

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 2<sup>nd</sup> June, 2016

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

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

### PRAYERS

### NOTICE OF MOTION

#### COUNTRYWIDE AUDIT ON DISTRIBUTION OF TEACHERS IN PUBLIC SCHOOLS

**Sen. Khaniri:** Mr. Speaker, Sir, I rise to give notice of the following Motion:-

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission (TSC) is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas;

APPRECIATING efforts made by the national government to improve the teacher-pupil ratio to international standards in all public schools through yearly employment of teachers;

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

## STATEMENTS

INCREASED CASES OF PNEUMONIA IN CHILDREN  
AND ELDERLY PERSONS

**Sen. Khaniri:** Mr. Speaker, Sir, I have two Statements to request. Pursuant to Standing Orders No. 45(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on Health regarding increased cases of Pneumonia and the resultant mortality especially of children under five years and the elderly. In the Statement, the Chairman should:-

1. Explain intervention measures put in place by the Ministry of Health to reduce the high prevalence of the disease in the county.

2. State when the Ministry of Health will conduct a countrywide vaccination exercise against the disease.

3. Explain why the Ministry has not invested in information dissemination on preventive and curative measures as a mitigation measure against the disease as is the case with other diseases such as Malaria and Polio.

**The Speaker** (Hon. Ethuro): What is it, Sen. Billow?

**Sen. Billow:** Mr. Speaker, Sir, I would like to ride on Sen. Khaniri's Statement and ask some supplementary questions on the same.

**The Speaker** (Hon. Ethuro): Please, proceed.

**Sen. Billow:** Mr. Speaker, Sir, similar to Pneumonia and other mortality cases, there is concern about the outbreak of Cholera which in a county like Mandera has killed dozens of people; this is the case in other counties. Could the Chairperson indicate the role of the Ministry in both the prevention and control of epidemics across the country, with particular regard to diseases such as Cholera and the Chikungunya virus that have infested Mandera County?

**The Speaker** (Hon. Ethuro): Order Sen. Billow. That is not allowed. This Statement is about those diseases that have vaccines like Malaria and Polio. You will be assisted better if you sought a Statement about Cholera on its own rather than riding on this because it is a more deadly case.

**Sen. Billow:** Mr. Speaker, Sir, could I perhaps ask the Chair through his Committee to look at the current crisis in Mandera and probably report to the House on Cholera and Chikungunya that is spreading there very fast and to other counties?

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., do you want to raise a point of order on the same?

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I do not know if you will allow me, but there is an outbreak of Yellow Fever in Mandera and other places. Unfortunately, there has been a shortage of the vaccine worldwide. I do not know whether I am in order to request the Ministry to also confirm that they have adequate doses for the Yellow Fever vaccine.

**Sen. Kagwe:** On a point of order, Mr. Speaker, Sir. Could you give us guidance on the questions that are being asked regarding health? I think those questions are supposed to be directed to governors because health is a devolved function in the Fourth Schedule. The only issue that is not devolved in the Fourth Schedule is policy. At what point do we demarcate between the functions in health that are supposed to be handled by

the county health facilities and which ones should be addressed to the Ministry of Health. Kindly guide the House.

**The Speaker** (Hon. Ethuro): What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The distinguished Senator for Nyeri is partly right. Procurement of medicine is still a national function, together with policy, as he has already mentioned. There are times when the county governments are able to work but procurement of medicine is delayed. There was a time when there was a crisis in the country when there was no medicine for Tuberculosis (TB).

More importantly, I think you should equally direct that within the context of Article 6(2) of the Constitution, the national and the county governments are interdependent and conduct their distinct and mutual relations on the basis of consultation and cooperation. This is where the two levels of Government can work together. Health is too important for anybody to pass the buck either from the national Government or the county government.

I want to encourage, as Sen. Billow said, that this very important question of Sen. Khaniri can be used to get the Ministry to tell the House and the country how they are managing what we require to be seamless supply of critical medicine to every county. We all come from rural counties where people are dying like flies due to diseases that are preventable. You have about 30 burials in one constituency every time you go home and it is unacceptable.

**The Speaker** (Hon. Ethuro): Sen. Kagwe, you are raising an issue which I will give a communication on next week. In the meantime, I do not see anything that bars the Senators from asking questions on matters health or matters devolved. That is really our business. The national Government is still responsible to the nation and health is not confined to a particular neighborhood. An outbreak in Nyeri County can easily find itself in the neighbouring county. When dealing with more than one county, you cannot just confine it to the governor alone. Subject to considered opinion, that will hold in the interim.

Regarding Sen. Mutula Kilonzo Jnr's issue, the rules of engagement during Statement Time are different so we need to appreciate that. That is why Sen. Billow had to put his request differently by asking the Committee to look at the issue itself and with that, you can rise on a point of order and do so. In terms of the specifics, this question will remain as it is.

