

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Tuesday, 3<sup>rd</sup> December, 2019**

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

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

**PRAYER****COMMUNICATION FROM THE CHAIR****VISITING DELEGATE FROM CPA INTERNATIONAL  
HEADQUARTERS**

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of Mr. Anthony Staddon from the Commonwealth Parliamentary Association (CPA) International Headquarters, United Kingdom (UK).

Mr. Staddon is in Parliament on the invitation of the CPA Kenya Branch to carry out a self-assessment exercise on the CPA recommended benchmarks for democratic legislatures. The CPA recommended benchmarks for democratic legislatures were published in 2006 and comprise 87 indicators for excellence in Commonwealth parliamentary and legislative practice.

Mr. Staddon is scheduled to hold meetings with the Speakers of the Houses of Parliament, the Houses' Leadership, Select Committee Chairpersons and members of the CPA Kenya Branch Executive Committee.

Hon. Senators, upon conclusion of the self-assessment exercise, CPA will prepare a report that will highlight the status of each Member of Parliament in upholding the recommended benchmarks.

On behalf of the Senate and on my own behalf, I welcome Mr. Anthony Staddon to the Senate and wish him well for the remainder of the visit.

Thank you.

*(Applause)*

**PETITION**

Hon. Senators, we have a Report on a Petition by the Chairperson of the Committee on National Security, Defence and Foreign Relations.

REPORT ON PETITION: SETTLEMENT OF AWARDS TO  
EX-KENYA AIR FORCE OFFICERS AND SERVICEMEN

**Sen. Haji:** Mr. Speaker, Sir, I beg to lay the following Report on the Table of the Senate today, Tuesday, 3<sup>rd</sup> December, 2019-

The Report of the Standing Committee on National Security, Defence and Foreign Relations and its consideration of the Petition to the Senate on the settlement of awards to ex-Kenya Air Force officers and servicemen.

*(Sen. Haji laid the document on the Table)*

Mr. Speaker, Sir, the Petition was submitted to the Senate by Mr. David G. Njau on behalf of ex-Kenya Air Force officers through the Clerk. It was tabled and presented in the House on 19<sup>th</sup> June, 2018, by the Deputy Speaker, Sen. (Prof.) Kindiki. The Petition laid out the grievances on settlement of the awards by ex-officers and servicemen of the Kenya Air Force, who served until the time of the attempted coup of 1<sup>st</sup> August, 1982.

Pursuant to Standing Order No.232(1), the Petition was committed to the Standing Committee on National Security, Defence and Foreign Relations. The Committee held meetings with the petitioners, the National Treasury, the Attorney-General and the Ministry of Defence and thereafter made observations and recommendations as contained in this Report.

The Petitioners drew the attention of the Senate to the following-

(1) THAT the petitioners are ex-officers and servicemen of the Kenya Air Force who served until the time of the attempted coup of 1<sup>st</sup> August, 1982;

(2) THAT following the said attempt, they were arrested, tortured, detained and imprisoned for periods spanning from six months to several years and then dismissed unlawfully and unconstitutionally from the Kenya Air Force without compensation;

(3) THAT the petitioners filed a petition in the High Court of Kenya and were awarded different settlement by different judges on diverse dates;

(4) THAT after the awards, the ex-officers applied and got the certificate of decrees, certificate of taxation and certificate of order against the Government to make payment of the said compensation awards;

(5) THAT their lawyers have written several demands and reminders to the Office of the Auditor-General and copied to the Department of Defence which has gone unheeded for several years; and,

(6) THAT the petitioners have further petitioned the Office of the Ombudsman with no results to date.

The petitioners pray that the Senate should investigate the matter with a view of compelling the State to make good the court awards and settle the compensation award together with the interest accrued thereof.

Mr. Speaker, Sir, the Committee considered this Petition at length and made the following observations from evidence adduced in the meetings-

(1) Justice delayed is justice denied – The Committee observed that the cause of action in these cases involves more than 35 years ago. While all parties have a right to

have their day in court, the decision by the Ministry to appeal four to seven years thereafter the cases were concluded, and after the Petition had been submit to the Senate, is an afterthought calculated to cause further delay, resulting to injustice to the petitioners and their families.

(2) Wastage of public resources – Pursuant to Article 232 of the Constitution, one of the values and principles of public service is efficient, effective and economic use of public resources. When the courts gave judgments in the cases which are the subject of the Petition, the courts ordered that the amount awarded will attract interest at the rate of 12 per cent per annum. The interest in these cases has run into tens of millions of shillings and continues to grow. This is a waste of public resources.

(3) *Sub Judice* Rule – The Committee observed the *sub judice* rule cited by the Ministry claiming that the cases which were the subject of the Petition are active in court. The Petition was not available to the Ministry because the cases are not currently active in court and the petitioners had exhausted all court remedies.

The petitioners were seeking fulfillment of the court awards which the Government has failed to fulfill. As indicated in the Report, in all the cases, judgment had been rendered and a certificate of taxation and certificates of order issued. The petitioners have, therefore, exhausted all remedies.

(4) Expedite payments to the petitioners – The Committee observed that as indicated by the Ministry, Petition No.49 of 2012 is currently before the Pending Bills Committee. However, it was indicated by the National Treasury that the amounts had not been included by the Ministry in their budgets.

Mr. Speaker, Sir, the Committee observed that the Ministry had the option to make special requests to the National Treasury to settle the awards and the amounts be included in a supplementary budget.

Mr. Speaker, Sir, based on the observations, the Committee recommends as follows-

(1) THAT the Government of Kenya, through the Ministry of Defence, should present the resolution of the Pending Bills Committee on the payment for Petition No.49 of 2012 within one month of the adoption of this Report by the House.

(2) THAT the Government of Kenya, through the Ministry of Defence, honours the court orders and immediately settles the awards due to the petitioners plus costs and interest accrued following the date of judgment as provided.

Mr. Speaker, Sir, it is now my pleasant duty, pursuant to Standing Order No.232(2), to present the Report of the Committee on National Security, Defence and Foreign Relations on the Petition on the Settlement of Awards to ex- Kenya Air Force officers and Servicemen.

I thank you.

**The Speaker** (Hon. Lusaka): Let us move on to the next Order.

Sen. (Dr.) Musuruve I can see you have an intervention.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir. As we commemorate the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) that is marked every year on 3<sup>rd</sup> December globally, I rise pursuant to Standing Order No.47--

-

**The Speaker** (Hon. Lusaka): Sorry, Sen. (Dr.) Musuruve, we are still on the Order on Petitions.

Let us listen to Sen. Mwaruma.

**Sen. Mwaruma:** Mr. Speaker, Sir, I rise on this intervention on an issue on Petitions. I do not know if this is the right time to raise the concern about the way we provide reports on Petitions to petitioners.

**The Speaker** (Hon. Lusaka): Maybe you will do that later. Let us get a comment from Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I congratulate the Chairman of my Committee for bringing the report concerning the outcome of the Petition by ex-Kenya Air Force personnel.

I sat in the proceedings of this Petition and listened to these Kenyans in distress. The Cabinet Secretary appeared before the Committee with very weak, flimsy and legally untenable arguments alleging that cases were on-going. On casual perusal, there were no on-going cases. These people had gone to court, got judgment and for more than 20 years they have not been able to enjoy the fruits of their labour.

Let it go on record that I am probably the living critical player in the post 1982 attempted coup because I represented many of the aggrieved young soldiers such as Hezekiah Ochuka, Okumu, Oburu, Njiraini and others.

I am happy that this House has returned a verdict on the Petition, that these people be paid their money. They went to court--- You cannot believe the laxity in the Government. Somebody gets judgment from court, but when it is about to be executed, seven years later the Solicitor General files a notice of appeal. Lawyers here such as Sen. Linturi, who has joined us recently, Sen. Dullo and others know that you should file an appeal in civil cases within 28 days maximum---

**Sen. Faki:** It is 14 days.

**Sen. Wetangula:** Fourteen days is for criminal while in civil cases it is 28. You---

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

**The Speaker** (Hon. Lusaka): There is a point of information.

**Sen. Wetangula:** Just before that, I acknowledge my distinguished colleagues Sen. Nyamunga and Sen. Faki as lawyers in this House, not to mention the Clerk of the Senate. I should not be selective.

**Sen. Faki:** Mr. Speaker, Sir, I wish to inform my brother and senior colleague, Sen. Wetangula, that appeals from the High Court to the Court of Appeal are supposed to be instituted within 14 days of the date of the decree or judgment. Appeals from the subordinate courts have to be instituted within 30 days.

I thank you.

**Sen. Wetangula:** Thank you, distinguished colleague. As I finish, I decry the lack of the Committee on Implementation in this House. We have just passed a verdict that these people be paid their money. This House abolished the Committee on Implementation. It is now going to be left to them to hop from office to office in desperation. They probably will be knocking at Sen. Haji's office, my office and your office because we do not have a Committee that *wananchi* can go to, to get the fruits of the labour of this House.

Mr. Speaker, Sir, I plead with this House that as we prepare to go for recess, we must think seriously about returning the Committee on Implementation where resolutions of this House can go and get undivided attention for people who come to this House to get justice.

Finally, allow me to also welcome the gentleman from the Commonwealth Parliamentary Association (CPA). I served there for a long time in the International Executive Committee. I was and feel very happy that through my guidance, effort and industry, the CPA that started in 1911 was only able to get the first African Secretary-General from Tanzania, the late Ferdinand Shija, when I was serving in the Executive Committee. I was the campaign manager through the Commonwealth to get him elected. I feel very proud about it.

I welcome the gentleman. I hope he will meet the Committee, the Speaker and everybody. Kenya has remained a very strong pillar in the activities of the CPA. We have hosted many CPA sub-regional, regional and international conferences. We stand to be counted among the family of members of the Commonwealth as being active.

I thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I would like to add my voice in commending the work of the Committee. This is because not many Committees get down to details when presented with a Petition. I have not had a chance to read the entire document. However, listening to the highlights of what was mentioned by the Chairman, Sen. Haji, it gives an incline that the Committee undertook this work with studious discipline to ensure that the people that brought the Petition before this House get justice.

Mr. Speaker, Sir, I beg to echo the sentiments of Sen. Wetangula. What happens after such wonderful presentation of facts before a Committee are admitted and confirmed as factual and the pleas of the petitioners are justified before this House?

I have had an opportunity to present a Petition before this House on one or two occasions. I am not complaining but after the Committee dispense of their findings, there is nothing that citizens can do because the findings are returned to them yet they brought the Petition before the House. However, they cannot take an answer to the Attorney-General or the perpetrators of whatever ills they complained about.

A few weeks ago, Sen. Millicent Omanga was soliciting for signatures from colleagues to try and convince the drafters of our Standing Orders to bring back the Committee on Implementation. Such a committee is important. At this point, it would discuss---

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

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot, do you want to be informed?

**Sen. Seneta:** Mr. Speaker, Sir, I wish to inform Sen. Cheruiyot that from the beginning of the last session, I went round to collect signatures from Members. I wrote a request to your Office through, the Office of the Clerk, to amend our Standing Orders to form a Committee on Implementation.

I did that because Motions, Bills and Statements pass through this House and our Committees bring reports but without the Committee on Implementation, they are not followed up. Apart from what was collected by Sen. Omanga recently, I also did the same. However, I did not get a response from the Office of the Speaker on why we should not have that Committee.

**Sen. Cheruiyot:** Thank you, for that information Sen. Seneta. It aids my argument. There appears to be a broader consensus on this issue unlike in the past. Until recently, I did not have a change of mind on this particular issue. I know the thinking that went into the abandoning of the Committee on Implementation. There were good and justified reasons for that.

It is important for a committee to follow through its work and not leave it at the reporting stage. The most affected of our work are Petitions. This is because Bills become laws and the originator of a Motion can draw the resolution of the House and follow up on implementation. However, Petitions are unique because they are the only documents from the citizens that find their way directly to this House without necessarily going through a particular Senator. If we want to maintain the status quo, we must find a solution on what to do with Petitions.

With those many remarks, I support.

**The Speaker** (Hon. Lusaka): The Procedure and Rules Committee is seized of the matter. It is actively being looked at and we will give a way forward.

**Sen. Mwaruma:** Mr. Speaker, Sir, I support the need to have the Committee on Implementation. This is because Committees do a lot of work on Petitions but there is no committee to follow up on implementation.

I also want your guidance on the way we give feedback or reports to petitioners. I have had several instances where three or four committees gave their feedback in form of soft copies. For example, when a petitioner from Ngare Mara is given a soft copy, where does he or she print the report from? The best way is to have a printed and signed report which can be put in the shelves or presented in a court of law.

We need do away with giving reports in soft copies and insist on hard copies. For examples, when you go to the Journals Office, you do not get the reports---

*(Sen. Murkomen consulted loudly)*

**The Speaker** (Hon. Lusaka): Senate Majority Leader, consult in low tone.

**Sen. Mwaruma:** Mr. Speaker, Sir, I propose that petitioners be given hard copies.

**The Speaker** (Hon. Lusaka): That is noted for record purposes. Let us move to the Next Order.

## PAPER LAID

### REPORT ON THE 20<sup>TH</sup> ORDINARY SESSION OF THE EXECUTIVE COMMITTEE OF THE FP-ICGLR

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, on behalf of Sen. Poghisio, I beg to lay the following Paper on the Table of the Senate today, Tuesday 3<sup>rd</sup> December, 2019-

Report on the 20<sup>th</sup> Ordinary Session of the Executive Committee of the Forum of the Parliaments of the Member States of the International Conference of the Great Lakes Region (FP-ICGLR).

*(Sen. Murkomen laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Let us go to the next Order.

## STATEMENTS

### OPERATIONALIZATION OF THE MINING ACT ROYALTY FUND

**Sen. Mwaruma:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources concerning operationalization of the Mining Act and in particular the Royalty Fund Account.

In the Statement, the Committee should-

(1) Explain the status of operationalization of the Mining Act indicating when the Cabinet Secretary (CS) will make the Royalty Fund Account, the Royalty Fund sharing regulations and operationalize the Royalty Fund Account;

(2) Indicate how much money has been paid to the Royalty Fund Account by all mining companies operating within all counties for the past four years;

(3) Explain in detail how much each mining company has remitted to the National Treasury as tax for the past four years and state when the Government will commence payment of royalties arising from mining activities to counties and communities in accordance with the Mining Act, 2016.

Mr. Speaker, Sir, this is not the first time this Statement has come up. I have requested for it for the umpteenth time but I have not gotten the right responses. The Mining Act, 2016 contemplates sharing of revenue between the national and county governments and communities.

We do not know how much money paid as royalties by mining companies to the National Treasury has been transferred to the Fund Account. We also do not know whether the royalties will be paid in arrears with interest. We are also not sure when the counties will start benefitting from the royalties.

Mr. Speaker, Sir, the lack of transfer of royalties is impoverishing our counties. We contemplate shareable revenue to the counties but we need to assist counties to get money from the wealth of own resource envelope from the resources that are domiciled in our counties. How I wish the response to this Statement can be given by the National Treasury or the Ministry of Petroleum and Mining so that counties benefit.

A grapevine source reveals that there is Kshs600 million meant for Taita-Taveta County that is held by the National Treasury. When shall we get that money? If that money is ploughed back to the county, it can help us exploit more. Taita-Taveta County has capacity to produce Kshs1 trillion per year. With proper support, we can fund the budget of Kenya. Taita-Taveta County needs to be assisted.

I thank you.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Ali.

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I thank Sen. Mwaruma for bringing this Statement. Taita-Taveta is one of the counties that has benefitted from mining of minerals

by big companies before. Other small-scale miners have been mining in other counties but they are experiencing a lot of challenges.

There is a lot of uncertainty in the Mining Act with regard to getting licences. Big companies get licenses easily and have ease of doing business. I therefore urge the Committee on Lands, Environment and Natural Resources that will look into this issue to take the welfare of the small-scale miners into account, so that they also benefit from the mining business.

Mr. Speaker, Sir, I thank you.

**Sen. Faki:** Asante sana Bw. Spika kwa kunipa fursa hii kuchangia Taarifa iliyoletwa na Sen. Mwaruma ambaye ni Seneta wa Kaunti ya Taita-Taveta. Taarifa hii imekuja wakati mwafaka. Ni karibu miaka mitatu sasa tangu pesa zianze kukusanywa lakini hakuna sheria ya kusaidia serikali za kaunti na jamii zinazoathiriwa na uchimbaji wa madini.

