, understanding and acceptability of diversity. The Bill is about accepting economic and cultural differences of various communities and allowing those communities to work together.

Clause 34 addresses discrimination in employment. The NCIC conducted some studies and established that certain institutions employ one or two people from the Mijikenda or Turkana to insinuate that there is diversity. Therefore, to strengthen this Bill, we should talk of equitability in terms of representation across-the-board, other than talking of not more than a third to be from a particular community. When we do that, we will avoid cases where a community only has one or two people working in an institution with an overflow from other communities.

Clause 32 addresses discrimination and hate speech. The NCIC discussed this, although the discussion was done in an inconsistent format which created disjuncture. Clause 38 looks at public resources and equitable distribution. We have to disaggregate the role of the county and the role of the national Government. Devolution has created mechanisms of addressing public resources hence we are looking at distribution of public resources at two facets; the national Government and county government levels. Therefore, fair distribution of public resources has been addressed at the county level, but we probably need to stress equal distribution at the national level. Different clauses stipulate the penalties.

Clause 20 states that:-

“The salaries and allowances payable to, and other terms and conditions of service of the chairperson and members of the Commission shall be determined by the Salaries and Remuneration Commission.”

Clauses 27 to 31 deal with the financial provisions which interrelate with Article 110(3) of the Constitution. We have to assess those clauses so as to ensure that the monies go to the right places.

Mr. Deputy Speaker, Sir, Clauses 41, 42, 43, 44 and 45 give the particular specifications. The Bill states that the Commission will have a form of complaint. It also states that where there is indirect discrimination, somebody can complain on behalf of somebody else. Clause 43 talks of the offences and the penalties of those specific offences. Part V addresses the complaints, investigations and enforcements. I had referred to these clauses earlier on. Clause 51 gives indemnity to people who give evidence and

protects them from being prosecuted. Clause 53 looks at the complaints and how they will be handled within that specific Act.

Mr. Deputy Speaker, Sir, a lot has been said about the importance of having national cohesion and peace building. We have focused on fighting each other instead of being cohesive. The fight is more of seasonal, because it tends to come up during the electioneering period. We have to move forward with intact communities. To achieve this, we need to work on how we conduct our elections. People must feel that their choices have been appreciated. South Africa recently conducted very peaceful elections.

We also have to make sure that everybody gets a chance in education, social and cultural systems. I sit in the Committee on Education, and this debate comes up over and over again. There are children who end up in schools that disenfranchise them in terms of performance. It is now 50 years after Independence, and we have to look at equality in terms of opportunities so as to give chance to everybody; and this Bill contributes to that.

Congratulations, Sen. Pareno, for bringing this Bill. I know that it will help to bring cohesion in this country.

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to add my voice on this important Bill. I want to congratulate my sister, Sen. Pareno, for coming up with this important law.

This Bill is timely, because it has come at a time when we need to look at ways of building peace and cohesion in our country. It unites all the cohesion and peace initiatives that have been scattered in many directorates. We have had different programs, which have never been given a framework of this nature. This Bill also establishes the National Cohesion and Peace Building Commission (NCPBC), which has very good functions and mandates.

*[The Deputy Speaker (Sen. (Prof.)Kindiki) left the Chair]*

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

Therefore, the Commission can now help in terms of getting rid of discrimination on ethnic grounds and provide for the establishment of institutional frameworks for national cohesion and peace building.

I want to support this Bill especially in terms of the functions given to the Commission. The Commission has been given very good mandates in formulating and implementing strategies, plans, and programmes for the promotion of national unity, both in the national and county governments. It has also been given the mandate to collaborate with other institutions and stakeholders to give effect to the policies relating to cohesion and integration.

I support this Bill because it is bringing together all institutions and stakeholders that are facilitating cohesion and peace building in this country. I also support this Bill because it has made recommendations to the National Government, county governments and other relevant entities on plans and strategies of spreading peace building in our country.