I would put the statement sought by Sen. Mutula Kilonzo Jnr to the Committee along the lines of Sen. Billow so that you can look at the issues and come back to the House. Is the Chairman here? What about the Vice-Chairman?

Sen. (Prof.) Lesan, could you respond to this?

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, the Committee is seized of the matters that have been asked in the House and recognizes the seriousness of the issues in Mandera and Vihiga as they have been presented in the House. I will request my Committee that we work on this very urgently and probably come back within a week for the first preliminary answer to the questions.

*(Sen. Wetangula consulted loudly)*

**The Speaker** (Hon. Ethuro): Order Sen. Wetangula. You are rendering me jobless.

*(Laughter)*

That was exactly my issue. You cannot at the initial start talking of preliminary answers. You have already made your case weak. Make your commitment to the House and let the others who are supposed to help you be the ones to frustrate your commitment.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, we will take a week to bring the answer to the House.

**The Speaker** (Hon. Ethuro): It is so directed.

Sen. (Prof.) Lonyangapuo, proceed with your statement.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I have three statements to seek and the whole of last weekend---

**The Speaker** (Hon. Ethuro): Order. You heard me loud and clear. I said one statement.

**Sen. (Prof.) Lonyangapuo:** Let me seek two

**The Speaker** (Hon. Ethuro): Choose one.

#### FUNDING OF LOW COST PUBLIC BOARDING PRIMARY SCHOOLS

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2) (b) to seek a Statement from the Chairperson of the Standing Committee on Education regarding the funding of low cost public boarding primary schools. In the Statement, the Chairperson should;

a) state whether he is aware that all low cost public primary schools in both West Pokot and Turkana counties are now closing down because no funds were released to them for the current term;

b) table the list of all low cost public primary schools per county; and,

c) state what measures the Ministry will take to address the problem and when.

**The Speaker** (Hon. Ethuro): Where is the Chairman of the Committee?

**Sen. Karaba:** Mr. Speaker, Sir, given the gravity of the question, we should be able to answer it in two weeks' time.

**The Speaker** (Hon. Ethuro): Order, Chairman. When you talk of gravity, you do not elongate time; instead, you shorten it.

**Sen. Karaba:** It should have been one week but I am giving it two weeks.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. Karaba, school calendars are fixed by the Ministry of Education so they do not need more time to negotiate anything. They know when the schools open and they know when the resources must be released. If anything, as far as I am concerned, you would only ask for a weekend to solve the problem. Today is Thursday; you are directed to answer that Statement on Tuesday next week.

**Sen. Karaba:** Mr. Speaker, Sir, I will try to visit them to find out why they are not doing that.

**The Speaker** (Hon. Ethuro): Being a former Principal, you know better.

**Sen. Karaba:** Mr. Speaker, Sir, I know a lot about what happens. Thank you.

**Sen. Billow:** Mr. Speaker, Sir, there was a report last week published by the Ethics and Anti-Corruption Commission (EACC) that was submitted to the Ministry of Education. It revealed that a substantial amount of the money for free primary education was actually being misappropriated and this affects these low cost primary schools the most. Could the Chair also look at the issue of the Free Primary Education (FPE) report that was submitted and tabled, showing the extent of the losses to the House?

**Sen. Karaba:** Mr. Speaker, Sir, you are the only person who can ask me to give a report. When he directed the question to me, I had to wait for your guidance.

**The Speaker (Hon. Ethuro):** Order, Sen. Karaba. I agree with you. He was talking to you and not through the Chair. That is an issue that should arise when the Statement is being issued. Right now, it is a matter of allocation and the release of the money. We are yet to look at the expenditure. So Sen. Billow can wait until the Statement is issued.

Sen. Khaniri, you have another Statement.

CAMPAIGN AGAINST MANUFACTURE AND CONSUMPTION  
OF SECOND GENERATION ALCOHOL

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. I should have started with this one because it is the first one on the Order Paper. Nevertheless, pursuant to Standing Order 45 (2) (b), I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the campaign against the manufacture and consumption of second generation alcohol in the country. In the Statement, the Chairperson should explain why the national government's attention and funding of the campaign against illicit and second generation alcohol is skewed and has only concentrated in a few counties or regions yet this problem is in many parts of the country.

Secondly, what is the comprehensive plan by the national government to fight illicit brews in the country and how are they going to provide a lasting solution to the predisposing factors that encourage the manufacture and consumption of these brews?

**The Senate Minority Leader (Sen. Wetangula):** On a point of order, Mr. Speaker, Sir. Could you allow me to ride on that? Could the Chairperson also explain to the House and the country why some politicians, in their enthusiasm to ostensibly fight second generation alcohol, resorted to criminal acts of attacking and destroying private property even in cases where there was no evidence that there was second generation alcohol in those premises?