Ijapokuwa Kaunti ya Mombasa haina madini yoyote, tuna bandari inayosaidia kusafirisha madini. Kwa hivyo, wakaazi wa Mombasa wana haki ya kupata ruzuku zinazotokana na madini. Madini yanayosafirishwa kwa wingi ni *Titanium* lakini Kaunti ya Mombasa haijafaidika kwa vyovyote kutokana na uchimbaji wa madini. Pesa zote zimekuwa zikiwaendea wawekezaji na Serikali kama kodi.

Ipo haja ya kuhakikisha kwamba maelezo haya yamefikishwa katika kamati husika ili kuwe na sheria ya kuhakikisha kwamba pesa zinagawanywa kwa haraka iwezekanavyo.

Asante sana, Bw. Spika.

**Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I thank you for giving me the opportunity to support the Statement by Sen. Mwaruma. I was privileged to serve as an Assistant Minister in the Ministry of Natural Resources, Minerals and Mining from 2010 to 2011 when the late hon. John Michuki was the Minister. He played a role in coming up with the Mining Act.

Sen. Mwaruma is seeking an important aspect of the Royalties Fund. At the time of coming up with the Act, we were interested in knowing who should benefit from the minerals. Our minerals have been safe for a long time. However, there has been infiltration from all corners.

Taita-Taveta is one of the counties that have been infiltrated by miners from a neighbouring county because there are many precious stones there. However, we do not have a very systematic way of selling them. Brokers buy from the small miners cheaply because we do not have an organized way of selling our minerals.

Mr. Speaker, Sir, it will be important for the Committee to look at the entire value chain of mining. When coming up with the Mining Act, we wanted to know the value of every mineral. Back then we had problems with the mining that was going on in Kwale and Kilifi because a big company was licensed to mine one mineral but they got many other associated minerals. The question we should be asking is whether we know what mining companies take from us, the value of what they take and who speaks for Kenya.

Mr. Speaker, Sir, a lot of gold mining has been taking place in Kakamega County but they have not benefitted from it. When I was an Assistant Minister, we handled a case of a company that had been mining for 10 years in the name of prospecting. I urge the Committee to look into the issue of royalties keenly. The law states that the county

government should receive 15 per cent. However, we do not know the minerals that are associated. Is it possible for a mining company to mine diamond and end up getting gold.

I believe that if we manage the mining sector well, it can sustain the economy of this country. Poverty can be a thing of the past if we focus on the mining of the natural resources that we have because Northern Kenya and Coast regions are beds of minerals. Let us take interest on the value chain and identify how we can regulate the mining sector, so that local communities can benefit.

Mr. Speaker, Sir, I beg to support this Statement. I urge the Committee to investigate the matter and come up with a response on the issue of royalties.

I thank you.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, our colleague has brought a very important issue to the Floor of this House. While appreciating the issues that he has raised, it will be important for Sen. Mwaruma to begin the process of drafting an amendment to the current Mining Act. Some of the issue that he has raised can only be addressed legislatively. At the time of passing the Mining Act, we did it with a centralist mind approach.

We have the mentality that in this country, counties are still baby organizations that still need to be incubated, yet in most federalist countries, most regions depend on that which they are naturally endowed with. The same cannot be said of our counties. You cannot think of any county that is enjoying the fruits of having a natural resource within its locality.

I request Sen. Mwaruma to begin the process of bringing an amendment. He may team up with his neighbour, Sen. (Prof.) Ekal, because at the time we were discussing the Petroleum Bill, he had very serious concerns about what was happening in Turkana County. This presents to him an avenue through which he can influence policy. I get the sense that now is the time to talk about how resources should be shared.

The people of Turkana County are being told that they are not supposed to receive the kind of allocation they get in the Division of Revenue. If that is the case, then you should also deny them your oil. Let them pay dearly for it. That is the same case for Taita-Taveta County, given the kind of revenue they receive, despite the fact that they contribute immensely through tax. Mining companies that operate in Taita-Taveta pay huge amounts of taxes, but what they receive is only a small portion of it.

Therefore, I challenge Sen. Mwaruma to think along those lines. I support this Statement.

**Sen. Wetangula:** Mr. Speaker, Sir, I join my colleagues in supporting the Statement by the distinguished Senator for Taita-Taveta because it points to a complex problem that we have.

When the Late John Michuki was the Minister for Environment and Mineral Resources, we visited Perth which is in Australia. We found that Western Australia, which is the Mining Capital of the Far East, is a province richer than the rest of Australia. In this country, Taita-Taveta, Migori, Narok, Turkana and Kwale would probably be the richest counties that could be giving some money to the centre, instead of expecting money from the centre.

However, because of weak legislative and regulatory framework that we have, the people of Kwale County have remained the same, despite the billions of shillings got from the mineral in Kwale. Our brothers in Turkana County are fighting for jobs in the oil industry instead of a share of the wealth from the oil. In Migori, a lot of mining goes on yet the county has to wait for money from Nairobi. The same happens to Kwale County.

Mr. Speaker, Sir, the Bill by Sen. (Dr.) Zani on mining and sharing of resources that we passed here was eventually captured and turned into something else. The Committee on Lands, Environment and Natural Resources should take up this matter and study in depth what is ailing the mining industry. I agree with Sen. Cheruiyot that we need legislation.

We have the case of Narok and Migori where South African miners come and freight away containers of raw mineral in the guise that they are going to do research. At the end of the day, Kenyans are denied everything. We still treat minerals the same way they treat maize. You have to pay cess for a bag of maize, the same way we pay cess on coffee and sugarcane, yet the value of minerals is nothing comparable to maize or coffee. Something needs to be done.

Sen. Mwaruma has opened the box. The Committee on Lands, Environment and Natural Resources should work hand in hand with him. There are enough professionals in the market who can assist this House in helping Kenyans to get value for money.

I still remember the King of Belgium wrote that Kenya is a country that has mineral wealth equivalent to the oil reserves of Saudi Arabia. Four years ago, the oil reserves of Saudi Arabia were valued at USD970 trillion. If that is what we have in this country, why are Kenyans still poor?

As a leadership, we need to style up and make sure that the mining that goes on in this country, whether in West Pokot, Macalder in Migori or Roasterman in Kakamega and everywhere benefit not just individuals, but the whole nation. County governments, as devolved units, should also get resources out of this to give services to *wananchi*.

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

**Sen. Olekina:** Mr. Speaker, Sir, I rise to support this very important Statement by Sen. Mwaruma. If we do not take the issue of mining seriously, we will end up being treated by foreigners the way Zambia and other countries are treated.

I drove from South Africa to Nairobi. In Zambia, the only vehicles you find on the roads are tracks of people ferrying mines of copper out of the country. It is quite sad that my county of Narok has got a lot of wealth, yet it does not translate into real cash because everything leaves the county. It is important that the Cabinet Secretary takes this seriously.

I keep saying that we do not need new laws in this country. What we need is discipline and to implement laws. There is no reason why we should be arguing why an Act that was passed by Parliament and enacted by the President has not been operationalised. It is time we became serious.

Sometimes we talk about issues and set up commissions and institutions to look at what is ailing us. What is ailing Kenya is just indiscipline. The reason why---

**Sen. Kinyua:** On a point of order, Mr. Speaker, Sir. I would like to know whether there are rules of the hairstyle that people should have. Is the Member's hairstyle acceptable?

**The Speaker** (Hon. Lusaka): Which Standing Order are you basing your question on?

**Sen. Kinyua:** Mr. Speaker, Sir, I am just seeking guidance.

**The Speaker** (Hon. Lusaka): We do not have anything to guide us on whether you should shave all the hair or just let it grow if you want. Proceed Olekina.

**Sen. Olekina:** Mr. Speaker, Sir, the problem is that some of our friends--- Let me let it pass because I spent 40 minutes every morning with my barber called Omosh to look this good.

**The Speaker** (Hon. Lusaka): Sen. Olekina, please proceed with your point. You are worsening the situation.

**Sen. Olekina:** It is a nuisance! I was trying to prosecute an important matter but my dear colleague decided to interrupt me. Maybe he should visit Omosh at Flair by Betty and I know he will take good care of him.

Mining can get us out of poverty in this country. I hope that the concerned Committee will take this matter seriously, so that we ensure that at least we instill some form of discipline in terms when it comes to legislation.

I can see Sen. Haji is here. I congratulate him for doing a good job. Maybe he should tell us that it is not that we do not have legislation in this country. It is because of lack of discipline because institutions do not implement resolutions passed. Although the Building Bridges Initiative (BBI) brought us together, we would not have needed that if most legislation had been implemented.

This is a matter that I hope and I do pray that the Cabinet Secretary will take seriously once he is asked to provide this information. This will ensure that for once in the history of this Parliament we can convert mines into dollars for the common *mwananchi*.

Mr. Speaker, Sir, the gap between the rich and the poor is getting wider and wider. I dare say that some of us politicians are the ones in business with those miners from outside the country who are raping our country. If we are serious, we should ensure that everybody benefits.

I thank you, Mr. Speaker, Sir.

**Sen. Ochillo-Ayacko:** Mr. Speaker, Sir, I want to add my voice to this very good Statement and congratulate Sen. Mwaruma. Migori County is blessed with a lot of minerals. It is one of the counties that have been mentioned by my senior, Sen. Wetangula, that are suffering from the fact that we are not implementing the law. If we believe in the rule of law and we have a law that enjoins us to harness resources and ensure that these resources are returned and utilized properly, we should do so. I do not know what we should do as a Senate or Parliament to enforce or ensure that those given the opportunity to enforce laws are accountable. We should do whatever it takes.

Mr. Speaker, Sir, when you refer this matter to the relevant committee, I pray that the committee comes up with answers. In Migori, we are tired of poverty. We have resources that are God-given. We have gold in North Sakwa, Nyatike, Suna East, Kuria,

and everywhere. It is a shame! I am happy Sen. Mwaruma has brought to light the shame that golden and mineral rich counties are suffering from.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir, for giving me the chance to contribute to this very important Statement by Sen. Mwaruma. I am saddened to hear that other counties are suffering the same fate of Turkana.

The reason why Turkana is listed as one of the poorest counties in the country is that despite the fact that we have all sorts of minerals including gold, unfortunately the people do not get anything from those minerals.

Sen. Wetangula mentioned about the oil which is being produced in Turkana, which has put Kenya on the map as an oil producing and exporting country. That oil comes from Turkana, but the people of Turkana are still where they were from the year the Christ was born. They do not have jobs. They beg for jobs and nobody is paying attention. This kind of exploitation is not what we expect from a civilized nation.

Mr. Speaker, Sir, laws should be put in place in such a way that people benefit from the minerals and the wealth they have in their own areas. Speaking as a person from Turkana, we say that whatever is found on Turkana soil belongs to Turkana people. Unfortunately, we have laws that claim that the oil is riches for Kenya.

Kenya does not treat people fairly because those minerals are taken away and people are left in poverty. Even if foreign companies come in, the Government should lay laws that they should follow in such a way that people are served and get value from the minerals they have.

I support this Statement by Hon. Mwaruma and hope that something is going to be done to make sure that the people of Kenya get what they deserve from the wealth they have in their own counties.

I thank you, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I also want to support this Statement. Coming from the Senator for Taita-Taveta, I am reminded of an incident where, one time we went campaigning for votes there. The old men there told us that since we protect the animals more than the people, we should go to the park and campaign to the elephants to get votes from them.

It is important for him to ask this question because Taita-Taveta has got enormous mineral wealth; probably unimaginable. All those who extract that wealth are the people who know how valuable that county is. This goes across the country because even in my County of Siaya, there is a lot of gold but we do not see any evidence of people getting services or sharing that mineral resource in terms of wealth creation. This Statement should have had a response like yesterday.

Mr. Speaker, Sir, if you go to a place like the USA, the State of California is rich because it has a share in the resources of California, be it mineral wealth or agriculture. If you go to the United Arab Emirates (UAE), you will note that some people there are richer than others depending on the resources they get from their oil resources.

I hope that this will not be another incident where the legislature makes the right legal provisions in terms of legislation, then it is infracted by violation of provisions of an existing statute.

Mr. Speaker, Sir, the reason why Kenya went for devolution was not just sharing of political power. We are now talking a lot about sharing of political power and so on, but we do not hear so much about sharing of resources. In fact, in that report, there is a lot of input about sharing of resources including these types of resources. We are more focused on politics and the political power but when it comes to the things that really matter like resources, we do not concentrate.

I thank Sen. Mwaruma for bringing this particular Statement because several Senators here, including Sen. (Dr.) Zani, have brought legislation or Bills to put into effect the objectives in terms of sharing resources and creating a Royalty Fund and an account to that effect, so that there is equitable sharing of mining resources. Unfortunately, this is coming at the tail end of this sitting and session, but I hope that we will not go to sleep on it.

Thank you, Mr. Speaker, Sir.

**Sen. Boy:** Asante sana Bw. Spika kwa kunipa fursa ili niweze kuchangia kwa hii *Statement* ambayo imeletwa hapa na Sen. Mwaruma kutoka Kaunti ya Taita-Taveta.

Kusema kweli, hata Kaunti yangu ya Kwale ina shida kama hiyo. Baada ya utalii, mapata mengine yanatokana na madini. Sisi tuna madini ambayo yanaitwa *Titanium*. Tangu *Base Titanium Company* ianze kuchimba madini, wananchi wa Kwale hawajafaidika kupata haki yao mpaka sasa.

Bw. Spika, kusema kweli, kampuni zinazochimba madini zinapata mabilioni ya pesa lakini wananchi ambao ardhi zao zimenyakuliwa hawapati chochote. Hizi kampuni huwadanganya kuwa watawajengea hospitali na mabweni ya shule lakini mwananchi hafaidiki na chochote kutokana na biashara hiyo.

Bw. Spika, naunga mkono hii *Statement* kwa sababa inagusia kilio kikubwa cha watu wa Kaunti ya Kwale. Lengo la kufanya hivyo ni kuhakikisha kuwa wananchi wa Kwale na kaunti zingine wanapata haki. Kwa hivyo, ningependa kuhimiza Kamati na Wizara ambazo zitachunguza jambo hili kutafuta njia ya kuhakikisha kwamba wananchi wa Kenya wanapata haki. Hatutaki kuona wenye makampuni wakifaidika kwa kupata mabilioni na kupeleka pesa zao Ulaya ilhali wananchi wetu wanateseka.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to this Statement. It is important for us to have mechanisms for giving royalties to communities that are supposed to benefit from the mining industry.

I looked at the background of this Statement and realized that a number of minerals have been extracted in Taita Taveta but the residents have not benefited from the proceeds of mining; they are wallowing in poverty without hospitals or schools. We need to have indicators of mining. Land owners need to be compensated when minerals are found in their land. This legislation will ensure that people benefit from the natural resources that are in their communities.

I thank Sen. Mwaruma for coming up with this Statement. The Committee that will deal with this Statement should fast-track it for the benefit of the common man.

**Sen. Wario:** Asante Mheshimiwa Spika kwa kunipa nafasi hii. Ninaunga mkono taarifa ambayo imetolewa na Seneta wa Taita Taveta. Watu wa Taita Taveta huwa wanakufa katika migodi ya dhahabu wakiwa katika harakati ya kutafuta mali asili. Umaskini ni mkubwa sana Taita Taveta. Watu wa Taita Taveta bado hawajawezeshwa kufaidika na mali yao asili.

Kaunti zote za pwani ziko na mali asili na watu wa pwani wanaweza kufaidika na hiyo mali. Mimi ninatoka Kaunti ya Tana River na tuko na madini ambayo inaweza kufaidi watu wa Tana River. Sheria na kanuni za kuchimba madini hazifuatwi. Kuna shimo kubwa ambazo zimebaki katika zile sehemu ambapo *gypsum* ilitolewa na ingekuwa vyema kama miti ingepandwa katika hizo sehemu. Hizo shimo zinasababisha maafa ya ng'ombe, mbuzi na hata wanadamu. Badala ya kuleta usaidizi kwa wenyeji, hayo madini yamekuwa hatari kwao.