Madam Temporary Speaker, I urge Sen. Pareno to make sure that a county government appointee or nominee should be represented in the membership of the Commission, because cohesion and peace building issues are not only applicable at the national government level, but also at the county government level. We should also align it to the county government programmes. Currently, there are counties that are facing tribal conflicts, like what we are seeing in Wajir, Marsabit and other counties. These conflicts have been brought about by lack of inclusion and inequalities in terms of employment. It is high time that we have these programmes running in our counties so that we can prevent conflicts and encourage cohesion and peace building from the onset of those small units.

Madam Temporary Speaker, when you look at our counties today, we are suffering from the “*mtu wetu*” syndrome. We have fights all over during the General Elections because everyone wants to elect “*mtu wetu*.” They do this because this “*mtu wetu*” will always make sure that he or she has served the people who elected him or her on tribal grounds or clannism. It is high time we looked at how the issues of inequality and inclusivity are addressed in terms of employment and empowerment.

Madam Temporary Speaker, we have programmes in our counties that are implemented in some particular areas of a county, while neglecting other areas. These development programmes are geared towards “my people,” “my clan,” or “my tribe” to the exclusion of other parts of the county.

This Bill needs to be amended further so that we have an inclusion of programmes geared towards building cohesion and peace in our counties.

Madam Temporary Speaker, I also support this Bill because it gives the NCIC some powers to bring on board witnesses, documentation from witnesses and to also to list those people who will have been seen to be breaking the law and causing conflict in the country. Therefore, all these issues are being addressed in this Bill.

The NCIC has power to supervise and administer its assets. It has power to enter into association with other bodies or organisations within or outside Kenya. It can publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations.

This Bill has given more powers to this commission to bite, unlike in the other Act, where the commission was toothless. There is criteria in this Bill for deciding whether any public office or officer has committed acts of discrimination on grounds of ethnicity. These are important functions. I only wish that the Bill goes through soonest possible and be implemented so that we can go a long way in building cohesion and peace initiatives in our country.

Madam Temporary Speaker, I feel that the commission should be inclusive of the county government representatives. I believe that at an appropriate time, we will propose some amendments to cater for programmes for the county governments.

I beg to support.

**Sen. Kwamboka:** Thank you, Madam Temporary Speaker, for giving me this opportunity to add my voice on this very important Bill. I also thank its sponsor, Sen. Pareno, for bringing it.



Madam Temporary Speaker, I support this Bill with some amendments. Clause 10(c) talks of qualifications for appointment for the chairperson and members. It says:-

“Has knowledge and experience of at least ten years on matters relating to human relations, public affairs, human rights or peace and security; and

(d) Meets the requirements or Chapter Six of the Constitution.

The clause is not youth-friendly, because it does not allow them to serve as members of the commission. Assuming that an individual graduates with a degree at the age of 24 years, he will need at least three years to get employment. For that reason the person will be 27 years by the time he is employed. Ten years experience means that the earliest one can serve as a commissioner is probably when they are 37 years old, which is above the youth age bracket. I would, therefore, like the sponsor of the Bill to look at that.

Madam Temporary Speaker, Clause 47 talks about the investigations of the Commission, but does not give the timeline on how long the process will take up to conclusion. I would like her to look at that one also.

Clause 4(2) says-

“The Commission shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of –

(a) Suing and being sued;

Although the Article states that the Commission can sue and be sued, Clause 52(a) contradicts that by indicating that the Commission will still be toothless, since the findings will have to be referred to some other institutions for further action. I would like the sponsor of the Bill to add some words so that it reads:-

“Where the inquiry discloses a criminal offence, the matter, together with the recommendations from the commission, should be referred to the Office of the Director of Public Prosecution (ODPP) or any other relevant authority or undertake such other actions as the commission may deem fit against the concerned person or persons.”

Madam Temporary Speaker, this Bill is very important. It even states the objectives which provide a framework for the promotion of national cohesion, unity and peace building. It further elaborates the functions of the commission, which are very important. Clause 6(a) says:-

“Formulate and implement strategies, plans and programmes for the promotion of national unity.”