Mr. Speaker, Sir, this happened particularly in Murang'a, Kiambu and Nakuru counties. There is a particular case where a Member of Parliament (MP) led a gang of close to 500 hooligans to raid, attack and destroy Keroche Breweries; the only indigenous owned brewery in the country yet there was no evidence that it was manufacturing such alcohol

**Sen. Kagwe:** Mr. Speaker, Sir, allow me to ride on the same statement request. I would like to seek a clarification on the process of rehabilitation that the Government is putting in place. Whereas you can stop people from consuming illicit brews, the biggest

problem is rehabilitation. People stop, give up and then in a couple of weeks go back again. So, could we be told what rehabilitation policy and systems are being put in place?

**The Speaker** (Hon. Ethuro): I will allow those two because they are not a burden to the animal. You can only ride when your weight is less than the one carrying you. They are related because one takes it forward in terms of rehabilitation plans and the other one is the conduct in which the campaign was carried out. These are relevant to the Statement.

Where is the Chairperson of the Committee on National Security and Foreign Relations?

**Sen. Haji:** Mr. Speaker, Sir, under normal circumstances, the statement sought is valid and should be issued in a week's time. However, because of the problem we have sometimes, I request that we be given two weeks.

**The Speaker** (Hon. Ethuro): It so directed. It will be issued in two weeks' time. Proceed with your second statement, Sen. (Prof.) Lonyangapuo.

#### STATUS OF THE LAST MILE ELECTRICITY CONNECTIVITY PROJECT

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to request for a Statement from the Chairperson of the Standing Committee on Energy regarding the last mile electricity connectivity project. In the Statement, the Chairperson should:-

(a) State how many schools in Kenya, both Primary and Secondary, have been connected to electricity, and give the list per county.

(b) State how many schools per county are on solar connectivity and explain why the Ministry of Energy and Petroleum is not performing the maintenance and operations including replacing the solar batteries fitted in the schools.

(c) State when all the schools that are on solar connectivity and those that are not, particularly in West Pokot will be connected to the national electricity grid.

**The Speaker** (Hon. Ethuro): Where is the Chairperson of the Committee on Energy?

**Sen. Mwakulegwa:** Mr. Speaker, Sir, I will respond in two weeks' time.

**The Speaker** (Hon. Ethuro): It is so ordered.

Proceed with your last statement, Sen. (Prof.) Lonyangapuo.

#### STATUS OF THE EQUALIZATION FUND

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.45(2)(b) to request for a statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the equalization fund. In the statement the Chairperson should state:-

(a) How much allocation from the equalization fund was to go to West Pokot and Turkana Counties in the 2015/2016 Financial Year?

(b) What projects have been identified to be funded using the Equalization Fund?

(c) Explain why West Pokot and Turkana elected leaders have not been involved in the identification of the projects to be done using this Equalization Fund.

(d) When will the concerned Ministry call a meeting to brief the elected leaders on the status of this Fund and the projects?

**The Speaker** (Hon. Ethuro): What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, allow me to ride on that question by the distinguished Senator for West Pokot although some of the issues he is asking are in the law.

The Chairperson should also inform the House where the Equalization Fund for the first, second and third year is. Is this Fund administered after allocation by the Commission of Revenue Allocation (CRA) through Parliament, particularly this House, or is it a discretionary fund to be dished out benevolently by the Executive? They say, "I have an announcement that the Equalization Fund is available to do projects here and there." I do not need to go into the details. I am sure the Chairperson has heard this as well. Where is the money?

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula. Since you invoked the fact that Sen. (Prof.) Lonyangapuo asked matters in law, it means you also know the matters in law. If you wanted to know the genesis of the Equalization Fund, it did not begin with our term. It began with the promulgation of the Constitution of Kenya, 2010.

Where is the Chairperson of the Committee on Finance, Commerce and Budget?

**Sen. Billow**: Mr. Speaker, Sir, this matter is of significant interest to many counties, particularly counties in the Arid and Semi-Arid Lands (ASALS) of this country; pastoralists communities whom I represent in some other capacity. It has taken so long for this fund to be operationalized. I will invite the Cabinet Secretary to a Committee to give explanation on issues surrounding the operationalization of this fund, and then I will respond to the House in two weeks' time.

**The Speaker** (Hon. Ethuro): The statement will be issued in two weeks' time. Those were statements to be requested. Let us now go to the statements to be issued. We will begin with statement (a).

What is it, Sen. Njoroge?

**Sen. Njoroge**: On a point of order, Mr. Speaker, Sir. Before we went for recess, I had sought a statement from the Chairperson of the Committee on National Security and Foreign Relations regarding the last police recruitment. It was promised that the response will be given immediately we resume from recess. I have not seen it in the Order Paper.