Ninaunga mkono hii Taarifa. Serikali za kaunti na Serikali kuu zinafaa kusaidia wenyeji ili waweze kufaidika na madini ambayo yanapatikana kwao. Hiyo itatuwezesha kutoa umaskini ambao uko sehemu hizo.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I want to thank Sen. Mwaruma for raising this issue which is so important. When I was young, I would visit my grandfather and he would tell me stories about our sleepy village called Bushiangala in Ikolomani. The word 'Ikolomani' is said to be the corruption of the words 'gold mine' but we believe that the words 'gold mine' are actually a corruption of the word 'Ikolomani'. Gold mining led to change of fortune for the residents of Ikolomani between the years 1935 to 1952.

The Mining Act that we have today was the first review of the Act from the 1940s. The intention of the review was to create a better situation in the mining sector but we have seen little implementation. You will find the mining companies prospecting or doing some activities in Western Kenya, Migori and other parts of the country, yet the mining industry is still shrouded with a lot of secrecy. A lot is hidden from the common person despite the legislation that was passed here.

I urge this House, specifically the Committee that will look into this Statement, to look at the implementation of these laws. I heard that they wanted to ask the Chinese to come up with a map that will indicate the areas and the minerals that we have.

This country is rich under the ground but we have to first establish the true wealth of our country for us to see the difference between 1935 and the year 2019. The system we have still reeks of colonialism where the common man does not know what is happening. The British in Tullow knows more about oil than the Senator for Turkana County. What is the difference between now and the pre-independence Kenya? This matter should be taken seriously and we should know the worth of our country.

We have aquifers, gold, oil, manganese and magnesium. One of the most expensive roads in the world was constructed using these minerals and it is still too dark. The people who explored the minerals that were used to construct that road have not stopped and they are still exploiting Kenyans. We need to pronounce ourselves more strongly. The Natural Resources (Benefit Sharing) Bill (Senate Bills No. 31 of 2018) by Sen. (Dr.) Zani needs to be implemented and we need to actualize the provisions of the Mining Act that safeguards what we have under our ground for the benefit of Kenyans.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I congratulate and thank the Senator for Taita Taveta for bringing this Statement to the attention of the House. The Statement addresses the plight of Kenyans who have continued to suffer under the exploitation of the minerals and non-compensation for those resources.

In the previous session of Parliament, I served as the Vice Chairperson of a Committee that was looking at this issue under the Bill that was moved by Sen. (Dr.)

Zani. This House has been mandated by Article 96 of the Constitution to guard, safeguard and take care of resources and interest of counties but it has been eluded by that important mandate and duty.

The Bill that was moved by Sen. (Dr.) Zani has not succeeded. It is also important for us to remember that Sen. (Dr.) Moi brought the Local Content Bill, 2018 which has found its death place in the National Assembly. Therefore, no meaningful legislation has been put in place under the Senate since devolution, to take care of these issues.

When I was the Vice Chairperson of that Committee, we visited various places such as Kwale, Kajiado, Machakos and the sheer exploitation and plight of our people is amazing. Sand is harvested in Machakos and it is used to build mansions, storied buildings and stadia in Nairobi, yet the people who own those resources live in sand caves. The reason for living in those sand caves is so that they can wake up near the river banks the next day and sell that sand. It is a pity.

Mr. Speaker, Sir, we visited Kajiado County where we found a serious contest almost boiling down to a physical fight between contractors and the local people. What is amazing is that, some of these exploiters appear to have protection from the Government.

As the current Chairperson of the Committee on Roads and Transport, I tell this House that the average cost of building a highway today – be it a bypass or one of the highways we are building - costs about Kshs1 billion per kilometer. That is what we are being charged.

I recently went to Turkana with my Committee and the first case that we dealt with was presiding over a contest between the county government and Chinese contractors who have completely refused to pay Cess Tax or a local percentage to the county government for locally exploited materials. You can imagine.

If you divide the cost of doing a kilometer at Ksh1 billion which is built using ballast that has been crushed locally and sand that has been harvested locally, one would assume that the charge to the local government per truck - which is paid using our taxes - is probably more than half a million. A contractor is told by the local county government to pay only Kshs5,000 for a truck of either ballast or sand exploited as the local charges.

Mr. Speaker, Sir, they choose to sabotage the contract. They would rather not pay a bill of Kshs3 million against a contract of Kshs16 billion. It becomes a big issue that the Committee has to travel from here all the way to Turkana to mediate. One wonders what we are saying about our people, if these people can go to your *shamba* like they have done here in Kajiado---. For the information of the House, all the roads we see in Nairobi – the Souther Bypass, and the Eastern Bypass – have been built using materials exploited near Ngong'. Not only has the whole of that place turned into a death trap and a major environmental hazard, but if you ask the Senator of Kajiado, today not a single penny has been paid for the minerals exploited.

Mr. Speaker, Sir, you ask yourself if in the quarry where Sen. (Dr.) Zani and I visited, a company is exploiting minerals like titanium and exporting them, not only denying us the value, but also delaying us the opportunity for our local young men to find jobs, if they were doing either the extraction or separation locally. We have to have this conversation.

I want to laud the proposal by one of the Senators; that the Senator of Taita-Taveta County would rather have the courage and determination to have this converted

into either a Bill or an amendment into our own laws, so that it can have the force of law and one way or the other, we can implement it and ensure that we can resolve this. It will be a pity if this House winds down its business in 2022 and goes home before we have been able to seal this and ensured that we can protect the resources of our people at the county level.

I beg to support.

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

**Sen. Madzayo:** Asante, Bw. Spika, kwa kunipa nafasi hii ili niweze kuweka mkazo kwa Taarifa hii iliyoletwa na ndugu yetu Seneta wa Taita-Taveta.

Katika miaka 40 iliyopita, kama kulikua na mji maskini, ulikua mji wa Dubai. Kule nyumbani tunauita Dubai. Dubai ilikua mji maskini sana; watu walikua wanatamebea na ngamia, kama vile kule North Eatsern. Lakini, leo Dubai inaheshimiwa duniani nzima na kila mtu angetaka kuenda huko, kwa sababu wameinua uchumi wao hali kwamba, hawajivunii rasilmali ya petroli peke, bali pia utalii.

Bw. Spika, nchi yetu imebarikiwa sana. Kule upande wa Turkana, kuna petrol, na kule Migori, kuna dhahabu. Ukienda Pwani, kuna titanium, na nyinginezo. Nchi yetu imebarikiwa sana, lakini kwa sababu ya tamaa ya watu binasfi, tumepoteza nafasi hio.

Miaka iliyopita, wakati Rais Kenyatta alikua anatawala nchi hii, alisema watu wa Taita - na sisemi hivyo kwa sababu ndugu yangu yuko hapa, lakini yeye aliongelewa na aliyekua Rais wetu wa kwanza. Alisema kwamba tumekalia uchumi, na sijui kama hio ndio sababu shamba zao na milima zao zilichukuliwa. Jambo la kusikitisha ni kwamba, ufisadi nchini humu umefanya hatuwezi kupata rasilimali zetu. Kama vile Seneta wa Nairobi alivyosema, mahali ambapo malalamishi yanapatikana kwa wingi Kenya nzima, ni Kilifi. Hii ndio sababu barabara zimegeuka rangi. Inakua rangi ya ile mchanga.

Ikiwa Taarifa kama hii itaenda kwa Kamati Chunguzi ya Madini, itaweza kuchunguza vizuri sana na kuchukua hatua ya kumuuliza Waziri amefanyia nini vitengo vyote, na tuweze kujua jawabu lake kwa umakini.

Ninaunga mkono Taarifa hii na kumshukuru ndugu yangu kwa kuileta Bungeni.

**The Speaker** (Hon. Lusaka): The next Statement by Sen. (Dr.) Musuruve

#### UN CONVENTION ON RIGHTS OF PWDS

**Sen. (Dr.) Musuruve:** Thank you very much, Mr. Speaker, Sir. As we commemorate the United Nations (UN) Convention on the Rights of Persons with Disabilities (PWDs) that is marked globally on 3<sup>rd</sup> December every year, I rise, pursuant to Standing Order No.47(1), to make a Statement on the commemoration of the UN Convention on the Rights of Persons with Disabilities, scheduled for 13<sup>th</sup> December, 2019.

Mr. Speaker, Sir, the Convention on the Rights of Persons with Disabilities is an international human rights Treaty of the United Nations, intended to protect the rights and dignity of people with disabilities. It was ratified on 13<sup>th</sup> December, 2006, in the following languages; Arabic, Chinese, English, French, Russian and Spanish. It was signed in March, 2007 and effected in May, 2008.

The Convention is the only UN human rights instrument with an explicit sustainable development dimension. The UN Convention has been signed by 162

countries worldwide and ratified – that is made legally binding - by 177 countries. State parties at the Convention recognized that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

Mr. Speaker, Sir, the State parties saw the need of emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development. They recognized that discrimination against any person on the basis of disability was a violation of the inherent dignity and worth of the human rights. Parties to the Convention also considered that persons with disabilities have the opportunity to be actively involved in decision-making processes about policies and programs, including those directly concerning them.

The State Parties present recognized that women and girls with disabilities are often at greater risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, both within and outside the home. The State Parties further recognized that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children and obligations to that end were undertaken by State Parties to the Convention on the Rights of the Child.

State Parties present highlighted the fact that a majority of Persons with Disabilities (PWDs) live in conditions of poverty and in this regard, recognize the critical need to address the negative impact of poverty on PWDs.

I want to congratulate Kenya for being among the first countries to ratify the Convention in May, 2008. At that time, the then Attorney-General of the Republic of Kenya, Hon. Githu Muigai, as well as a delegation of 25 members from relevant key stakeholders were in attendance.

It is, indeed, a reality that from the time Kenya ratified the United Nations (UN) Convention on the Rights of PWDs, a number of positive steps have been made.

Mr. Speaker, Sir, Article 54(1) of the Constitution of Kenya states that-

“A person with any disability is entitled-

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

(c) to reasonable access to all places, public transport and information;

(d) to use Sign Language, Braille or other appropriate means of communication; and,

(e) to access materials and devices to overcome constraints arising from the person’s disability.”

I take this opportunity to thank His Excellency President Uhuru Muigai Kenyatta for appointing Commissioner Washington Sati, who is deaf, as the Vice Chairperson of Commission on Administrative Justice; Permanent Secretary (PS) Amakobe, who is of little stature and Mr. Peter Muchiri, who has a physical disability as Chairman, National Council of Persons with Disabilities (NCPD). This is a positive move in defending

Article 54 (2) that seeks to guarantee 5 per cent representation of PWDs in elective and nomination positions. I encourage the President to continue with this process until Kenya realizes the constitutional requirement of 5 per cent.

I take this opportunity to celebrate PWDs who have defied all odds and brought immense contribution to this country. The faces of Wanjiru the athlete; Mary Atieno and Reuben Kigame, the gospel singers; Hon. Ashura Michael who is a deaf Speaker at the EALA; Sen. (Dr.) Musuruve; Sen. (Dr.) Isaac Mwaura who has championed Albinism; Prof. Orwenjo, a leader and seasoned writer who is physically disabled, among many others. The faces of these PWDs are indicative that if PWDs are accorded an opportunity, they can perform just as well as the able-bodied.

As I laud PWDs all over the country who engage in positive socio-economic ventures, I call upon the national Government and county governments to empower PWDs economically and politically. This empowerment will lead to liberation. I also want to condemn any form of discrimination meted on PWDs, be it social, economic, psychological and so on.

As we mark this day, I strongly condemn the inhuman act that was perpetrated by German Airline, Lufthansa, on Professor Daniel Ochieng Orwenjo, a lecturer at the Technical University of Kenya (TUK) and a person with physical disability. The airline denied him use of his walking stick during a flight, insisting he had to check it in as a baggage because it was too big and looked like a weapon. While on board, he was confined to his seat and could not even visit the washroom because accessibility was denied.

On arrival, Prof. Orwenjo was informed that his walking stick had been forgotten in Germany and they had to fabricate a metal one for his use. That act was not only inhuman, it was also callous and deserved to be considered punishable. There is need for intensive disability awareness in all organizations.

Mr. Speaker, Sir, for PWDs to be guaranteed of the rights stipulated in Article 54, all state organs, private organizations and individuals must endeavor to defend our Constitution. The Government and all machinery in the country must deliberately strategize to end poverty among PWDs by allocating 5 percent elective and nomination positions to them as a matter of immediate action. State Parties were keen to see that PWDs were involved in decision making.

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

**Sen. Wario:** Mr. Speaker Sir, the hon. Member on the Floor is debating her Statement. Could you give us the way forward please?

**The Speaker** (Hon. Lusaka): Senator, could you summarize and conclude?

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir.

As a country, we need to engage in an honorable behaviour and ensure that PWDs are brought on board in decision-making process. They are, indeed, like anyone else and have needs to be expressed.

During the 2017 elections, there were counties that notably lacked representatives of PWDs. In some county assemblies, PWDs were represented by someone who was not disabled. This action flouts the UN Convention's political, social and economic stand on PWDs.

Mr. Speaker, Sir, indeed, if the cyclic nature of maltreatment of PWDs and their generation is to come to a stop, Kenya must make a deliberate move to ensure that PWDs are productive members of the society. Political parties must be hawk-eyed in ensuring that they bring on board their PWDs.

As the Building Bridges Initiative (BBI) national conversation is going on, all leaders must endeavor to bring on board women and youth living with disabilities in an inclusive process. Inclusion can never be complete if PWDs are not factored in. As we mark the day and the UN Convention on the Rights of PWDs, everyone needs to be reminded that PWDs have come a long way and they want to be on the negotiating table where decisions and policies are made. They no longer want to be a drop in the ocean.

Article 98 1(d) of the Constitution gives PWDs an opportunity to be in Parliament. This window is minimal and needs to be strengthened by political parties in order to amplify the voices of PWDs.

Finally, as we mark the UN Convention on the Rights of PWDs, it is worth noting that full implementation of the Convention is salient in actualizing these rights. It is my hope as a representative of PWDs, that every State Party that signed and ratified the UN Convention on the Rights of PWDs will remain true to the international agreement and endeavor to defend the Convention by implementing every portion of it in order to bring PWDs on board and end the simmering disparities in the political, social and economic status that are visible.

Thank you for giving me the opportunity.

**The Speaker** (Hon. Lusaka): Sen. Shiyonga. She is not there.

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, with your permission, I would like to make a few observations on the Statement on behalf of the Committee of Labour and Social Welfare which is charged with, among other things, addressing the plight of PWDs.

From the outset, I congratulate Sen. (Dr.) Musuruve for being a champion of PWDs in this Parliament. In the last Parliament and in this one, we have had Sen. Mwaura. Whatever debate you bring to this House or to the Committee, Sen (Dr.) Musuruve will always ask: “What is in it for PWDs”? Whatever topic it is, she incessantly will bring up and play her role of representing the people for whom she was nominated to this House.

The UN Convention on the Rights of PWDs is very important, but I think we need to give more prominence as a country. Personally - I do not know if I am one of those who Sen. (Dr.) Musuruve is talking about, persons who are not living with disability, representing PWDs - I have personally attended the Convention on Rights of PWDs many times and seen the strides that our country has made. This is the first comprehensive human rights Convention of the 21<sup>st</sup> Century that came effective in 2008.

Part of the gains we need to underscore is the fact that people’s attitudes internationally towards Persons with Disabilities (PWDs) changed. Before, it was about them being objects of sympathy and medical issues, but now we look at this as a human rights issue.

Mr. Speaker, Sir, just as anybody else, they need certain adjustments to be made for them to attain human rights. In the last Parliament and in this one, our Committee

together with that of the National Assembly have brought in the issue of political and economic rights.

Therefore, I wish all the PWDs in this country a happy International Day of PWDs. I hear the estimates from Sen. (Dr.) Mwaura are close to four million. As a Committee, we will continue to push for the realisation of their rights as provided for in Article 27 of the Constitution and to bring legislative interventions to support them.

Thank you.

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

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

**Sen. (Dr.) Mwaura:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Statement by my colleague and fellow Senator representing PWDs, Sen. (Dr.) Musuruve.

From the word, go, I congratulate all PWDs and their allies on the celebration of the International Day of PWDs. This day is celebrated every 3<sup>rd</sup> of December across the world.

Earlier on, we used to celebrate it as a national event alone in Nairobi or in some other location. Today, people in Kibwezi in Makueni County are doing that. I am very glad that it has now become a matter of counties. I have just come from Kiambu County and if you look at my shoes, they are full of mud. We were having a celebration there---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mwaura. Is it your argument that the only place with mud is Kiambu?

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, every place has mud.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Mud on shoes does not mean you are coming from Kiambu, does it?