It should be further stretched to the counties to have those programmes so that it can reach the people who are at the *mashinani* level.

Clause 6(b) is on the commission’s objectives. It says:

“Collaborate with institutions and stakeholders to give effect to the policies relating to cohesion and integration.”

(c) Make recommendations to the National and county governments and any other relevant entities on –

- (1) The review and reform of practices, policies and legislations relating to cohesion and integration.”

Madam Temporary Speaker, this Bill is timely, especially when we now see the Building Bridges Initiative (BBI) going round the country, seeking views from the

common *mwananchi* on how to come up with something. We all saw what happened during the post-election violence. The current commission did not do enough work to contain the situation.

I, therefore, congratulate my sister, Sen. Pareno, for coming up with this important Bill.

**Sen. Shiyonga:** Thank you, very much, Madam Temporary Speaker, for giving me this opportunity to contribute to this Bill by my fellow Senator. I congratulate her for bringing it because it is timely and we need it, as a country.

Madam Temporary Speaker, the Bill intends to address peace and reduce conflicts in the country. When I was in lower primary school, our clarion was, “Peace, love and unity.” That was like a song to us. We have passed many Bills in this House, but they have never been implemented. We only legislate and leave them to gather dust in the shelves. When it comes to implementation and practice, we do very little.

The framework of this Bill gives energy and courage to operate on policies that are laid down in Articles 10 and 27 of the Constitution, especially where it looks at implementation of interventions aimed at promoting national cohesion and peace building.

The mechanism of coordination is very important, and this mandate is mostly given when the commission is formed. However, I would like to recommend a timeframe of when the commission needs to serve. The Bill has elaborated what the transition entails, but even if the time is not given, it is better for the commission to be given three years because elections happen after every five years.

If the commission is given three years and then transition happens within five years, then the continuity of that work will go on well. This is because people will be well versed with the mandate and implementation of this commission. Therefore, I urge that when we have the amendments, we put the duration of three years so that the commission does its work and transit within the period of five years after elections, so that its mandate is within the transition period. This will give time for transition, other than for it to be in the election year, which will be dangerous, because election years are years of tension.

Madam Temporary Speaker, this Bill prioritizes the urgency to mobilize and train the worst-hit communities in our Republic. For example, our country has experienced conflicts before, just like other countries in Africa. However, we do not live to tell of the problems and experiences we have passed through. This Bill is impressive because it provides for a period to heal the conflicts or wounds that are experienced during the conflicts which are painful.

Therefore, I applaud the Senator who sponsored it because we now have an opportunity to facilitate and give the public the framework they need for peace building and cohesion in our country. We will also give ourselves a foundation and the coming generation will respect this House.

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

**The Senate Minority Leader** (Sen. Orengo): Thank you, Madam Temporary Speaker. I rise to give my support to this Bill and congratulate Sen. Pareno for coming up with a well thought out Bill. I hope that useful ideas will come from the plenary and the

Committee of the Whole House that will make this Bill better. However, without a doubt, it is a much better product in terms of the subject matter that we are dealing with.

Madam Temporary Speaker, I salute Sen. Pareno and those she has worked with to come up with this Bill, which is not a short Bill. It deals with various themes and topics on the areas of cohesion and national integration. The transformation from mere integration to peace building is a qualitative leap. This is because we want to deal with peace building at all times, and not only in terms of national integration when we experience cycles of violence and conflict in our country.

Madam Temporary Speaker, it is important to begin from where all this started. I can say without any fear of contradiction that if ordinary Kenyans were to be asked whether the NCIC has achieved its mandate, statutory obligations and guidelines that they were given in terms of the National Cohesion and Integration Act of 2008, the popular answer which will reflect the truth as it is; that the current commission has not lived up to its promise and the expectations of the people of Kenya.