**The Speaker** (Hon. Ethuro): When was it due?

**Sen. Njoroge**: It was supposed to be issued the first Tuesday after we resumed.

**The Speaker** (Hon. Ethuro): I order that it be brought on Tuesday, next week. I think the period expired during the recess and it was not scheduled. Let us have statement (a).

INVESTMENTS MADE BY THE NATIONAL GOVERNMENT  
IN DEVELOPMENT OF SCHOOL INFRASTRUCTURE

**Sen. Karaba**: Mr. Speaker, Sir, I am sorry that statements (a) and (b) have not been signed, and are waiting for signature at the Cabinet Secretary's (CS) Office. I am still waiting for the two statements, and I will communicate to the House any time I receive them.

**The Speaker** (Hon. Ethuro): Sen. Khaniri.

**Sen. Khaniri:** Mr. Speaker, Sir, if we check in the records, I requested for these statements in early April and the Chairman undertook to respond in two weeks. It is now over two months. This excuse of, “the statements have not been signed” has been there I think the four times that the statement has come up. The Chairman has always said that the statement was ready but not signed. I think we should compel him to deliver them as promised.

**The Speaker** (Hon. Ethuro): Order! Order! Give the Senator the microphone.

**Sen. Karaba:** Mr. Speaker, Sir, the statements are awaiting signature by the CS in his office, and that is the information I got at 2:15 pm today. I have been struggling to have them signed to no avail, but if the orders allow---

**The Speaker** (Hon. Ethuro): How long have you been struggling to have them signed?

**Sen. Karaba:** Mr. Speaker, Sir, I am even waiting for them to come to me any time now. It is not my issue that I should fail to answer them. I am very good at it. I even have some statements here which have not been listed on the Order Paper, and I can issue them if I was to be asked.

*(Laughter)*

**Sen. Billow:** Point of Information!

**The Speaker** (Hon. Ethuro): Senator Billow, who do you want to inform?

**Sen. Billow:** Mr. Speaker, Sir, Sen. Karaba; the Senator for Kirinyaga, and Chairperson of the Committee on Education. It is the procedure in the Executive that if a document has been prepared, the Principal Secretary (PS) can sign on behalf of the CS. We have had that done and have even had those kinds of statements submitted here before. So, if the CS is not available, the Chairperson should also appreciate that he has always given that excuse. If he has physically seen it, he can get the PS to sign the statements on behalf of the CS.

**The Speaker** (Hon. Ethuro): The Chairperson, Committee on Education.

**Sen. Karaba:** I have been to both the PS and the CS offices’ and I do not know where they are. They are not there in order to sign.

**The Speaker** (Hon. Ethuro): Chairman, you are ordered to produce the two statements, signed by the CS, to this House on Tuesday afternoon.

**Sen. Karaba:** Mr. Speaker, Sir, I am most obliged. I have others which are now signed; can I issue them if you so direct?

*(Statements deferred)*

**The Speaker** (Hon. Ethuro): You may need to tell the CS that the business of this House is paramount. May be, he needs to reduce those visits he is making elsewhere. Let us move to Statement (c).



PLANS BY THE GOVERNMENT TO BAN *MITUMBA* TRADE

**Sen. Billow:** Mr. Speaker, Sir, Statement (c) is not ready. They are still working on it. We have not yet gotten it, so I will ask for more time, with the indulgence of the Senate. We perhaps need another week.

*(Statement deferred)*

**The Speaker** (Hon. Ethuro): Senator Khaniri.

**Sen. Khaniri:** Mr. Speaker, Sir, it is okay if the Chairman asks for a week, because this is another statement that I requested for in April. So, it is long overdue.

**The Speaker** (Hon. Ethuro): Sen. Khaniri, you are also responsible for the accuracy. I think you asked for the other statements from the Committee on Education in May, because this is a House of records.

**Sen. Khaniri:** Mr. Speaker Sir, I stand corrected. I think it was early May. Thank you.

**The Speaker** (Hon. Ethuro): Let us have Statement (d), from the Chairman of the Committee on Transport and Communication. Yes, the Vice-Chairperson, Sen. Sijeny.

POOR STATE OF ROADS AND BRIDGES  
IN WEST POKOT COUNTY

**Sen. Sijeny:** Mr. Speaker, Sir, the statement is not ready. I beg for some little time, probably two weeks. I talked to the CS but he was on his way out of the country, and it did not work the last time we had agreed on inviting him. I cannot remember what happened, but he begged for another day and we agreed to fix a date as soon as he arrives. It should be within the two weeks.

**The Speaker** (Hon. Ethuro): Two weeks from when? When was it due, and how much time had it been given?

**Sen. Sijeny:** It had been given two weeks and was due on Tuesday.

**The Speaker** (Hon. Ethuro): Last Tuesday?

**Sen. Sijeny:** Mr. Speaker, Sir, this week.

**The Speaker** (Hon. Ethuro): It is so ordered. Two weeks, but if you get the answer within one week, the House will appreciate. Let us get Statement (e).