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, I was a guest there to honour the day. Every place has mud, but Kiambu has more mud than other places.

*(Laughter)*

Possibly it delineates the challenges of PWDs because when there is this kind of terrain, they are not able to navigate properly because of issues of accessibility. In fact, this morning I was privileged to officiate an event that we are organising about assistive technology between the United Kingdom (UK) and the Kenyan Government as a follow up commitment to the Global Disability Summit that we had last year in London.

What we are doing, as the Chair of the advisory board is that, we are looking for innovations that will help PWDs to have affordable, but quality assistive technologies and devices. For example, there is a very good innovation by a young man called Lincoln which is a motorised tricycle that would help PWDs at the cost of about Kshs80,000. However, it can come lower so that it is affordable.

As politicians, we like to donate these assistive devices to PWDs because they look good; it is political philanthropy with political mileage. However, most of them are

not durable. Therefore, we need to look at issues of disabilities clearly as a legitimate constituency that needs to be facilitated and represented properly.

When I look at the Building Bridges Initiative (BBI) Report led by Sen. Haji, I have heard a lot of complaints about PWDs not getting prominence when people were at Bomas of Kenya. I was not there because I was not in the country. However, PWDs expected that one of them would speak, so that they can see people who look like them and hear from them.

Mr. Deputy Speaker, Sir, we are still under that element of tokenism where people still think that to have a person with disability is a favour; it is not a right and you are almost made to be apologetic for being there. This is a challenge. However, we need to appreciate that this is a legitimate constituency.

Sen. (Dr.) Musuruve and I represent a whole country of people who have aspirations. We have just had the census and it is our belief and prayer that the census will produce better results for PWDs. Our estimate is that we will have nearly four million Kenyans with disabilities out of an estimated 47 million Kenyans as we have seen the nominal results so far.

Also, we hope that it will be desegregated in various categories of disabilities, so that we do not have under-representation or marginalisation within disability itself, especially when we look at developmental disability, such as autism, cerebral palsy, down syndrome and intellectual disability. That we shall find this---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mwaura, conclude.

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, this is a very great day and I hope that Senators will find time to celebrate their own constituents with disabilities, in the spirit of leaving no one behind and also to join our clarion call: “Nothing about us, without us.”

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. We are past the Statements Hour.

I will only allow one last Statement from the Chairperson of the Committee on National Security, Defence and Foreign Relations, Sen. Haji.

He is not in. Sen. Sakaja, are you standing in for Sen. Haji?

I thought I saw him one second ago or is he building bridges?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, the bridges are being built by all of us.

*(Sen. Kihika consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Kihika.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, the Chairman of the Committee has requested that I make the Statement on his behalf, if you so allow.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please, proceed.

ACTIVITIES OF THE COMMITTEE ON NATIONAL SECURITY,  
DEFENCE AND FOREIGN RELATIONS

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, this is a Statement relating to the activities of the Standing Committee on National Security, Defence and Foreign Relations from 1<sup>st</sup> July to 30<sup>th</sup> September, 2019.

During this period, the Committee has held seven sittings, considered three Petitions, 10 Statements and undertook visits to four counties. With respect to Statements pursuant to Standing Order No.48 (1), 11 Statements were handled during that period. All of them fall under the mandate of the Ministry of Interior and Coordination of National Government and were as follows-

(1) There was a Statement by Sen. Halake on the issuance of certificates of good conduct to ex-prisoners. The Committee received the response and shared it with the questioner.

(2) Statement by Sen. Prengei on the state of preparedness for the 2019 National Population and Housing Census. I think that was overtaken by events. The response had not yet come by the time this report was being done.

(3) Sen. Farhiya sought a Statement on flights arriving into Kenya from Mogadishu. The Committee was yet to receive a response on that one.

(4) Sen. Loiptip sought a Statement on remuneration of police reservists. The Committee received a response and shared it with the questioner.

(5) Sen. Outa requested a Statement on cause of unrest in Kisumu County Assembly. The Committee received a response and also shared it with the questioner.

(6) Sen. Wario sought a Statement on provision of immigration services and I think this response was received and shared with the questioner. I will have to confirm with the Member. As of this date, it had not been received, but I know it had been received by the questioner.

Sen. Mutula Kilonzo Jnr. sought a Statement on the status of prisons in Kitui County. We received and shared the responses. There are also many others from the Senators. Let me not go to each one of them because of time.

We have received requests for Statements many times and we look for the responses. Due to the high number of Statements sought from the Committee on National Security, Defence and Foreign Relations, the Committee administratively came up with a system where, once a month, the Cabinet Secretary appears before the Committee to respond to the Statements. However, some colleagues have not been coming to hear and question the responses on their own Statements. I urge Members to be attending sittings.

Mr. Deputy Speaker, Sir, the Committee scheduled a meeting---

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Members! Proceed Sen. Sakaja.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, the Committee scheduled a meeting with the Cabinet Secretary for Interior and Coordination of National Government on Wednesday, 20<sup>th</sup> November, 2019, to clarify on issues arising. The remaining issues will

be dealt with. The last meeting aborted but we shall reschedule that. We urge Members to attend when invited.

A report has just been given by Sen. Haji regarding the Petition on settlement of awards to ex-Kenya Air Force officers and servicemen. We met the petitioners, the Cabinet Secretaries in charge of Defence and the National Treasury and the Attorney-General. We have tabled a report before this House.

The second Petition was about the rising cases of insecurity in Laikipia West Constituency in Laikipia County. The Committee has scheduled meetings with the petitioners and the Ministry of Interior and Coordination of National Government. A visit to the affected area will be undertaken and a report will be tabled.

The third Petition was brought by Sen. Khaniri. The Petition was about the enactment of a military veteran law. It had earlier been referred to the Committee on Labour and Social Welfare but later on, it was referred to our Committee. The Committee has planned to invite Sen. Khaniri.

Mr. Deputy Speaker, Sir, in that period, we visited Kakamega, Nandi, Kisumu as well as Kitui counties. The Committee jointly undertook with the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration to address issues of border disputes and insecurity. That report will come to the House.

During the Senate sittings, the Committee together with the Committee on Justice, Legal Affairs and Human Rights visited Kitui Maximum Prison to oversight the status of the prison. We have also been visiting other prisons and borstal institutions across the country.

The Committee also held key meetings as follows: We had meetings on police reforms and housing programmes with the Cabinet Secretary for Interior and Coordination of National Government and different agencies. The issues of double registration of motor vehicles, new generation of number plates, extra-judicial killings in the country, roadblocks, status of border posts in the country and issuance of e-passports were discussed.

For the remainder of this quarter, the Committee has planned to convene a workshop on drugs and youth radicalization. We will also have a meeting with the Cabinet Secretary for Foreign Affairs and International Trade to deliberate, among others, integrity and security of Kenya's borders. We have heard a matter of Migingo Island. We also have issues with our maritime border with Somalia. There is also an issue in the north at Elemi Triangle that we raised in this House a week ago.

Concerning the status of all our missions abroad, some are in a poor state. We will deliberate on pending bills before the Committee.

Mr. Deputy Speaker, Sir, finally, I would like to thank all the Members. The Committee has dedicated Members who always attend meetings on time and we always have quorum. We also have a dedicated Secretariat, led by Ms. Rose Mudibo, and a legal team and researchers. We thank them for the great work they have been doing.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Members. I would like to be advised by the Chief Whips of the Parties whether we are able to carry out Divisions.

**Sen. Kihika:** No.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The answer is in the negative. Accordingly, I direct that the Divisions appearing in today's Order Paper be carried out

tomorrow. I direct the Senate Majority and Minority Whips to ensure that we have numbers to carry out those Divisions because they are many. Therefore, accordingly, I defer Order Nos.9, 10, 11, 12, 13 and 14.

### MOTIONS

ADOPTION OF CPAIC REPORT ON INQUIRY  
INTO FINANCIAL OPERATIONS OF VARIOUS COUNTY  
EXECUTIVES FOR FY 2014/2015

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo-Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot County Executives for Financial year 2014/2015 (1<sup>st</sup> July, 2014 to 30<sup>th</sup> June, 2015), laid on the Table of the Senate on Wednesday, 9<sup>th</sup> October, 2019.

*(Motion deferred)*

ADOPTION OF CPAIC REPORT ON INQUIRY INTO  
FINANCIAL OPERATIONS OF VARIOUS COUNTY  
EXECUTIVES FOR FY 2013/2014

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the Financial Operations of Kiambu, Busia, Kwale, Tana River, Trans Nzoia, Nyandarua, Migori, Kisumu, Samburu, Kericho, Bomet, Bungoma, Garissa, Isiolo, Kitui, Lamu, Makueni, Mandera, Marsabit, Meru, Mombasa, Nyamira, Taita-Taveta, Uasin Gishu, Vihiga and Wajir County Executives for the Financial Year 2013/2014 (1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014), laid on the Table of the Senate on Thursday, 21<sup>st</sup> November, 2019.

*(Motion deferred)*

### BILLS

*Second Reading*

THE CARE AND PROTECTION OF CHILD PARENTS BILL  
(SENATE BILLS NO.11 OF 2019)

*(Bill deferred)*

*Second Reading*THE ALTERNATIVE DISPUTE RESOLUTION BILL  
(SENATE BILLS NO.19 OF 2019)*(Bill deferred)**Second Reading*THE KENYAN SIGN LANGUAGE BILL  
(SENATE BILLS NO.15 OF 2019)*(Bill deferred)**Second Reading*THE COUNTY LICENSING (UNIFORM PROCEDURE) BILL  
(SENATE BILLS NO. 17 OF 2019)*(Bill deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Members, I also wish to make the following communication.

There has been a ruling which has been pending on the Motion that had been introduced by the Senator for Narok, Sen. Olekina. I know it touches on life issues. I am informed that as late as today, there are some counties where deputy governors are trying to assert themselves in the absence of their governors or otherwise. The ruling is ready but I have been requested by the Majority Party that we proceed. I have accepted that we deal with Second Reading on the Elections legislation and the ruling be given tomorrow.

I direct that the ruling on the powers of deputy governor to act when the substantive governor is not in office shall be delivered tomorrow at 3:30 p.m. Therefore, the business of the House tomorrow will be re-arranged accordingly to give precedence to the timing of that ruling. That timing can only be changed if there will be Division. Otherwise, no other agenda should supersede. It is so ordered.

*(Applause)**(Sen. Murkomen spoke off record)*

Order, Senate Majority Leader! I have overheard you dishing out leadership roles like candy.

Sen. Mwaura, I would like to know how many minutes you will require to reply to the Bill on Order No.8 because that will dictate what I will say next. How many minutes will you require?

*(Sen. Mwaura spoke off record)*

Sen. Mwaura, you can see the mood of the House. We have an urgent legislation on elections. I direct that you take 10 minutes. If you wish to take 15 minutes, I direct we proceed with the Bill on elections first, then you can reply later.

Can I hear from Sen. Mwaura?

**Sen. (Dr.) Mwaura:** I can do it right now, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you do it now in 10 minutes?

*(Sen. Mwaura spoke off record)*

Then let us have Order No.8 called out.

## BILL

### *Second Reading*

#### THE REGISTRATION OF PERSONS (AMENDMENT) BILL (SENATE BILLS NO.14 OF 2019)

*(Sen. (Dr.) Mwaura on 7.11.2019)*

*(Resumption of debate interrupted on 20.11.2019)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mwaura, you have 10 minutes to reply.

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, let us not rush the matters that do not appear to be important because all matters are important. This should go directly to the Senate Majority Leader.

The Registration of Persons (Amendment) Bill (Senate Bills No.14 of 2019) is an important piece of legislation. It seeks to ensure that intersex persons are recognised in this country.

Members who contributed made a clear case. I thank Sen. Orenge who is the Senate Minority Leader, Sen. (Dr.) Milgo, Sen. Halake, Sen. Kasanga and others who have supported this Bill from the time it appeared for Second Reading. The country is waiting to see this Bill passed by the Senate. This is because, for a very long time, intersex persons have suffered greatly. The injustice cannot be gainsaid.

Mr. Deputy Speaker, Sir, just to reiterate some of the issues that have been brought up clearly, we should be proud as a country because we are the first to do a comprehensive census for intersex persons. Although the census did not achieve the threshold as anticipated, it is better than countries such as Australia which tried to do a similar exercise but only got 40 people. We have 1,524 individuals who positively identified as intersex persons despite the constant stigma and discrimination.

Mr. Deputy Speaker, Sir, this Bill, is a question of identity; who do you think you see yourself as and how do other people see you as? This is a very genuine question. It speaks very deeply to the very essence of a human being.

Listening to stories of people who are intersex, I have noted that they have been discriminated upon. They have been denied basic documents such as birth certificates or a question mark is indicated in their birth certificates because it is not clear which genitalia the child has. Further, it is sad when they have to go through non-therapeutic surgery that is informed of other people's opinion on their bodies without proper biological scientific background. It is really sad. Further to that, there is the issue of having to incur these expenses amounting to millions of shillings especially because these children are largely born from poor backgrounds. This is something that we need to take care of.

The intersex persons Bill in the name of The Registration of Persons Bill - because that is exactly what it is - is intended to ensure that these anomalies are corrected. This way, such individuals can also get identity cards and have basic transactional power like having an M-Pesa account or a SIM card. They will have the right kind of name in their academic papers and can also go for an interview and be competitively recruited for a certain job opportunity, so that they can be self-reliant.

Mr. Deputy Speaker, Sir, I must applaud the 14 Senators and Members of the National Assembly who showed up during the breakfast meeting that we had on 24<sup>th</sup> October, 2019 at the Intercontinental Hotel. I also applaud the Committee on National Security, Defence and Foreign Relations. This time round, it was chaired by the Senator for Kisumu County, Sen. Outa. Sometimes we joke with him that he is actually the *Thur* Gem. Sen. Kwamboka and others also supported.

I hope the report of the Committee shall be availed to Members - I cannot see it on the I-pad - so that even as we go to the Committee of the Whole, people can see the submissions that were made by various bodies and individuals concerning this issue.

One of the notions that I want to disabuse is that this is about Lesbian, Gay, Bisexual and Transgender (LGBT). It is not about lesbians, gays, bisexuals and transgender. This is about intersex persons. For the avoidance of doubt, intersex persons are children who are born without fitting the binary definition of a male and a female. They are born that way. They are not people who want to change their sex or those who think they are female when their bodies are male. No!

These are children who are born just like you and me, without necessarily a clear definition of their role. Their bodies only express themselves after puberty and then they will lean more towards female or male; a situation that would occasion the change of name and change of particulars in their official documents.

Mr. Deputy Speaker, Sir, when we do this, we should have in mind that it is actually child-centered. It is about the best interests of the child as a principle of human right so that then we ensure that when this child is born, they do not come into a rigid system against them on factors that are beyond their control.

I would want to ask this august House that when this Bill is called for the Second Reading - based on the situation in the House, I would ask that you do that much later - that we pass this Bill and go to the Committee of the Whole. We got very good recommendations and some few amendments and definitions that I would want to imagine that we shall be able to carry so that by the end of the day, we will not leave out any aspect that would help us.

However, we will certainly need to move forward and have a more comprehensive Bill and other similar amendments through miscellaneous or other ways so that we can fully integrate and include them.

I commend the Kenya National Commission on Human Rights (KNCHR) and the Intersex Persons Society of Kenya (IPSK), an organisation of which I am the vision bearer and patron. I hope that Kenya will definitely teach the rest of the world on how to be inclusive. I thank all the stakeholders; the advocates and lawyers from the Cradle Children's Foundation who went to court to make sure that such cases were properly prosecuted.

I thank the Attorney-General's office for the way they have given us the support. I thank the Kenya National Bureau of Statistics (KNBS) and all the people that have made it their calling to ensure that these individuals also count as Kenyans and they have their right place in society and they too can make a contribution to make Kenya a great place.

I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mwaura! Can I proceed to call out for Division?

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, gauging the mood of the House, I ask that we defer.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Do we defer on the basis of the mood?

*(Laughter)*

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, you are the presiding officer. I stand guided by your ruling that if you look around, we may want to look at the numbers.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Absolutely. We do not have the numbers. I direct that Division takes place tomorrow.

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

I further direct that we defer Order No.17.

*Second Reading*

THE ELECTION (AMENDMENT) BILL  
(SENATE BILLS NO.18 OF 2019)

*(Bill deferred)*

We will deal with Order Nos.15 and 16 and if time allows, Nos.18, 19 and 20 in that order.