Madam Temporary Speaker, this Act that we want to repeal by the enactment of this Bill was enacted in the wake of post-election violence that we experienced during and after the elections in 2007. In fact, the National Cohesion and Integration Act of 2008 predated the Constitution. Some of the ideas that are found in the Act found their way into the Constitution of Kenya 2010. It was assented to a year after the elections, in 2007. However, it is important to remember that this Act came after a long journey that started in 1992, when violence was experienced in the elections. At that time, we called them tribal or land clashes. There were clashes again in 1997; and it would appear as if we were having a cycle of violence every five years, which erupted prior, during and after every election.

Madam Temporary Speaker, after the elections in 1997, there was what was called the Akiwumi Commission of Inquiry into Tribal Land Clashes. That Commission was required to determine the underlying causes of clashes that the country experienced in 1997/1998 after the general elections. Other than talking about the underlying causes, it was hoped that through the commission, mechanisms would be found to determine the level of preparedness every time there was a possibility of violence erupting in the country, then and in the future; and ways and means of preventing such clashes. It was also hoped that there would be prosecutions or mechanisms for prosecution to deal with those who are responsible for this tribal or ethnic violence.

There was another Commission in 2008 which was dubbed the 'Waki' Commission. This was after the elections in 2007. This was an international Commission because in it there were commissioners who were recruited internationally. The purpose of that Commission was to deal with ethnic violence and, more particularly, the post-election violence and the underlying causes of that violence. In fact, our road to The Hague emanated from the report of this Commission. If you remember, it is the Waki Commission that required us to have a local tribunal, which we opted not to have. Instead, the violence that arose after the elections in 2007 and 2008 were then dealt with by the International Criminal Court (ICC).

We then had the Truth, Justice and Reconciliation Commission (TJRC), which had a wide responsibility and mandate. This was to specifically deal with gross violations

of human rights from Independence to 2008. The mandate included dealing with economic crimes, illegal acquisition of public land, marginalization of certain communities and the issue of ethnic violence.

If you look at the reports which have never been published – the TJRC, the Waki Commission and the Akiwumi Commission reports– they contributed largely to the creation of the NCIC, the Kenya National Commission on Human Rights (KNCHR) and the National Land Commission (NLC). This was fed into the Constitution that came later in 2010.

Madam Temporary Speaker, having said all that, there was an underlying cause why there was necessity to have a commission of this nature. The judgement of many Kenyans, including myself, is that this Commission has generally failed to meet its mandate. There was a time when the Commission itself carried out an audit that exposed skewed dominance in the Public Service of certain large communities to the detriment of minorities. This was the finding of the Commission itself, but there is nothing much about what it did about it.

The other thing that the Commission has tried, over the years since its formation, is to carry out certain prosecutions relating to hate speech. You will agree with me that these prosecutions have, most of the times, been politically motivated. For that reason, even the convictions arising out of those prosecutions are almost zero. Some of the cases that have been instituted with regard to hate speech have not seen the light of day in terms of finality, and neither end up in acquittals nor convictions. They remain in the court process, experiencing and confronting certain difficulties in terms of the manner in which these cases were instituted and prosecuted.

Madam Temporary Speaker, I am beginning by looking at the past and the failures of the past. Whenever we have a problem, as Kenyans, we tend to think that the answer is forming a commission. A commission is formed, people are appointed and they earn salaries. Most of the time, they ask for resources and if there is failure to provide the resources, they blame their inaction on the lack of sufficient resources. Attempts are made to give them resources, but sometimes they still fail to carry out their mandate.

The South African example is good. Because of persistence, they came up with reports about the deep state capture and, ultimately, the South Africa State had to deal with those problems because commissions or independent offices persistently pursued their mandates without fear or favour. I am particularly happy about how they deal with discrimination against women. I heard about it the previous night, but I need to confirm whether the Government and the African National Congress (ANC) won the elections.

They announced that whatever Government that will be formed in South Africa, because of the issues that have arisen, the Cabinet and administrative structures or organs must have at least 60 per cent of the female gender. In Kenya, when we talk about the one-third rule, we think we are doing well. However, that is tokenism. In South Africa, they take a more assertive role by stating that women deserve to be in positions arising out of the work that some of the commissions have done regarding discrimination of the women and the youth.