## POWER FAILURE IN POKOT NORTH SUB-COUNTY

**The Speaker** (Hon. Ethuro): Vice Chairperson.

**Sen. Mwakulegwa:** Mr. Speaker, Sir, the Statement is not ready, but will be ready by Thursday, next week.

**The Speaker** (Hon. Ethuro): It is so ordered, since Sen. Lonyangapuo had also stepped out. Which day of next week?

**Sen. Mwakulegwa:** Mr. Speaker, Sir, on Thursday.

**The Speaker** (Hon. Ethuro): Let us have Statement (f) from the Committee on Finance, Commerce and Budget.

THE LEGAL AND REGULATORY PROCEDURES  
IN RECEIVERSHIP OF BANKS

**Sen. Billow:** Mr. Speaker, Sir, I wish to issue the statement which was sought by the Senator for Nyeri regarding the regulatory and legal procedures for putting a bank under receivership.

We invited the Governor to the Committee to discuss this matter. There is a very elaborate answer and I think the Senator has a copy. I will briefly highlight the key issues so that he can seek clarification where he can. It was an extensive discussion for which the minutes of the Committee are available. Many other issues and supplementary questions were raised and discussed at that meeting.

The Senator had sought, one, the regulatory and legal procedures followed before a bank is placed under receivership and written procedures in communication that had to be followed. He had also sought to know the extent to which regulations were followed in placing Dubai Bank, Imperial Bank and Chase Bank under receivership.

He further sought to know whether placing the said banks under receivership was the most appropriate course of action and whether it was the board's decision or the decision of an individual. Lastly, he sought a clarification on the remedial measures that have been put in place by the Central Bank of Kenya (CBK) with respect to Imperial Bank.

There is a legal basis for placing a bank under receivership by the CBK which is established under Article 231 of the Constitution and also anchored in the CBK Act. One of the principle objects of the CBK, as captured in Section 42, is to ensure liquidity, solvency and proper functioning of a stable market-based financial system, which is further elaborated in the Banking Act. Section 34 of the Banking Act sets out the circumstances under which the CBK may intervene in the management of a bank. The circumstances are:-

(a) If the institution fails to meet any financial obligations. For example, if the depositor is not able to withdraw money because the bank is unable to meet the demand, that is one of the circumstances. Therefore, if the institution fails to meet any financial obligations, when it falls due.

(b) If a petition is filed or resolution is proposed for the winding up of the institution.

(c) If the auditor of an institution makes a report to the CBK, under the provisions of subsection 4 of the Act.

(d) If the CBK discovers or becomes aware of any fact or circumstances, which in the opinion of the Bank, warrants the exercise of relevant power. This was applied in one of the three banks.

(e) If the institution is significantly under-capitalized. Again, one of the institutions actually had that challenge.

(f) If the institution fails to submit a capital restoration plan or plan to solve all of the deficiencies mentioned in Section 33.

Mr. Speaker, Sir, Section 43 (2) of the Deposit Insurance Act sets out the circumstances under which the CBK can appoint the Kenya Deposit Insurance Corporation as a receiver of the bank. It says that the CBK shall appoint the corporation as the sole receiver of any institution if it determines that:-

- (a) the institution's assets are less than the institution's obligations, in other words, the assets are far less than the liabilities of the bank;
- (b) an unsafe or unsound condition to transact business exists or other cause that warrants the exercise of relevant power in the interest of the institution;
- (c) there is a willful violation of a regulatory or supervisory order; and,
- (d) there is a concealment of the institution's books, papers, records or assets;
- (e) the institution is likely to fail to meet any of the financial obligations or depositors' demands.

There are more circumstances given in the answer.

Regarding the regulatory and legal procedures followed, the CBK may, through onsite inspection of a bank, offsite surveillance or auditor's report:-

- (a) Establish that the bank has violated the law or is facing certain deficiencies such as capital inadequacy or liquidity deficiency.
- (b) Notify the concerned bank on the violations or deficiency.
- (c) Engage the concerned bank with a view to addressing the violations or deficiencies in question;
- (d) Give an opportunity to the affected bank to address the deficiencies or violations, that is, consideration whether the case of the bank in question falls under Section 34 of the Banking Act or Section 43 of the Kenya Deposit Insurance Act. In other words, whether the adverse circumstances of the bank fall within the grounds under which a bank can be placed under receivership and whether placement under receivership is the best option in the circumstances.
- (e) The Kenya Deposit Insurance Corporation (KDIC) is notified of the adverse circumstances surrounding the bank in question.
- (f) The matter is discussed between the CBK and KDIC. In other words, sharing of information and determination by the CBK, in consultation with the KDIC to place the bank under receivership. A team comprising the CBK - Governor and Deputy Governor and senior staff – actually consider the circumstances of the affected bank and determine the best course of action.
- (g) Formal letter of appointment of KDIC by the CBK as the receiver of the bank in question.
- (h) Press release to inform the public and gazettement of the receivership.