Let us move to the next Order.

*Second Reading*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
(NO.2) BILL (NATIONAL ASSEMBLY BILLS NO.13 OF 2018)

Senate Majority Leader, proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to move:

THAT, The Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bills No.13 of 2018) be read a Second Time.

This is such a voluminous, Statute law (Miscellaneous Amendment) Bill. This is a practice that we have been discouraging as the Senate because the number of legislations that are being amended by this Bill are too many and some are substantive. If it was only to correct the things that we would say are miscellaneous as they are called, then we would have gone with it.

Nevertheless, since it is a Bill that has come from the other House, it is our responsibility to prosecute it as we ought to do. However, when it becomes this voluminous, it also becomes incumbent upon us to take time to scrutinize it. I am happy the Committee on Justice, Legal Affairs and Human Rights did a good job in scrutinising this Bill.

One of the challenges you have in such a situation is that you even wonder which Committee should deal with such a Bill. This is because, as I will point out, the Bill seeks to amend the following laws:

1. The Betting Lotteries and Gaming Act Cap.131; basically, the amendments are to enhance various penalties on offences under the Act.
2. The Dairy Industry Act Cap.336 - the amendments seek to enlarge the definition of milk to include goat and camel milk and to amend penalties under the Act as well as allow regulation of standards, manuals of installation and operation of milk dispensers.

Mr. Deputy Speaker, Sir, did you realise that when I mentioned the word, milk, the Senator of Narok County jumped from his seat?

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is the connection between the Senator for Narok County and milk?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I know him as a dairy farmer. Being a pastoralist, that is possibly what I am interested in.

It reminds me of something, let me digress a little bit; there is a manager of Manchester United and his name is Mr. Ole Gunnar Solskjær. He has an “Ole” in the middle of his name. When I made a comment on *Twitter* about the manager of Manchester United as a club, the Senator for Narok County quickly defended the manager. I suspected it is because of “Ole”; Ole Gunnar Solskjær.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): He was defending a fellow pastoralist.

**The Senate Majority Leader** (Sen. Murkomen): He actually believes there are some Maasais in Norway where the said gentleman comes from.

*(Laughter)*

Mr. Deputy Speaker, Sir, the Bill also seeks to amend:-

3. The National Hospital Insurance Fund Act of 1998. It seeks to amend Section 32 of the Act.
4. The Urban Areas and Cities Act; the amendment seeks to establish the Directorate of Urban Development and Management, and to mandate the county government to comply with the National Urban Policy prescribed by the Cabinet Secretary (CS).
5. We have the Micro and Small Enterprise Act 2012, and the Amendment seeks to align the Act with the Constitution and devolved system of government.
6. We also have the Public Private Partnership Act 2013, and the Amendment seeks to streamline the process of resolving disputes on various project agreements under the Public Private Partnerships Act.
7. The Crops Act 2013 seeks provision for benefit of value-addition to agricultural produce in relation to exports.
8. The Technical and Vocational Education and Training (TIVET) Act 2013 seeks to define the public institutions, make more provisions of council membership and their appointments.
9. We also have the Public Procurement and Asset Disposal Act 2015, the National Employment Act 2016, and;
10. The Fisheries Management Development Act, 2016.

Mr. Deputy Speaker, Sir, can you imagine a Miscellaneous Amendment Act that deals with 11 laws? Even if it is brought to a particular House, as it was brought to the National Assembly and forwarded to this House, the question is which Committee should prosecute it? This is because we are moving from crops to dairy, public procurement to national employment, fisheries, TIVETs, betting, issues related to public-private partnerships, and then we move all the way to hospital insurance. As a practice, this is something that needs to be checked.

Mr. Deputy Speaker, Sir, I am very happy that the Committee spent time to work on these various positions. The observation of the Committee was generally that the Bill did not keep in discipline with the purpose of an omnibus Bill, which ideally makes few amendments to legislations. On the contrary, some of the proposals make substantive amendments to legislation. The Committee also proposed several amendments to the Bills. That is why I am saying that I am glad the Committee spent time to scrutinise these Bills.

Mr. Deputy Speaker, Sir, I will start with the Betting, Lotteries and Gaming Act. In general, this Bill is dealing with punishment for various offences under the Act. Most of the provisions that came from the Bill itself, which is from the Attorney-General's Office, are that most of the amendments were enhancing the punishment for various offences. Our Committee looked at it and said that some of the punishments were not proportional to the offences; so we reduced them. I will just capture the essence of all these.

If you look at the amendment of Section 2, it deals with changing from Permanent Secretary to Principal Secretary, as required by the Constitution. You also have amendments that relate to holding of office for the board. For clarity purposes, the amendments indicate that three years is enough, as a period for one to serve only twice in the Board.

Mr. Deputy Speaker, Sir, the other amendment in Section 5 deals with amending provisions talking about local authority; and it expressly refers to county governments, because the local authority does not exist anymore. We have county governments replacing it, which is also a local government. If the Act had said local government, it would be superfluous to even refer to the county government, but in any case local government is the county government.

Section 5(4) deals with offences if you make false statements in an application for license. Section 5(4) enhances the penalty from Kshs5,000 to Kshs1million, and for a jail term of six months. Our Committee in the Senate is proposing an amendment that it should be Kshs5,000 instead of Kshs1 million, and that the six months is retained. There is also the penalty where security is not provided for in the Act itself. With regard to depositing of security, the Section is saying that the security should be Kshs20 million, but the Senate Committee says it should remain Kshs5 million. This is because Kshs20 million is also too high for one to get that amount of money.

Mr. Deputy Speaker, Sir, with your permission, I remind Members that I agree with all the amendments that have been brought by our Committee, because it is just about proportionality of punishment. You cannot just move from Kshs5,000 to Kshs1 million in one day. You should move to a reasonable amount of money. The reasoning of our Committee was that you should not also punish those who are entering the business to protect the big boys. We should also not make it excessive punishment. If you did not like this kind of business, then it was important not to approve it in the first place than to put punishment that is not proportional.

Mr. Deputy Speaker, Sir, on the amendments in the Dairy Act, these are very few. We were to expand the definition of milk from milk, which in those days, was known to be only cow milk, to also capture milk from other animals. Our Committee removes the question of milk from definition of milk becoming solid--- First of all, the milk should be from goats and camel. I do not know why it is also not from sheep, because I grew up milking sheep. That is something we should consider during the---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should tell us why it should not include sheep milk; it is now your Bill.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am proposing that at the Committee Stage, it should be goats, camel, sheep and donkeys, because we milk donkeys in Turkana. In fact, in most parts of the country where donkeys are milked, it is believed that their milk is of high medicinal value---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): At that rate, Senate Majority Leader, you will end up milking everything!

*(Laughter)*

**The Senate Majority Leader** (Sen. Murkomen): Whatever brings milk, we let it be milked, as long as it is not human beings and also not ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let there be milk!

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I think the reason the Committee left out sheep was basically because globally, sheep milk has not been commercialised to the point we would have to worry about it being sold in the market. However, I can tell you for sure that I used to milk my Merino sheep. A glass of Merino sheep milk can prepare – I do not know how to measure – a big *sufuria* of tea. It has a higher concentration than if you were to use cow milk.

I am talking from experience. If you have two or three Merino sheep, you will take very fantastic tea in your home. Since most of it has not been commercialised to the extent that it needs public regulation, that is perhaps the reason why it should be left; and understandably so. Camel and goat milk are highly commercialised and, therefore, that regulation makes sense.

Mr. Deputy Speaker, Sir, there is an amendment in Section 9 that prescribes licences that will regulate issues of milk. The Committee proposes that the licensing requirements shall be overseen by county governments. I totally agree with it. Those regulations will prescribe the manner of handling, storage, dispensing and general management of dairy produce. It will also deal with the collection of dairy levy by county governments. The regulations to be made under the Act should provide for punishment for a fine not exceeding Kshs3 million, or a term of imprisonment not exceeding three years or both.

Mr. Deputy Speaker, Sir, the Committee on Justice, Legal Affairs and Human Rights proposes that this Section be deleted so that matters to do with punishment are retained by Parliament, and not *via* regulation. For example, discretionary powers on matters of fines should not be left to a CS. I fairly disagree with the Committee because the CS cannot make the regulation on his or her own. It will come to Parliament for approval; so we can still discuss that.

I would have appreciated if the Committee did not remove that important punishment, because mishandling of milk is dangerous for this country. There have been cases where people have added other substances to milk. For example, they put a lot of water and some colouring matter, and then they sell to Kenyans substandard milk. This should attract serious and severe punishment, because it is like selling untreated water. Some people collect water from the river which exposes citizens of this Republic to all kinds of diseases.

Mr. Deputy Speaker, Sir, we should be serious with regulations on matters that deal with the health of the people of this country. We spend a lot of money to treat serious diseases whose root cause is the way we handle food and dispose substances. This is an area that we must take seriously. I, therefore, persuade the Committee that when we come to the Committee Stage, we should allow this regulation to remain in place. If not, we should prepare an amendment of the main Act so that we provide the punishment there.

Mr. Deputy Speaker, Sir, there is a provision in the proposed New Section 23A (1) that states:-

“There shall be payable to the Board by every producer a dairy regulatory levy a rate of 0.2 per cent of ex-factory price per kilogram of marketed processed milk and milk products.

(2) Despite subsection (1), a county government may, pursuant to Article Section 209 (3)(c) of the Constitution, impose a cess payable to county governments on any milk or milk products produced within the county.”

Our Committee proposes that this Section be deleted. The argument is that the provision allows the Kenya Dairy Board (KDB) to charge a regulatory levy on milk and milk products. The Committee noted that the charge on levies on agricultural products is a mandate of county governments, and only counties should be allowed to charge such levies. The Committee, therefore, proposes that only the proposed new subsection 23(4)(2) be retained. Consequently, the words ‘despite subsection’ appearing at the beginning of the Section should be deleted.

In other words, the county government, based on Section 209 of the Act, should levy such amounts on milk and not the KDB. This is because this will be double taxation on the farmers, who are already struggling. I totally I agree with our Committee. I do not know how this escaped the National Assembly because every person who cares about farmers must protect them.

Mr. Deputy Speaker, Sir, Section 33 deals with punishment of a person who recklessly supplies milk which is materially false. That person will be guilty of an offence and will have to pay a fine of Kshs1 million from Kshs2,000 – that was those days – or to imprisonment for a term not exceeding one year or both. Our Committee proposes that we do away with “Kshs1 million or imprisonment for a term not exceeding one year or both” and replace it with Kshs5,000. I totally disagree with this, because this Section deals with what we were talking about. The punishment should be high for a person who sells milk falsely and lies to Kenyans. Why should we fine people Kshs5,000 for selling milk that has dirty water?

Mr. Deputy Speaker, Sir, I propose that the Committee enhances the punishment from Kshs1 million to 5 million, so that it becomes difficult for those who are guilty to pay. They should be locked up if they are unable to raise the fine. This Section must remain as it is for now, so that it is enhanced further in the future. That way, we will deal with cartels that are selling Kenyans bad products in the name of good milk.

Mr. Deputy Speaker, Sir, the Chairperson of the Committee on Justice, Legal Affairs and Human Rights is somewhere in Milimani Courts, having been charged for incitement on a matter that happened four months ago. It took the Director of Criminal Investigation (DCI) four months to approve his charges. It is coincidental that as a result of serious criticism of those who preside over the Ministry Interior and Coordination of National Government, our Chairman is not around. I, therefore, hope that Members of the Committee---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): How do you know that is the reason?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, what a coincidence that it took four months for one to be charged over incitement, which is a straight forward kind of a crime. It is actually a misdemeanor, considering what he said then. Assuming that it is a felony, it does not go beyond two or three years.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you not aware of the non applicability of statutory limitations on crime?

**The Senate Majority Leader** (Sen. Murkomen): I am fully aware, Mr. Deputy Speaker, Sir. However, I am talking about the coincidence between the criticism of the CS and his immediate charge thereafter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, I would rather you stay on the issue of milk and how to ensure that Kenyans take good milk. I see you venturing into what is happening out there. There are those who are building bridges, and others who are burning them. We are oblivious of who is building and who is burning; so stay on the issue of milk.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, this Senate cannot be oblivious of such important matters as burning bridges. This is because the Senate was heavily represented in the Building Bridges Initiative (BBI). Therefore, if there is a bridge that will be broken, the Senate must be more interested in dealing with it. However, the uptake of my comment is that---

*(Sen. Sakaja consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Sakaja!

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, in the absence of the Chairperson of the Committee, who is currently facing incitement charges in court for an offence that allegedly took place in August this year and immediately charged after criticizing senior Government officials, I request, Sen. Mutula Kilonzo Jr. and other Members to take note until the Chairperson is freed, so that we deal with the relevant amendments. The Senate Majority Leader does not support incitement in any manner or situations where the rule of law is misused to punish political competitors.

Mr. Deputy Speaker, Sir, the law that is being amended is on the title of the National Hospital Insurance Fund (NHIF) Act, which we are changing to the National Health Insurance Fund Act. Subsequent amendments deal with the removal of the word “hospital” and replacing it with the word “health.” Various amendments have been made to ensure that the “health” part is removed. The word ‘Cabinet Minister’ has also been replaced with ‘Cabinet Secretary,’ until the day the BBI will return the ‘Cabinet Minister;’ then we shall amend it again.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Murkomen.

*(Laughter)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, there is an amendment to demonstrate the kind of contributions that can go to the fund. That is a new Clause, which is an extension of Section 3(2)(i) to (vi) that:-

- (i) contributions under section 15;
- (ii) employer contributions matching the employee's contributions;
- (iii) such monies as may be appropriated by the National Assembly out of the Consolidated Fund, for persons certified by the Board to be unable to pay the contributions;

- (iv) gifts, grants or donations;
- (v) funds from the National Government, County Governments or employers for the administration of employee benefits; and,
- (vi) funds from post retirement funds for provision of medical cover to retired employees, where the contributor has elected to do so.”

Mr. Deputy Speaker, Sir, the law also amends Section 4(e), where the Director of Medical Services or his or her representative was supposed to sit on the board. It has been substituted with Director General for Health or his or her representative to capture the new Health Act. The new addition to that Section is that an additional person will be nominated by the CoGs, who has knowledge and experience relating to health.

The Senate, in its amendments, is proposing that this Section be amended by deleting the words in Paragraph (k) and substituting with the word ‘three.’ Three persons will represent the CoGs, considering that health is a heavily devolved function. We would like to have more representatives from the counties seating at the NHIF. That will be one of the ways of breaking the cartels. There are cartels that have been in the NHIF since its beginning. Those people never leave the fund, and they are not poor. Those individuals have benefitted from the NHIF by employing their friends and relatives while stealing money.

Mr. Deputy Speaker, Sir, there is serious looting of public resources at the NHIF. However, the individuals who sit at the fund board to represent the workers and employers are eternally in those institutions. They have devised means and mechanisms of dodging the rule of law. Some of those individuals are politically correct, so they are not charged or investigated. Many times, the CEO and other senior managers get arrested and charged, but the Board has never been charged; yet most of the expenditure by the NHIF was approved by the board. The Board membership never changes because it is almost cast in stone. It represents ministries, workers and employers. It is the same individuals who nominate themselves.

It is unbelievable that some of the Board members of the NHIF can give us lectures about democracy. Some of the Board members that I am talking about are very close to the Senator for Nairobi City County. I hope that while having private conversations, Sen. Sakaja can convince his friends to leave the Fund for other young and vibrant minds.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it Sen. Sakaja?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, the statement by the Senate Majority Leader insinuating that I have close friends at the NHIF Board can be ignored. I am close to many Nairobians who voted for me.

*(Interruption of debate on Bill)*

**POINT OF ORDER**STATUS OF SENATE BILLS PENDING IN THE  
NATIONAL ASSEMBLY

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I rise on a point of order under Standing Order 156 and 157. I would like to seek a serious ruling from your Chair. We are debating a Bill from the National Assembly. In true fashion of the Senate, we are going to deal with it and finish. However, currently, there are 34 Bills from the Senate in the National Assembly, which Members have researched, worked on and passed. Sen. Olekina has two Bills that he sponsored, which are still pending in the National Assembly. Sen. Mutula Kilonzo Jnr. and I also have two pending Bills each. The Determination of the Nature of Bills (Procedure) Bill, 2018, was referred to the Budget Office and it is still pending there.