Madam Temporary Speaker, unlike in the current statute, this Bill talks about discrimination and how to deal with it. That is what I consider exceptions to the

applicable laws or regulations with regard to discrimination. In the current Act, there is no provision, like I have seen in this Bill by the distinguished Sen. Pareno, that provides for gender parity. When you look at clauses dealing with discrimination, you will find that any appointments made in pursuance of affirmative action will not be considered to be an act of discrimination. That specific statement in this Bill is a great achievement.

There are exemptions, for example, when it comes to employment, where there are issues of special skills or where there is need to employ people of a certain category or from certain communities. You will find that in the current statute, when it comes to the question of affirmative action, I have not seen those provisions. In this Bill, there are specific provisions which relate to exceptions in relation to affirmative action. That is found in Clause 40(1), which states that-

“Nothing contained in this Part shall render unlawful any act done—

(a) to afford persons of a particular ethnic group access to facilities or services to meet the special needs of such persons in regard to their education, training or welfare, or other ancillary benefits; or

(b) on grounds other than race, ethnic or national origin for the benefit of a person who is not a Kenyan citizen to afford the person access to facilities for education or training or other ancillary benefits, where it appears that the person in question does not intend to remain in Kenya after the period of education or training.”

Madam Temporary Speaker, Clause 40(2) deals with particular racial groups and gender so that women find space in this country called Kenya. I applaud Sen. Pareno for this, because when we talk about gender parity, people think it cannot be achieved. Our neighbours in South Africa – I am figuratively talking about ‘neighbours,’ although they are a distance away – have effectively dealt with issues of mainstreaming women into positions of leadership.

Madam Temporary Speaker, allow me to go into a bit of history before I come specifically to the Bill. If you look at the current Act, when it talks about discrimination – those are found in Part 2 – they commence with discrimination by way of victimization; comparison of persons of different ethnic groups, harassment on the basis of ethnicity, discrimination in employment and so on, and so forth. You will find that acts of discrimination even in organizations or agencies are outlawed by dint of this Statute. Even discrimination in terms of access to public resources, discrimination by way of ownership of property and all that, was outlawed by the current Statute.

Madam Temporary Speaker, if you now go back so many years from 2008 to what this Commission has done in order to give life to this very good provisions which were in this particular Statute, which have been improved by this Bill that has been brought to us by Sen. Pareno, you will find that absolutely nothing has been done so that people would be happy to think positively about this Commission. I, therefore, commend Sen. Pareno for seeking to repeal this Act and come with a new Bill so that we can have a new beginning. That new beginning does not just begin and end with the setting up of the Commission, but by elaborating more particularly and in specific terms, the functions of the Commission.

The functions of the Commission were there under the old Act, but as I said, they were as good as water in the sand. I, therefore, hope that in enacting this Bill, we are

going to open a new chapter where we mean what we say, and we say what we mean. If the Kenyan people can truly live to the spirit of what is contained in this Bill, we will be able to have a more united, peaceful and prosperous nation. If we do not, then the cycles of violence, as we have experience before, will continue.

Madam Temporary Speaker, we do not have to wait for laws to be in place, but I think this Bill will encourage us to do what is right. As we speak now, even if we look at public institutions, the appointments in certain public institutions still go to certain communities, more particularly, the large communities.

In Kenya, there was a time when the late hon. Shikuku and other people were talking about Indians, and how they were messing the economy. The late hon. Shikuku came to the House one day and said:-

“You know, no Indian is the Governor of Central Bank or the Managing Director of the Kenya Commercial Bank (KCB), but our own people. If I was to form the Government of Kenya and put the Luo in those positions, that does not guarantee success.”

A real audit should be taken, like the public defenders did in South Africa. We should be encouraged with this Bill to do a proper public audit.

If you look at certain positions in this country, like the position of the Governor of the Central Bank of Kenya (CBK), the position of Head of Civil Service or Public Service or who is in charge of intelligence in this country, there are exceptions. But it would look like getting people from other communities to be in those particular positions is very difficult.