That is the procedure that is followed.

The second question was in relation to the extent to which the regulations were followed in placing Dubai Bank, Imperial Bank and Chase Bank under receivership. The procedure was followed in the case of all the three banks. For instance, Dubai Bank and Chase Bank were given an ample opportunity to remedy the violations and deficiencies. The CBK held several meetings with the two banks to discuss the violations and deficiencies. The CBK and KDIC deliberated at length on the adverse circumstances facing the two banks, the best course of action to take, its benefits to the institution's depositors and creditors and possible adverse impact. There was also a formal appointment of the KDIC.

In the case of Imperial Bank, the matter was discussed between the CBK and Imperial Bank's board. It is the board that actually alerted the CBK of the violations. In fact, the violations and deficiencies were brought to the attention of the CBK by the board of Imperial Bank. Again, the CBK, KDIC and the board of Imperial Bank

deliberated at length on the matter and considered all relevant issues, including the impact of the fraud at the bank on the capital adequacy, the money laundering offences that may have been committed, possibility of a bank run upon disclosure and so forth. All those things were looked at and the placement of the bank under receivership was intended to give the bank time to remedy the situation.

The third question was to demonstrate whether the placing of the banks under receivership was the most appropriate course of action. All operations of the CBK are the responsibility of the Governor and his team, which includes the Deputy Governor and staff. Section 13 (3) of the CBK Act vests the executive authority of the CBK in the Governor. Therefore, all operational decisions of CBK are made in line with this mandate. The CBK Board is separate from the CBK management team and has oversight role as set out in Section 10 of the CBK Act. There is no overlap in their responsibilities. The role of the CBK management is to implement policies and laws, which fall under the CBK mandate. In line with that mandate, therefore, those three banks were placed under receivership. There are details providing the circumstances that led to the closure of Dubai Bank, Chase Bank and Imperial Bank. I will not go into the details because the Senator has them.

The last question sought a clarification on the remedial actions being put in place by the CBK with respect to Imperial Bank. The Imperial Bank Limited (IBL) was placed under receivership on 31<sup>st</sup> October, 2015 after the discovery of unsafe and unsound practices. The senior management of the bank was suspended because of a possible culpability and successfully, the CBK engaged the shareholders in the recovery of the bank, after developing an appropriate recovery plan. They were to inject Kshs20 billion and collateralize the bad loans. The CBK has sued the estate of the late IBL group Managing Director Abdul Janmohammed, senior management and related groups for the recovery of the lost funds. The CBK has also obtained freezing orders on all of their assets. They have also procured the services of FTI Consulting to carry out in-depth investigations to determine---

**The Speaker** (Hon. Ethuro): Order, Chair! If the Member has a copy of the Statement, just do the highlights.

**Sen. Billow:** Mr. Speaker, Sir, the measures are listed in the Statement. The international best practices are also listed.

The Member has a copy of the detailed response and can seek further clarification.

**Sen. Kagwe:** Mr. Speaker, Sir, I want to thank the Chairman for a very elaborate answer. The elephant in the room is in one of the statements he made; that is, "determination by the CBK to place the bank under receivership." That statement is where the issues lie. Most of the answers given do not relate to the procedure, as it were, but the reasons why a bank can be placed under receivership. For example, I am aware that the period between when the directors of Imperial Bank Limited reported that they had noticed that there was fraud in the bank and the closure of the bank was very swift. I am also informed that there is a situation where Chase Bank was supposed to deposit the money required by the CBK within an hour or so; from about 4.00 a.m. to 6.00 a.m.

In the determination by the CBK to put the bank under receivership, what exactly is followed within that statement? Is it the Governor of the CBK, for example, who makes a final decision and signs it thereof? I am told that at the time of the Imperial Bank

going into receivership, even the Governor of CBK was not in the country. I could be wrong; I stand to be corrected. Is there some two or three people who then sit and say: "Given the circumstances, we have no choice but to place the bank under receivership"?

Mr. Speaker, Sir, when you consider the importance of the financial sector in this country, I have no doubt about the capability of the current Governor, Mr. Njoroge. However, these are not rules or regulations that are made for an individual. It is not an individual but the institution that should determine these things. Could I get a clear answer as to who actually made that decision? We have no intention of interfering with the independence of the CBK to make those decisions; just to be sure that there is, indeed, a procedure which is signed off by somebody.

**Sen. Billow:** Mr. Speaker, Sir, that is a very important clarification sought by the Senator. It is because of that concern that our Committee has decided to investigate the circumstances under which Imperial Bank Limited was placed under receivership. In this regard, our Committee has already had a meeting with the Governor and is in the process of inviting the directors and other stakeholders in that bank, so that we can find out whether, indeed, the provisions of Section 34 have been followed properly by the CBK in placing the bank under receivership. We also sought to know whether the directors of Imperial Bank failed to comply with the issues that have been raised, for example, the recovery plan or the CBK did not act appropriately. We are in that regard investigating this matter and my Committee will table its report once we have concluded.