Mr. Deputy Speaker, Sir, the Senate needs to pronounce itself on the pending bills in the National Assembly. We have to relook at Standing Order 156, which states that once we have dealt with a Bill, it goes to the National Assembly, where they go to park. What can be done about the pending Bills? We have discussed so many wonderful Bills, which are pending in the National Assembly. The Mental Health (Amendment) Bill, 2018, was sent to the Parliamentary Budget Office (PBO), and it has been there for months. We have bills that have been pending in the PBO for months. It is not fair.

Mr. Deputy Speaker, Sir, the Senate is part of the legislative process in this country. We work hard and our secretariat does an amazing job; but our Bills are left pending in the National Assembly. I urge you to give a considered ruling on this matter. We can no longer sit and watch our hard work getting stuck in that House. I am an aggrieved Member of this House who produces content, as part of my roles under Article 96, that includes legislation. I need to give an answer to the people I represent on why the bills that they sent me to pass in this House are not being processed.

Mr. Deputy Speaker, Sir, I kindly urge you to give us a ruling on this matter. Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, where are the Bills from this House?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, when Bills leave the door of this House to go to the National Assembly, the Senate becomes *functus officio* literally, until they are returned to this House. This is as was expected by the Constitution; to have either been approved as it is, or to concur with the amendments from the National Assembly. If there is a disagreement on the passage of a Bill, we then go for mediation.

Mr. Deputy Speaker, Sir, the Constitution presupposes that we have reasonable men running institutions of governance. The Constitution also presupposes that we have people acting in good faith. Prof. Hastings W. Okoth-Ogendo said that Africa is suffering because we have constitutions without constitutionalism. We can lament here the whole day, but most importantly, we must pray that the Speaker of the National Assembly and the leadership there finds favour in establishing that constitutionalism is an important thing, and not to put unnecessary bottlenecks to legislations that comes from this House.

However, As we pursue the fate of our Bills in the National Assembly, we cannot hold the Business that comes from them at ransom, because we cannot accuse them of unreasonableness and bad faith and continue the behaviour of bad faith ourselves. Once Bills are sent to this House, we must continue doing our best to dispense with the law, as provided and brought to this House.

Mr. Deputy Speaker, Sir, I totally agree that this is a problem that we have been dealing with, in the Senate from 2013. More than 30 Bills collapsed in the National Assembly at the end of the 11<sup>th</sup> Parliament. I can see that 60 or 70 are about to die in the National Assembly now. I am speaking knowing very well that when the BBI was established, chaired by Sen. Haji and Sen. Wako, being the shining light in that Committee, there was no single sentence in the report that mentioned about the Senate, the problems that we face under Article 110 of the Constitution, or the problem of movement of Bills from one House to the other. This is a paradox, because when I looked at that report – with utmost respect to my father, Sen. Haji – I properly understood why Senators participated in closing the Senate in 1966. It is possible for us to play a role in undermining our mandate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, where are the Bills that have left this House and have not returned, as they should? That is the essence of Sen. Sakaja's point of order.

**The Senate Majority Leader** (Sen. Murkomen): The Bills are in the National Assembly.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): When are we having them back?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it is your office that can answer that question better than myself. The Constitution left that responsibility to the Offices of the two Speakers.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let me hear from Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, the point raised by Sen. Sakaja is so serious, but I am not sure whether the Senate Majority Leader has appreciated it. I am also not certain whether it can be responded to in the manner he is proceeding. He is saying that, "They are coming;" and "We do not know." To be specific, the Data Protection Bill that was proposed by the Committee on Information, Communication and Technology (ICT), led by Sen. Moi, has already been republished. The Disaster Management Bill, that Sen. Sakaja and I proposed, has been plagiarized to a Bill called the National Disaster Management Authority, 2019.

Mr. Deputy Speaker, Sir, when the Senate Majority Leader comes to issue a statement on Thursday on the status of Business and generally the state of the Senate, that point of order must be responded to. It should be responded to in a manner that we must understand that we are moving forward with this Bill, with the intention that there will be a handshake, a bridge or something. Otherwise, he has not raised the concerns by Sen. Sakaja, which is a serious issue.

Mr. Deputy Speaker, Sir, it is not enough to criticize this badly done law and then proceed to call for division. Sen. Kihika and I have the onerous task of looking for Members to pass Bills from the National Assembly, when the ones we have passed here are not discussed. Even Sen. Sakaja is guilty of some of the crimes, because their own

Bill on retirement was put in the shelf; yet we fast-tracked the one from the National Assembly. I warned the Senate that what is good for the goose must also be good for the gander.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, this matter raised by my distinguished nephew, the Senator for Nairobi City County, is not coming on this Floor for the first time; we have raised it before. I believe that the level of thinking that Sen. Sakaja had in bringing this was to ask the Senate Majority Leader why he is hurrying up with so much gusto on a Bill from the National Assembly, when our Bills are not even being looked at in the other House. They are gathering dust in the office of the Majority Leader of the National Assembly or in some office somewhere.

If we were having a push and pull from opposite sides, one would blame this impasse on bad or destructive politics. The Majority Leaders in the National Assembly and the Senate are from the same party. The Speakers of both Houses are sponsored by the same party. The majority of Members of each functioning Committee are also from the same party. If the procedural administrative structures are not working, at least the leadership of the party in authority can use extra legal and judicial process to get things done.

Mr. Deputy Speaker, Sir, lamentations are not enough. I have sworn here before that if our Bills cannot see the light of day in the National Assembly, then we have no business processing their Bills here. It means *quid pro quo*; an eye for an eye.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is it of the American type?

*(Laughter)*

That is a legal term now in the United States of America (USA).

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, we must make the National Assembly understand that in a bicameral system, Houses must work together. Houses must respect each other and decisions from one House moving to another is not a routine process.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your proposal, Sen. Wetangula?

**Sen. Wetangula:** My proposal is that the Senate Majority Leader should step down this Bill and keep it in abeyance until we deal with processes of legislation, Bills and Motions emanating from this House. Let us have a standoff until everybody comes to their senses.

*(Laughter)*

As the Former Minister Edgar Tekere of Zimbabwe said, you cannot walk to a field – where a Whiteman is shooting black people – with your hands in the pockets.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Sen. Olekina briefly, then we shall hear from Sen. Sakaja and the Senate Majority Leader. I shall then give my directions.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. This is a matter of concern, although I will not take the radical position that my senior, whom I respect, has taken. This is a matter that requires the Office of the Speaker to have a sitting with the Speaker

of the National Assembly to discuss it. These amendments are things which should have been done a long time ago.

Sometimes when you meet Members of the National Assembly, they try explaining to you what your role is. The other day, I was sitting with a Member of the National Assembly, and he was saying that the National Assembly enacts legislations while the Senate participates in the law making function. I consulted my senior, Sen. Mutula Kilonzo Jnr., and he said that the role of Parliament is in Article 94, which is very clear.

Mr. Deputy, Speaker, Sir, I beseech you to find some time and sit down with the Speaker of the National Assembly and agree. When I came to this House, I was extremely active from the onset in making sure that I bring Business to this House and develop legislation. However, you get discouraged because--- I do not think that I would go the radical way of stalling their legislation, because these are things that affect Kenyans.

Mr. Deputy Speaker, Sir, the issue of milk is affecting every other Kenyan out there. As we continue with this, I beseech you to find some time and consult with your colleague.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Let us have Sen. Sakaja briefly, and then the Senate Majority leader.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, just a quick clarification. What I am asking for is not for us to stall Bills coming from there; that is because if we adopt the “eye for an eye” approach, we will all lose our sight.

Mr. Deputy Speaker, Sir, there are Bills that are stuck there, such as the County Attorney Bill, the County Boundaries Bill and the Food Security Bill. Food security is about agriculture, which is devolved, yet they say it is a money Bill. This also affects all the other Bills. The fact is that in this 12<sup>th</sup> Parliament, there is only one Senator out of 67 who has been able to originate a Bill which has been assented to. It is actually a constitutional question. For me, I am not asking you to go and speak to your colleague or for the Majority Leader to look for Hon. Duale. There needs to be a pronouncement by the Senate on these matters. Under Article 96, as a Senator, I am mandated by the people of Nairobi City County to legislate. What I want is a Communication from the Chair on what our position is, on legislation that is stalling in the other House.

Mr. Deputy Speaker, Sir, as the Majority Leader said, these discussions have been had from the last Parliament; I am not interested in that. In fact, if anything, I was in the other House in the last Parliament where, as a Member of Parliament, I processed up to six Bills that were assented to ranging from issues of procurement, asset disposal and the Higher Education Loans Board (HELB). They were passed in this House, including the National Employment Authority (NEA), where I am now in court on a separate matter on that Act.

Mr. Deputy Speaker, Sir, it is really defeating for us to just say, “Until they agree, we need goodwill.” The Senate has to pronounce itself. I am glad that the Majority Leader has actually shown that it is possible for a House to finish itself, based on what is coming from the BBI.

Mr. Deputy Speaker, Sir, all I ask for, as a loyal Member of this House, is that you give a position and ruling on this issue. That will be the Senate position, even as the

other back channeling might be going on. This is so that I can go back to my constituency and tell them, “This is the position of the Senate on legislation coming from this House.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Alright.

Majority Leader, would you like to briefly say something?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I think it should rest there. The Senate Business Committee (SBC) and the Speaker should discuss this matter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It has rested there for the last seven years. I would like something more tangible, Majority Leader. Is it your position that there is nothing that the House can do, besides what the House has already done?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, this House has the power to hold all Business from the National Assembly at ransom, and refuse to discuss anything that comes from there. However, at whose expense? Business that comes from the National Assembly is new Business when it comes to this House. We can amend, change and approve it. Assuming that this House is already in court over a number of Bills that have been assented to which came from National Assembly, nothing stops the same people who made sure that those Bills are signed by the President---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Majority Leader, can you lead? I have listened to you for over 10 minutes. You are going round and round.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, this is my leadership position. The Speaker should put his foot down. Article 110 is failing us, because the Speaker is not being consulted on how the Bills are moving. The reason why Bills are being held in the National Assembly is precisely because Article 110 has been disobeyed. This means that a Bill starts here, but by the time it goes to the National Assembly, it goes back to the reverse of Article 110, which is that it is a money Bill and it does not concern counties. If the Bill was moved the way it was anticipated in the Constitution under Article 110, then we will not be here. The real reason is that, is there something that the Speaker can do to assert his most undermined responsibility under the Constitution?

Two, is there something that the Senate can do, through the Speaker’s Office, to ensure that the cases that are before court, as they are sorting out this issue, are decided on?

That is all I can say, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is there?

**The Senate Majority Leader** (Sen. Murkomen): The Speaker will tell us.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wetangula, kindly proceed. We must bring this to a close.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, we must bring this to a close, but I want to urge the Majority Leader to take responsibility and lead from the front. Buck-passing and evading responsibility does not help this House.

Mr. Deputy Speaker, Sir, there is a Bill in this House to give effect to Article 110(3). I am told that this Bill is stuck at the BPO in the National Assembly. I said here that it appears that these days, Sen. Murkomen is in the outer layer of the onion ring of the happening of things. It is very important to impress upon the President that for him to assent to any Bill, he must see a Certificate of Concurrence as per Article 110(3). It is the

only way that the President will ask, “Did the Speaker of the Senate concur to this in accordance with the Constitution?” That way, it also activates a more positive thinking in the other House, that the President is unlikely to assent to the Bills that are passing, even if they come to our House, if they have got no Concurrence Certificate. This can be done administratively through the Office of the Majority Leader.

I know that you are currently not enjoying the warmth of power, but I want to encourage---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wetangula! State the issues. You can always say that outside the Chamber.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I sympathize with the poor young man, because he is such a good young man with a good brain. However, but the brain is being wasted because nobody is valuing it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wetangula!

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, let me finish by saying that the Majority Leader must lead. Sit down with the Majority Leader in the other House and get things working. It is not enough to say that the Bills from the National Assembly are important because public interest is at stake. The Bills from this House also carry tremendous public interest. In fact, while many Bills from the National Assembly are serving national Government interests, this House is carrying the interests of the real people in the counties where we represent.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay. We will be on this forever.

Sen. (Dr.) Kabaka, I have not heard from you. Would you want to add your voice to this?

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief on this aspect. I need to add that when I was seated next to my friend, Sen. Sakaja, the Senator for Nairobi City County, I spoke to him. I also came to consult my senior, Sen. Wetangula, with regard to where Kenya is heading in terms of why we are elected by the people and their expectations. We seem not to reason or resonate together. It is like the two Houses, the National Assembly and the Senate, are at war. There is a push and pull.

Mr. Deputy Speaker, Sir, that is the reason why we refer to Article 110(3).

*(Sen. Cherargei entered into the Chamber)*

Mr. Deputy Speaker, Sir, I can see that the Senator from Nandi County has come from northern island.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is unusual about that?

*(Laughter)*

**Sen. (Dr.) Kabaka:** He has come from where he went to do his Master and PhD. *Karibu!*

**Sen. Cherargei:** Asante.

**Sen. (Dr.) Kabaka:** Thank you. I hope that your number is not 4CC/64.

Mr. Deputy Speaker, Sir, to cut the story short on the submission, is there not a way where a private citizen can proceed to court and seriously seek requisite orders

which will enforce these two Houses to act or work in concurrence? I think the Constitution has something to that extent. I am thinking of doing that, because we cannot be held at ransom by one House.

*(Sen. Kihika consulted Sen. Cherargei)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Kihika.

**Sen. (Dr.) Kabaka:** The Senate is held with high esteem by the citizens of this country. I will be the first person to move to court this season, if nothing goes on. We cannot leave the Bills in limbo at the National Assembly.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, this discussion has gone into many issues. I asked for a very simple direction from the Speaker. Standing 156 talks of what happens when we finish with a Bill. Standing Order 157 talks of what happens when a Bill comes from the National Assembly. We do not have a Standing Order that talks of what we should do when a Bill does not move, or when it is delayed for a long time in the other House. Standing Order 1 says that all cases where matters are not expressly provided for by these Standing Orders or by any other Orders of the Senate or any procedural question shall be decided by the Speaker. Therefore, I want you to decide on that procedural matter of our Bills not moving, because that has not been provided for in these Standing Orders.

Mr. Deputy Speaker, Sir, we need to have the position of the Senate; and you can then give directions to the Senate Majority Leader. That position is what I am requesting for, from the Speaker. I did not ask the Senate Majority Leader or the Senate Minority Leader to give me the position.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, to some extent, the Senate Majority Leader was right. It is your Office that has been undermined, and not that of the Senate Majority Leader.

*(Sen. Cherargei consulted the Deputy Speaker)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I am sorry; may I have that again?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, it is correct that it is actually your Office that has been undermined. The National Assembly has a Standing Order which negates Article 110 of the Constitution in its entirety. They do refer to a document or a Bill that comes from the Senate to a Committee for consideration as to whether it is an ordinary Bill or a matter concerning counties. What upsets me the most, and I must say this on record, is that the documents are actually sent to the Parliamentary Budget Office (PBO), not to a Committee. They are in the PBO. One of those officers told me that Sen. Cheruiyot went to see him, and he wanted to know the reason as to why I did not go to see him.

It is your Office that should tell us whether you were consulted on the Bill that Sen. Murkomen is reading. In fact, when giving a communication for purposes of reading a National Assembly Bill for the First Time, you have an obligation to tell the 67 of us whether you were consulted or not. You should tell us, "Dear Senators, I was consulted on this Bill." That will make us happy, because we will know that our representative, the person that we elected overwhelmingly, carries our mandate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The consultation is accompanied by concurrence. It is not just enough to consult.

We will hear from Sen. Cherargei and Sen. Murkomen, then we will close.

*(Sen. Orenge spoke off record)*

There is also the Senate Minority Leader. Very well, Senate Minority Leader, you will have your say.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir. I want to take this opportunity to thank you and my colleagues who stood with me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it about?

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, in the last six hours, I have been shifted between the National Cohesion and Integration Commission (NCIC), Kilimani Police Station and Milimani Law Courts. Most of my colleagues supported me, and I want to assure the people of Nandi and Kenya at large that I will continue to keep peace.

Mr. Deputy Speaker, Sir, many people went *mteja* when I called them, but that notwithstanding, I want to thank the people of Nandi for their prayers. I call upon Kenyans to maintain peace and we should preach peace.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have really changed in the last six hours.

*(Laughter)*

The last six hours have changed you. Sen. Cherargei, you sound completely pacified.