Madam Temporary Speaker, sometimes I commend President Moi in that regard, because during his tenure, we could see people from other communities being appointed to senior positions. However, this has not been the case in the subsequent Governments. Why are we happy to have this Constitution and say that we are one country, although we are divided into counties, which are part of a bigger Kenya? Why are we proud to be one country and not proud to have people from all over Kenya filling certain positions in the Government? This will give people confidence.

Conflict begins when you have exclusivity and there is no inclusivity. This is when other communities look at the way the country is governed and say that there is never a chance for a minority to become the President of the Republic of Kenya. As we speak now, if politics continues to be what they are in Kenya, you may be the best person or candidate that the country needs, but you will never rise to the top. You may have all the qualities, you may be well-loved, are popularly received in political rallies, but when it comes to elections, it becomes something else. We need to have a country which we can have people from different communities feeling that there is no place or room where you will find the door closed. So long as you are a Kenyan, it will be opened to you, just as it is opened to other Kenyans.

Madam Temporary Speaker, the resources of this country are allocated and divided in a skewed manner. We can say that, that is the correct position, because we still love to go to the leadership of the country and ask for this and that. In a truly democratic country under this new Constitution, which talks about how resources should be divided, we thought that that era when we would sit and pray that *Mtukufu* would come to your

area so that you can ask for this road or this bridge, was gone. However, it still looks like you have to be close to certain offices or persons in leadership for you to get resources.

Madam Temporary Speaker, the difference between this Bill from Sen. Pareno and the current Act is that it is underpinned with the Constitution of Kenya 2010. There is constant reference to Articles 10 and 27 of the Constitution. The sharing of resources countrywide is particularly in consonance with the provisions of the Constitution, when you look at the Chapter dealing with devolution, public finance and equitable sharing of resources. We hope that if there is a new Commission, it should come up and address this issue loudly. That is how you destroy the capturing of the State by cartels, by playing your role. Imagine what this lady in South Africa did. All these experiences and the fall of President Jacob Zuma can be attributed to a patriot in South Africa, who was a lady. She underwent a lot of difficulties. Her protection was only the law. The law of South Africa gave her the power and authority to speak out on all evils that were committed by public officers and the government of South Africa.

Madam Temporary Speaker, accountability is achieved through mechanisms and commissions, such as the one we want to establish under this Bill. I hope that those who will be bestowed with the power to implement the decisions rightfully made by the Commission under the law, which we are debating and enacting through this Bill, will also play their role as required under this Act and the Constitution. This Bill also puts the officials of this commission not far away from the search light. This is because if they do not perform their roles in accordance with the objectives of this Act, they will suffer certain sanctions spelt out in this Bill.

Madam Temporary Speaker, I want to talk a little bit more about the offenses created under this Bill. I will ask Sen. Pareno, at the appropriate time, to do certain amendments to the offenses under this Bill, especially those that deal with hate speech, ethnic and racial contempt as found under Clauses 41, 42 and 43. They need to be crafted and formulated in a manner that if there was a prosecution based on these offenses, the road will be clear. Sometimes we have good law in terms of overall principles, but the way it is drafted in relation to offences, which must meet the constitutional requirements and standards particularly as spelt out under Article 50 of the Constitution, may later on lead to difficulties when a prosecution is originated and attempts are made to arraign certain people in court. I hope that we will have time to discuss that at the appropriate stage of this Bill. I will keenly look at those particular provisions of the Bill. There are other provisions which create offences in this Bill, but the major ones are found under Clauses 41, 42 and 43.

Madam Temporary Speaker, I hope that when this commission is established, those who will be given the opportunity to appoint the commissioners who will lead it will not make the mistake of giving some people a soft landing. I very much respect those who have been appointed to serve in various commissions in the country, but I believe---

*(Sen. Orengo's microphone went off)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, hon. Senators! Hon. Orengo, you will have 30 minutes tomorrow to conclude your contribution.

Hon. Senators, it is now 6.30 p.m., the time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 29<sup>th</sup> May, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.