**The Speaker** (Hon. Ethuro): Next statement.

DENIAL OF VISA TO MR. JOSEPHAT KIMEMIA

**The Speaker** (Hon. Ethuro): The Member is not here. Therefore, we will defer it.

*(Statement deferred)*

FINANCING OF JARAMOGI OGINGA ODINGA  
TEACHING AND REFERRAL HOSPITAL

**The Speaker** (Hon. Ethuro): The Member also not here. Therefore, we shall defer that.

*(Statement deferred)*

DELAYED PUBLIC WORKS AT THE JARAMOGI OGINGA  
ODINGA TEACHING AND REFERRAL HOSPITAL

**The Speaker** (Hon. Ethuro): The Member is not here. We shall also defer that.

*(Statement deferred)*

Let us have the Senate Majority Leader issue a statement on business for next week.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 7TH JUNE, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise under Standing Order No.45 to issue the Statement on the Business for the Senate for the week commencing 7<sup>th</sup> June, 2016.

On Tuesday, the Rules and Business Committee (RBC) will meet at 12.30 p.m. to schedule the business for next week. Subject to the direction of the RBC, some of the Bills that will be discussed include; The County Governments (Amendment) Bill (Senate Bill No.18 of 2014), The Petition to County Assemblies Procedure Bill (Senate Bill No.35 of 2014) and The County Outdoor Advertising Control Bill (Senate Bill No.11 of 2015). These three Bills are at the Committee of the Whole stage. We also have a number of Bills which are expected to be brought for Second Reading, including the Order of Precedence and Titles Bill and several other Bills, some of which were read here to the House on Tuesday.

We have nearly 15 Bills and many of them have constitutional deadlines. So, I just want to implore colleagues to take this part of this session between now and when we go on recess at the end of July very seriously because we have a lot of work to do. I also want to remind the House that we have The County Allocation of Revenue Bill of 2016 which is also pending Committee of the Whole. I hope that this afternoon, we will transact the Anti-Doping Bill which is urgent and it is in today's Order Paper.

Mr. Speaker, Sir, I do not want to take a lot of time. I just want to implore colleagues to show commitment and sacrifice especially June and July, so that we do the national duty that is ahead of us.

I thank you and beg to lay this Statement on the Table of the Senate.

*(Sen. (Prof.) Kindiki laid the document on the Table)*

**The Speaker** (Hon. Ethuro): That is the end of statement time. Members, we can now proceed to the next Order.

## BILLS

### *First Readings*

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

THE ENERGY BILL (NATIONAL  
ASSEMBLY BILL No.50 OF 2015)

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

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

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

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

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

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

*Second Readings*

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

*(Sen. (Prof.) Kindiki on 31.5.2016)*

*(Resumption of debate interrupted on 31.5.2016)*

**The Speaker** (Hon. Ethuro): Order, Members. Since we will have to go to Division, we are still waiting for the numbers to accrue. So, we will defer that until the requisite numbers have been attained.

*(Bill deferred)*

Next Order

*Second Reading*

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

*(Sen. (Prof.) Kindiki on 31.5.2016)*

*(Resumption of debate interrupted on 31.5.2016)*

**The Speaker** (Hon. Ethuro): We shall also defer that one.

*(Bill deferred)*

**POINT OF ORDER**DELAYED PROCESSING OF SENATE BILLS  
BY THE NATIONAL ASSEMBLY

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. I raised a point of order about the several Bills that are from the National Assembly and I am seeking more of direction to this extent. I can see in our Order Paper that we have prioritised matters that come from the National Assembly. I have heard the Senate Majority Leader mention that some of these Bills actually have constitutional deadlines. What is the position of the Senate Bills, up to 18, that are pending and lying at the National Assembly? If I may refer you to Order No.13, this House has passed a version of the Community Land Bill. Since they have decided to sit on the version that we passed, through your directions, their version is now on the Order Paper.

Mr. Speaker, Sir, the Committee on Information and Technology was developing our own version of the Access to Information Bill. Because of the same problems, we now have another version from the National Assembly. Am I in order to seek your directions on whether you are satisfied as the Speaker of this House that we are moving properly and that this Senate is actually in order to continue fast-tracking the work that comes from the National Assembly? Although you have insisted that we should not revenge but continue being ladies and gentlemen, this is too much. My folder is full of work coming from the other House whereas we do not know why only five Bills have found themselves in the President's desk for signature out of the many Bill that we have passed since 2013. This is a serious concern.