What is it Sen. Orenge?

**The Senate Minority Leader** (Sen. Orenge): Mr. Deputy Speaker, Sir, I am worried about what has come from the Chair. The prosecutor may ask for a record of proceedings, because you are giving concurrence and corroboration that he has changed.

*(Laughter)*

May we declare that the Senator for Nandi is the same yesterday, today and tomorrow?

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is just the language. It is long since I heard Sen. Cherargei speak in that tone. Otherwise, he is the same, and he remains the same.

On the substantive issue, I will now have the Senate Majority Leader and the Senate Minority Leader give us the closing comments.

**The Senate Minority Leader** (Sen. Orenge): Mr. Deputy Speaker, Sir, knowing what has happened in the last hour on other Business, I would have actually called upon the Mover to exercise Standing Order 54 and the guidance of the Speaker to withdraw this Bill from the Floor of the House. Look at how your authority is being undermined. We have passed many Bills, including those that have been brought here by the Senate Majority Leader, and messages have been sent across to the other House. I agree with

Sen. Mutula Kilonzo Jnr. that the authority of this House is being undermined every day. There is something like compounding an offense; if we continue acting like nothing has happened, then we are compounding the infraction of Article 110(3) of the Constitution.

Mr. Deputy Speaker, Sir, I appeal that the Speaker invokes Article 110(3) of the Constitution, for which we have proceedings before the Court. The current Constitution requires everybody and all the institutions to abide by the Constitution and the rule of law. The area of ethos, as covered in the Report of the BBI, is a repetition of what is there in the preamble, Article 10, principle and values of governance, the principles around public finance and principles around devolution. We cannot continue as if nothing is happening. I am sure that somebody in the other House is saying that, "They have no alternative when the Bills go there. They will have to pass them. What they think does not matter."

Mr. Deputy Speaker, Sir, the Office of the Senate Majority Leader is so important, and it is only second to that of the Speaker. When the other House does not cooperate, it is his Office that should show or demonstrate that the House is not working in harmony and in coherence, as expected by the Constitution.

Therefore, I plead with you, under Standing Order 154, that we should withdraw this Bill until we get to a point where we can do a proper housekeeping between us. That will go a long way in trying to correct these constant constitutional violations, which include the principle of constitutionalism.

There is a story about the Speaker of the House of Commons, when the King of England wanted to arrest some Members of the House. That time it was absolute monarchy and the Speaker just said---

**Sen. Wetangula:** A point of information, Mr. Speaker Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Orenge, would you like to be informed by Sen. Wetangula?

**The Senate Minority Leader** (Sen. Orenge): Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Permission has been granted by Sen. Orenge.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I want to inform the senior counsel and the distinguished Senator for Siaya that what he is saying is important. In fact, in diplomacy, nobody goes to the negotiating table without a fear factor. You must create a fear factor before people come to the table to negotiate. What Sen. Orenge is saying is in sync with the internationally acclaimed philosophy and tenets of diplomacy; that it is fear that makes people negotiate.

**The Senate Minority Leader** (Sen. Orenge): At least there is one instance where the Senate Majority Leader has shown that he is fearless.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Only one?

**The Senate Minority Leader** (Sen. Orenge): What Sen. Wetangula is saying is that it should not be an isolated event. The time is now and we will support his position because it is the position of the House. With the concurrence of the Speaker, I think we can take this war where it belongs.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Orenge. Let us now have the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I would like to begin by speaking on the matter that Sen. Wetangula had referred to earlier. On matters of violation of the Constitution, I totally agree that I am in the outer layer of the onion.

What is the benefit of having power if it is going to be used to violate the Constitution? We said in this House that these things are temporary. We must be cognizant of the fact that when we are not here and not in charge of this business, the country must move forward. History must judge us positively. I agree that I am not part and parcel of those who are persuading the President to sign Bills that are unconstitutional.

Secondly, I have remained true to the Constitution from 2013. I was part and parcel of the team that went to court in 2013. I led this House, together with the Speaker and the Senate Minority Leader, to court. Therefore, we have done our bit and tried our best. However, this is my take. Should we decide to stop all business that comes to this House---

*(The Deputy Speaker consulted with  
the Clerk-at-the-Table)*

I wish that the Deputy Speaker could hear this. If we decide that we do not want to continue prosecuting business from the National Assembly, we must also be ready for more Bills to be signed by the President without any reference to us.

This means that we must pursue the court case vigorously. Perhaps it should be the only business that we will deal with until order and decency is found in this presence. If that is the decision that we will make, I will support the decision of the House 100 per cent.

Mr. Deputy Speaker, Sir, to show that I am willing to go that direction, I propose that I proceed with this Bill, but we do not put the question and go to Division of the Second Reading. If it is agreed, we will go on recess from Thursday. That means that we will revisit this matter in February. Between now and then, you and we shall make a decision on what to do. That means that no Private Member's Bill in this House should be debated until we get an outright concurrence from the Speaker of the National Assembly. That is usually the mischief used to perpetuate a narrative that this House is not ready to do its own business.

*(The Deputy Speaker consulted with  
the Clerk-at-the-Table)*

I am sure that the Chair is consulting but this is a matter that will require the Senate Business Committee (SBC), where the Speaker, the Senate Majority Leader, the Senate Minority Leader, the two Whips, and other Members appointed by both sides sit. If that shall be the resolution of the SBC, I will be ready to move it as a Motion, so that

the House adopts that business that comes from the National Assembly be stopped until Article 110 is respected.

In the meantime, Mr. Deputy Speaker, Sir, I beg your indulgence because I already moved the Bill. I beg that the Bill be seconded and debated and then the question be put when we come back from recess. We need to continue with the many provisions of this Act. I beg your indulgence because I have already moved and someone has to second. From there, we will make a firm decision following the direction of the Speaker's Office.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will start with the direction. After that, I will give one or two comments before we proceed. The direction is as follows: That the Mover concludes the Moving of this Bill and then we proceed with the Bill, as far as we can, but no Division takes place on the Second Reading of this Bill, and no further processing of the Bill until the issues raised by Sen. Sakaja are disposed of in one way or the other. That is the direction.

In answering the request by Sen. Sakaja for a ruling, I agree that the matters raised are weighty, because there is a gap in the Standing Orders. Therefore, Standing Order No.157, as Sen. Sakaja pointed out, applies. It talks about consideration of Bills from the National Assembly but does not state what happens when they go there and for how long we can wait. I am sure that this is the mischief that the Bill by Sen. Mutula Kilonzo Jnr. and Sen. Sakaja wanted to cure but, sadly, it is stuck in the National Assembly. It is now suffering from the same disease.

Colleagues, the situation we are in is untenable. I will not be happy to continue sitting here and supervising futility. Therefore, something has to give way. The only thing that can cause whatever must give way to do so is the law and nothing else. Not cajoling, not diplomacy, not sweet talk, not courtesy calls or threats but the law.

Having said that, I also want to draw to the attention of the SBC the massive role they enjoy in trying to unlock some of the issues that are stuck. That is not to say that we abandon this issue to be squarely in the hands of the SBC. I urge the House for a little patience on this matter. This is because there are many issues which are weighty and require a lot of reflection.

I am of the opinion that the ruling on this matter must be given from this Chair, so that it goes on record and sets the record straight. Beyond that ruling, the Senate can seek enforcement, because I do not think that the Chair's ruling is just a speech from a parastatal board or some agency.

The Ruling of the Chair has the force of law and can be enforced. Therefore, I urge Sen. Sakaja and the House to indulge the Chair, considering that we are proceeding on recess on Thursday this week, as per our Calendar. I request for time and I will give a considered, well-reasoned and legally sound ruling on the first day of the next session.

Meanwhile we consider the Bills as they come but on this one, we proceed as advised. We still have a bit of time. I hope you added the Majority Leader's time before he was justifiably interrupted by the Senator for Nairobi. How many minutes, Sen. Murkomen?

*(Resumption of debate on Bill)*

**The Senate Majority Leader** (Sen. Murkomen): I do not know, as I said---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us cause a discovery.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, let me just push it. Most of the provisions have been changed in the National Hospital Insurance Fund (NHIF) Act and as I said the Board will be expanded to accommodate the county governments. The Chief Executive Officer (CEO) of the board will also serve for two terms, 3 years each. Section 15(2) of the Act provides for the payment for those who are unable to pay for themselves by a contribution that will be provided by the Government; our Committee has emphasized that it should be the National Government.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Majority Leader, you have 34 minutes left.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, although that time is little, I want to try my best. Most of the remaining amendments are basically to remove the words like “health”, “hospital” and National Health Insurance and all these other amendments.

Section 25 provides that: “it is an offence for anyone who prints, manufactures or issues NHIF cards in circumstances other than those contemplated in the Act; misuses the cards for purpose not contemplated in the Act; fraudulently obtains or uses a card to obtain benefits; misrepresenting himself or herself in relation to the cards.”

In fact, there is a typo somewhere that reads: “misuses the car” it should be the “cards”.

“---commits an offence and shall be liable to a conviction and a fine not exceeding Kshs1 million or imprisonment for a term not exceeding 5 years or to both”. I think our Committee agrees and I totally agree. The rest is just corrections from Cabinet Minister to Cabinet Secretary (CS).

Section 26, provides that; “any matter incidental to payment, collection or contribution under this Act or to issue of the registration of the cards in this Act shall be in the manner prescribed by the vote.” The Board also shall use regulations prescribed under Article 29 that I talked about earlier, as they deal with health service providers. There is a sub section that states as follows:-

“The Board shall by notice in the Gazette and such other manner it may deem appropriate, declare health service providers referred to be contracted health service providers.”

Declaration under the section shall be subject to fulfilling health services, provide a criteria including meeting quality standards of the Ministry. Every contracted health provider should be given an identification so that the NHIF card holders can know where to go and the contracts can be signed and terminated by the Board if they fail to meet the criteria. The Board can also, by notice, gazette or revoke a declaration and so forth.

The Board can put the money for collections from the insurance to Government securities as may be approved by Treasury. The expense of administering the fund shall be shall be paid out of the Fund expenditure for administration purposes with respect to the financial year which monies shall not exceed 15 per cent of the total annual expenditure of the Fund.

The administration of the fund should not exceed 15 per cent to deal with the situation at the moment where a lot of excuses are being given to siphon the money outside the health insurance fund. The changes to Workmen’s Compensation Act is Work

Injury benefits Act and so forth. The rest of the amendments are just to ensure that they are in line with the Act. As I said, this is very boring because we are jumping from one Act to another; it is confusing sometimes.

We are now moving to the Urban Areas and Cities Act where the amendments are meant to establish the Directorate of Urban Development Management. The CS shall establish directorate of urban development management within the Ministry. The functions shall be -

- (a) formulating review of urban development policy.
- (b) co-ordinate urban development at national level.
- (c) convene forums of national urbanization dialogue,
- (d) organize liaison of Urbanization Estate Act as urban sector work groups.
- (e) develop and regulate the new criteria for the classification of governance and management of urban areas cities.
- (f) promoting innovative governance and open and inclusive urban areas and cities.
- (g) establish and maintain national urbanization observatory
- (h) providing support and technical backstop on urbanisation to the counties.
- (i) disseminating research, knowledge and urbanization in the counties.
- (j) monitoring national urbanization trends and performance.
- (k) advising national and county governments, monitoring urban disaster preparedness and urban safety.
- (l) seeking national priority on vision of urban development.
- (m) building capacity in urban governance.
- (n) undertaking minimum intervention projects in urban cities and performing such functions as the CS may direct.

Although I never mentioned much about it but we must be very careful about overlapping mandate of the counties particularly when you read “co-ordinating urban development at National level.” There is nothing called urban development at National level. All urban areas and cities are functions of the county government. We must be careful when dealing with those issues. However, practically speaking, many counties feel like it does not matter if the National Government has extra money after Division of Revenue Bill which is actually the principle. If they want to delve into implementation of a policy in a function that is devolved and there is the money, why not? It depends on the agreement they have with county governments. Why refuse money that is more?

That is why we must deal with the Division of Revenue processes properly so that once the counties get what they ought to get, if the National Government feel they will increase other areas like foreign policy, national defense and take that money to salvage disaster in a function that is devolved; we must be careful when we are criticizing National Government for spending money in a devolved function. That money would never have gone to counties anyway because the Division of Revenue has been done. If the National Government came and said, “We want to build the Kapsowar tower”, why would I as a Governor try to say, “No, no this is my function” ?

It is over and above, I already have the resources; I can channel them to something else like agriculture. That is all about the Urban Areas and Cities Act.

We have the Micro and Small Enterprise Act of 2012. Most of the amendments here were just to move associations to enterprises, capture functions of the Authority to

work with county governments. Most of it has to do with co-ordinating and working with county governments. There is nothing substantive being added to this Act except to align it with the nomenclature and terminologies that are dealing with county governments.

You go to the Public Private Partnership Act, 2013, the amendments therein are dealing with regulations to be prepared by the CS. Substantively, there is an amendment on Section 63 of dispute resolution where the parties to a project agreement may agree to resolve disputes arising under the project agreement through arbitration or any other non-judicial means of dispute resolution agreed upon in the projects agreement specified under paragraph 18 of the Third Schedule. This is to ensure that the project parties have greater latitude in dispute resolution without being boxed into using strictures of the Judiciary and the courts.

Mr. Deputy Speaker, Sir, there is also an amendment on variation of project agreements. The new clause provides that a party who intends to make material amendments to a project agreement in relation to the terms and conditions specified therein, the project or any waivers specified in the agreement shall;

- a) In the case of national projects, apply for and obtain the approval of the Cabinet Secretary.
- b) In the case of county level projects, obtain the concurrence of the Cabinet Secretary where the relevant project is supported by a letter of comfort or such other risk mitigation instruments from the national Government.

This is because most of the P-projects have a heavy hand by the national Government because of the financial implication that relates to the country, especially if PPP is a foreign investor.

The amendments on the Crops Act changes Ministers to Cabinet Secretaries. We also have establishment of Board of Trustees that is going to have various Principal Secretaries and persons appointed from various agencies. Our Committee has done well to propose that the Council of Governors (CoG) must have a heavy hand in it because agriculture is a heavily devolved function. Therefore, the Trustee Fund must have three nominees from the CoG.

Managing trustees of the Fund shall be hired from a competitive process as usual like in any other institution. The rest is just changes to capture the various linkages between this Act and other Acts, including the Economic Zones Act, Export Processing Act and so forth.

The next law is the Technical and Vocational Education Training Act. There are various amendments in this Act establishing the Council which shall be headed by a Chairman appointed by the Cabinet Secretary. There is a Principal Secretary of TVET, six members appointed by the Cabinet Secretary and so forth.

Mr. Deputy Speaker, Sir, the Committee proposes heavy representation by counties through three members appointed by the CoG. This is because vocational training is largely a devolved function and, therefore, counties must have a hand in it.

There is also the Public Procurement and Asset Disposal Act which has a few amendments being introduced there. One of which is the definition of a local contractor, which is a person whose shareholding is at least 70 per cent owned and controlled by Kenyan citizens or other local companies immediately after the words "in Kenya". This is an amendment by our Committee, but we must relook at it because it must be in

consonance with the Companies Act. This is because if you talk about 70 per cent, the Companies Act says over 50 per cent. Therefore, the Committee must relook that.

National Treasury have a role to develop, promote, support training capacity and procurement related issues. The Authority's functions have also been enhanced to include developing, promoting and supporting training and capacity development of persons involved in procurement and asset disposal. I probably think this came from the staff who felt like the agency did not have the mandate to enhance their capacity and perhaps budgetary expenditure was being stopped for that purpose. They generally needed a process for validation of that.

Most of these comments are just here and there, to correct small typos and new terminologies used under the new Constitution. Notification related to enter contract is provided there and so forth. As I said, we are jumping from one Act to another. The provisions on the Public Procurement Disposal Act are more detailed but most of them are contractual related issues.

National Employment Authority - the one for Sen. Sakaja I do not know where he is because he is the one who sponsored the Bill when he was in the National Assembly - there is a new section that has been inserted on the role of the National Employment Authority. If I may read this one, in addition to the functions specified under Section 8, the Authority shall-

- (a) Advise the Cabinet Secretary on all matters concerning labour migration.
- (b) Co-ordinate the various labour migration activities to ensure protection of Kenyan migrants workers and promote their welfare.
- (c) Register and maintain an integrated data of all Kenyan migrant workers.
- (d) Approve pre-departure training programmes and ensure that Kenyan migrants undergo the relevant pre-departure preparation before leaving to work outside Kenya.
- (e) Undertake research and collect and disseminate information on labour migration.
- (f) Ensure that Kenyan migrant workers who are in distress are assisted and returned to Kenya
- (g) Develop and implement programmes to ensure that Kenyan migrant workers returning to Kenya are reintegrated in society.
- (h) Develop and implement programmes to ensure Kenyan migrant workers returning to Kenya have been victims of trafficking and tied to the rehabilitated programme.
- (i) Provide legal and necessary assistance for Kenyan migrant workers who are in distress.
- (j) Formulate programmes to enable Kenyan migrant workers enter into technical jobs, better wage employment, entrepreneurial development and investment of savings.

This is key because this section deals with a problem we are facing at the moment where Kenyans are taken to various countries in the world to be tortured. They are being trafficked for sex and slavery. Slavery is now prevalent in the world because of these kinds of practices that are going on.

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

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

The rest are just amendments here and there on the Employment Authority and so forth.

Fisheries and Management Development Act has few amendments put forth to ensure that it defines what the Council is and define fishing; there is a detailed definition of fishing, use of aircraft and so forth.

In the Fisheries Council, again county governments are being introduced. Two persons will be nominated by CoG to sit in the Fisheries Council. Sen. Orenge should take a lot of interest about this. I was in Bondo the other day and fishing is a serious activity there. Fish is taken seriously. In fact, I disagree with the President respectfully who insinuated at Bomas that beef was more expensive than fish. However, it is the other way round; fish is a very rare commodity. If you find someone eating fish in Nairobi, then probably that is a very rich man.

*(Sen. Wetangula spoke off record)*

Generally, fish is still expensive if I may say so. We cannot really conclude all these details but the Committee has worked on several of these provisions.

Madam Temporary Speaker, most of the amendments proposed by the Committee are useful in taking the process forward. I beg that we proceed in the manner in which our Committee has suggested the amendments when the time comes in line with the ruling made earlier by the Speaker.

I beg to move and ask Sen. Kihika to second.

**The Temporary Speaker** (Sen. Prof) Kamar): Sen. Kihika Waikura Susan.

It is a very difficult name.

**Sen. Kihika:** Thank you Madam Temporary Speaker. I will just state that it is Wakarura, similar to Karura Forest.

I rise to second the Statute Law Miscellaneous Bill and also just point out a few of the things that we felt in some of the Committees that I sat in, that it was necessary to bring out. Additionally, given that it is a lot of different laws that are in this Bill and different Committees have gone through the Bill, it seems they have done a good job.

Beginning with Betting, Lotteries and Gaming Act, we noticed that a lot of the changes that have been brought to this Bill have to do with enhancing penalties.

I believe that as a country, at this point in time, betting, lotteries and gaming have become a big deal and a pastime for most of the people. This was not the case a few years ago. However, when you look at some of the proposals and amendments being proposed here, it is quite concerning. For example, when you look at Clause 5(4) where they want to delete Kshs5,000 and six months and substitute therefore with the expression “Kshs1 million and three years”.

How do you move from Kshs5,000 to a Kshs1 million? This seems a bit unreasonable. It begs the question as to whether the relevant Ministry is trying to legislate

on morality; whether it is just really being punitive so as to stop many people from participating in betting, lotteries and gaming.

It is either you give the licenses and let the people carry this on or you do it in a reasonable manner. That is why I believe in some of these amendments the Committee on Justice, Legal Affairs and Human Rights felt were unbearable. Going also from Kshs40,000 to Kshs20 million is harsh. It also begs the question as to whether we are trying to do away with the small players in the country and leave the field for the big boys. It just seems off. That is why we came back with proposals to actually not just go to Kshs20 million, but to Kshs500,000 instead of that kind of a jump.

When we look at the Dairy Industry Act, it has to do with milk. Like the Mover of the Bill, the Senate Majority Leader has stated that milk has become one of those things that we must look at it in a very critical manner.

This is because there has been quite a bit of outcry. When there were discussions as to whether to make the punishment very punitive, I believe as a Committee when we were looking at these amendments, it also had a lot to do with looking at who is being targeted. Is it my next door neighbor in Subukia, Nakuru County with a small milk kiosk? Who are we targeting when we make these extreme punishments for small acts?

That is why as a Committee we felt that the jump should not be that excessive or extreme. A lot of those people dealing with milk will be just a farmer with one or two cows in Narok, somewhere near Sen. Olekina's place.

As much as we want to make sure that we are making milk, which is such an important product that we consume safe, we also do not want to make it impossible for the small farmer to play in this market as well. I strongly also felt that the levies should be left to county governments and should in no way shape or form be regulated at the national level, but leave them to the county governments.

There is also the law on the National Hospital Insurance Fund (NHIF). It is a great thing where now we are shortening or limiting the terms so that we do not have chief executives staying on forever and stealing from the poor people. These ones will stay for a shorter period. It is also good to see that we have this in law so that they are not staying there forever.

It was also good where they have this amendment where a person who is unable to pay the contributions and the board is able to certify as such that they have been unable to pay, then such contributions are payable by the Government. That is really important. As we move into the Universal Health Care (UHC), that can only go a long way in helping our people who are unable to make these contributions.

On the Crops Act, there are minimal changes from Ministers to Cabinet Secretaries. That is just to be in tandem with what we have in the Constitution now. That is agreeable. However, it is important to see that we are giving a bigger role to the CoG versus just retaining a lot of this power at the national Government yet things to do with crops are devolved.

Madam Temporary Speaker, let me also talk a bit on the National Employment Authority Act, 2016. I am happy to see that the amendments they are bringing forward have to do with taking care of our migrant workers or Kenyans who go abroad. We have all read and seen the cases. For example, in Saudi Arabia, there seems to be quite a problem when our girls go there. There is a problem as far as how they are treated. We

tend to also read and come across these distress calls. However, we are not sure how the Government reacts in different countries.

Therefore, by having these amendments and we are cognizant of this issue that is really problematic. Slavery now seems to be worse than it was in the past, especially the problems faced by victims of trafficking. Therefore, by developing and implementing these different programmes that the Bill proposes, this can go a long way in helping Kenyan migrant workers in different countries. It will assist in coming to their aid when there is a distress call.

Most or some of us have participated in some fundraisings regarding this issue. I just had one recently in Naivasha where there was a girl who was in one of those countries in the Middle East. She had managed to escape, but she did not have a penny to come back home. For some reasons, the Embassy was just not being receptive. It is important to take bold steps in being able to help in these sorts of cases.

Madam Temporary Speaker, this is quite a substantial Bill here touching on a lot of laws, but like we said and heard from the Mover of the Bill, the Majority Leader, the Committee seems to have done a great job. I am sure as we progress in the second reading, issues will come up and be handled properly despite the Bill containing so many laws.

I, therefore, beg to second.

*(Question Proposed)*

**The Senate Minority Leader** (Sen. Orengo): Thank you, Madam Temporary Speaker, for giving me this opportunity to speak to this Bill. First of all, I wish to express my discomfort with an omnibus Bill of this nature. The Miscellaneous Amendment Bill is a vehicle through which, many times, legislations come through the back door and we live to regret it later on.

It has been a standard practice in the Commonwealth and in Kenya that where a Bill deals with substantial portions of any legislation, it should be made through a separate substantive Bill instead of having an omnibus Bill which involves several Bills. For example, in this one, there are more than six or seven Bills which are dealt with at the same time. As they say, the devil is in the details.

In a Bill of this nature, looking at the details becomes extremely difficult. In fact, I am in the Committee on Justice, Legal Affairs and Human Rights and without the assistance of the Clerk to that Committee; it would have been extremely difficult to wade through the substance of some of these amendments.

Unfortunately, I have to disclose that I did not attend all the meetings of the Committee at the time. I attended the Committee meeting when we were dealing with legislation on The Betting Lotteries and Gaming Act. For that reason, I may not speak with the authority the distinguished Member from Nakuru has debated this Bill. We belong to the same Committee and I congratulate her for being faithful to the report of the Committee. On the part relating to the portions that were discussed when I was there, she has clearly brought out what came out in the Committee.

Madam Temporary Speaker, the proposed amendments to the Public Procurement and Asset Disposal Act are substantive. They are not a one sentence or one word

amendments, for example, deletion and insertion. They are detailed and substantive amendments.

In our fight against corruption, the procurement sector has come into focus. We need to fully understand the tenor and effects of these proposed amendments. Therefore, I hope that as we debate this Bill, in future, the National Assembly where these kinds of Bills come from will see it fit to ensure that where there are substantive amendments in relation to any particular Bill, they are made through separate Bills.

For example, if you look at the preamble to this Bill, it reads: “An Act of Parliament to make various amendments to statute law”. The purpose of the Bill is not reflected in the preamble of the Bill. Normally, by reading the preamble of a Bill, if it is a substantive Bill, one would look at the purpose and objects of those amendments. Some of these amendments from the National Assembly come to us without the memorandum of objects which is important because it informs the debate and discussions.

The sponsor of the Bill would tell you in summary what it is that it desires to change. So, I emphasise that in the past, many legislators have lived to regret passing Bills which have been brought in this fashion.

In fact, one of the cases that is very clear, is one in which the National Assembly, when we had a unicameral system, passed a substantive Bill by way of miscellaneous amendments affecting what was already in the Constitution. The Attorney General brought a Bill affecting the period for political parties for purposes of nomination. In the Constitution, the words were “not more than”. In the amendments that came before the National Assembly, the Attorney General proposed that the words “not more than” be deleted and replaced with “not less than”.

That amendment brought a lot of chaos during the elections because political parties were required to nominate candidates within two weeks when the Constitution required that period to be more than three weeks. Luckily, Justice Mbaluto saw the mischief and ruled those amendments unconstitutional. I hope that this practice does not persist.

Madam Temporary Speaker, looking at the Chapter that speaks to Betting, Lotteries and Gaming Act, when the Government was basically trying to take certain steps against betting firms and looking at what is in the BBI report in relations to betting; the Government took the position that it is morally unethical to allow betting in the country because it was a bad influence on society and so should be removed in its entirety. It looks like the intention of the proposed changes is to squeeze out betting. It looks like the intention is to allow betting amongst big people in society and denying the lesser people an opportunity. That is like saying that rich people can drink as much as they want while drinking is bad for poor people. So we ban drinking for poor people and allow the rich people to drink.

Looking at the punitive provisions that Sen. Kihika went through, there is enhancement of penalties to an extent that it is difficult to understand. In one of the provisions, it is stated that the penalties should be increased from Kshs1,000 to Kshs50,000. What is the rationale that found it appropriate to raise the penalty to Kshs50,000. Consistently, certain actions attract punishment which previously was Kshs10,000 which have now been increased to as high as Kshs1 million or Kshs500,000. There should be a rationale behind what is being done. That explanation has not been

forthcoming. I hope that the Committee will call those who are concerned with betting and gaming to explain what informed that decision. We cannot on one hand say that betting, lotteries and gaming are reprehensible activities while at the same time allow them in a way that only a certain sector of society will take part.

Madam Temporary Speaker, I hope that the proposals by the Committee in this regard will be followed by the House when we go to the Committee stage so that these amendments are made appropriately.

There is the amendment that is to be made in the Dairy Industry Act and the Crops Act and the first port of call is that these are activities that are devolved. Agriculture and crop husbandry is devolved.

If you look at the tenure of the amendments concerning those two statutes, you will realize that there is a claw back and the national Government is trying to enter into areas whose functions belong to the counties. Why would the national Government want to punish a farmer in Eldoret? Why would the national Government run to Siaya to establish the number of cows that one has and how he is keeping them? Why would they then say that so and so should be fined Kshs30,000? It is totally absurd. I do not know the reason as to why they did not go the whole hog by looking at chicken farming. I do not know the reason as to why they left out the chicken and pigs. These are activities that have been devolved.

On the penalties, they are talking of fining someone Kshs20,000 or Kshs30,000. Imagine someone who has one cow, has not committed a criminal offense but is being asked to pay Kshs20,000. It is just a requirement like one that requires someone to drive on the left or the right side of the road. I think that there is something wrong about people who sit down and dream of such a legislation where a farmer in Nakuru is asked to pay Kshs20,000 because he has violated a regulation that was set in Nairobi.

The Committee came out strongly with these amendments and it said that these amendments should be made during the Third Committee stage. I am of the view that this Bill should not see the light of day without those particular amendments. I know that the Senator sitting behind me will be the first one to suffer. I think that this Bill was made with him in focus, knowing how much he loves dairy farming. I am also doing some dairy farming in Siaya but this Bill has just discouraged me. I would rather do what my other relatives are doing; brew *chang'aa*.

I also have an issue with the Urban Areas and Cities Act and I do not think that I am the first person to say something about it. The Senate Majority Leader, the Mover, said that regulation emanating from the national Government in respect of cities and urban areas should not be there in the first place. These are devolved units under counties. It is the only other category of devolution which falls under counties. Therefore, Clause 3(a) that is found on page 419 of the Bill on the establishment of the Directorate of Urban Development and Management should not see the light of day unless there is strong representation from county governments in that Directorate.

Madam Temporary Speaker, if you turn over the page from pages 419 to 420, you will find under 3A(n) and (o). For example, in (n), it says:-

“Undertaking minimum intervention projects in urban areas and cities---”

Now, how would the national Government want to make those interventions without the participation of counties? Or is this something that they can dream of at the national level

and decide that today, we are making this minimum intervention; and that minimum is not defined? These provisions should be looked into carefully. If they are to be left the way they are, then the participation of the CoGs and counties should be provided for.

Madam Temporary Speaker, Section (m) is on the question of building capacities in urban governance, urban authorities, project management, resource mobilisation and monitoring. These are not just limited to policy; they are direct interventions and actions which intrude into some of the exclusive mandates and jurisdictions of the county entities. Therefore, I entirely agree with the Mover of the Bill that those provisions should be looked at carefully.

Coming to the Public Procurement and Asset Disposal Act, I am really hoping that the Senate, at one point or another – and I think I will probably take the responsibility, on my part – needs to look at this Act very carefully. This is where counties and procuring entities fail us. Together with it, juxtapose the Public Finance Management Act and amend them together. This is because if you amend one without looking at the other, you are at cross purposes, and then the budgeting process that you would find provisions in the Constitution--- The County Governments Act also has some provisions which relate to budgeting and procurement plans. All these should be read together and brought into harmony.

Madam Temporary Speaker, I see that there are some provisions here which may be positive. For example, the provisions on Page 426, which substantively relate to Section 41 of the substantive Statute; the Public Procurement and Asset Disposal Act, 2015. It is desired to amend Section 43, which gives certain powers, with the authority of a magistrate, to enter into any premises subject matter of investigations. Those are probably pointing in the right direction. That is because I think all of us know that if you go to any town or market in this country, and you find a very big building coming up; most likely it is by somebody from the Kenya Revenue Authority (KRA), somebody doing business with KRA, or somebody involved in procurement; and so on, and so forth. Therefore, there is a lot of mischief that happens in tendering and tax issues, *et cetera*.

Madam Temporary Speaker, looking at these provisions and the little deletions and insertions that follow, it is important--- I am a Member of the Committee on Justice, Legal Affairs and Human Rights, and I am asking Sen. Mutula Kilonzo Jnr. and Sen. Kihika that we should go back to the Committee and look at these provisions to deal with public procurement.

In fact, Madam Temporary Speaker, when you are targeted by the system, there are laws around procurement and the Public Finance Management Act, where anything you do or do not do can constitute an offence, even if you are a private citizen. Therefore, somebody who has been in the criminal courts, like Sen. Mutula Kilonzo Jnr., should guide us in this process in the Committee. We should then ensure that we do not make laws that eventually actually kill investments instead of promoting them.

We are all the time saying that the Government should get out of business, but in the process, through over regulation and excessive interventions by public bodies and authorities, doing business in Kenya sometimes becomes extremely difficult. Decision making is also extremely difficult, and it takes a long time. This is because of these many regulations and laws that sometimes are very difficult to interpret for an ordinary person, sitting behind a desk to carry out responsibilities that involve legislation.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Senators. Senate Minority Leader, you will still have 37 minutes, if you will wish to continue and complete your submissions when we next sit.

### ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The House, therefore, stands adjourned until tomorrow, Wednesday 4<sup>th</sup> December, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.