**The Speaker** (Hon. Ethuro): Proceed, Sen. Onge'ra.

**Sen. Onge'ra:** Thank you, Mr. Speaker, Sir. With your permission, let me also ride on that point of order at the risk of sounding like an old record. If I borrow words from Sen. Mutula Kilonzo Jnr., we have been in this House for over three-and-a-half years---

**The Speaker** (Hon. Ethuro): Order, Sen. Ongera. You do not need both. You do not need to ride on it but you can rise on your own point of order.

**Sen. Onge'ra:** Thank you, Mr. Speaker, Sir, for that information. I stand guided. We have been in this House for over three-and- a-half years and have not legislated any Bill into an Act of Parliament except five of them. This is not because we have not been working.

We have worked very diligently but over 18 of our Bills are lying somewhere in the National Assembly. Is it in order to fast track the work of the National Assembly? Are we here as errand boys and girls to fast track the work of the National Assembly when we know that they are sitting on our Bills? Secondly, this House is going to be judged at the end of the five year tenure by the kind of work we did as legislatures. One of our core duties is to legislate. It is not right for the National Assembly to continue sitting on our Bills yet we are fast-tracking their Bills in the Senate.

Mr. Speaker, Sir, as I said last week, under the risk of sounding like an old record, time has come to call a spade a spade, and as the Swahili saying goes; *kama ni kubaya, ni kubaya*. It is high time that this House also takes drastic measures in looking at the Bills from the National Assembly.



**The Speaker** (Hon. Ethuro): Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen.(Prof.) Kindiki: Mr. Speaker, Sir, I fully understand and support the decision that has been articulated very ably by Sen. Mutula Kilonzo Jnr and Sen. Onge'ra. I am in full support. However, as a leader in this House, I want to request the Chair to guide us whether it is in order for the Senate to go slow in its constitutional duties because somebody else is not performing their constitutional duties. I asked this because two wrongs do not make a right. I am very aggrieved and feel that the National Assembly has fallen short of their constitutional obligations. I am not sure, whether it would be in order for this House that prides itself as a House of reason and sobriety to sit on Bills because I do not think that is a strategy.

These Bills do not belong to the National Assembly. These Bills are enacted on behalf, and for the benefit of the people of Kenya. In my own view, the Bills that originate from this House are not Senate Bills. They are Bills for our country, initiated and sponsored by the Senate. I would be a bit hesitant to go slow on a national and constitutional obligation because I am aggrieved by somebody somewhere who is not doing their role. We must find a way of unlocking that impasse. I do not think sitting on Bills - with great respect to alternative view - or refusing to enact laws is a viable and respectable option this very senior and well informed House will take.

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): I would like to be informed by my neighbour and Senior, Sen. Musila.

**The Speaker** (Hon. Ethuro): Even as Senator Musila informs you, I would also add my thought processes. You have argued eloquently and justifiably as a professor of law. If your argument is that you should not be seen to be abdicating the responsibility, what is your comment on others who seem to be doing the same? Proceed, Sen. Musila.

**Sen. Musila:** Thank you, Mr. Speaker, Sir. My point of information to my dear friend and neighbour is that he is the Senate Majority Leader and the person who sits or influences the sitting on our Bills is the National Assembly Majority Leader who is his counterpart within the Jubilee Coalition. I, therefore, find absolutely no problem in our leader to influence and convince the other leader and ensure that what we take there is acted upon so that we reciprocate. I want to inform him that the rule of reciprocity entails that the two parties must respect each other, work together and reciprocate on issues.

**The Speaker** (Hon. Ethuro): Proceed, Sen. Elachi.

**Sen. Elachi:** Thank you, Mr. Speaker, Sir. I think it is unfortunate for the Senate because all the Bills that have been handed over to us are constitutional Bills that have a deadline of 27<sup>th</sup> August 2016, and totaling 15. Right now, we are being bashed by the media just because of the Anti-Doping Bill. The biggest challenge we face as a House is that people perceive and think that the Senate does not work. It is up to us to be proactive and use the media to help us fastrack some of our Bills, like The Food Security Bill that is lying at the National Assembly. This is because when you go to the media now as a Senator, you will not be able to debate it.

The most unfortunate thing is the way the Bills come in. These Bills with constitutional deadlines should not be listed as "National Assembly" Bills, but; "Parliament of Kenya" Bills because they are constitutional Bills. The Senate Majority Leader should be going to the State House after passing the Bills and witness when these Bills are being signed into Law.

Sen. Mutula Kilonzo Jnr., politics in this country is perception. People will never know that the Senate, indeed, played a role in these Bills if Senators are not seen witnessing their signing into law. They do not know that the Senate played a critical role in scrutinizing the Bill and resending it to the National Assembly. We must also be proactive.

**Sen. Hargura:** Mr. Speaker, Sir. I would like you to be very clear on the Bills that were passed and taken to the National Assembly and *vice versa*. This is because there are Bills that were passed though they originated from there and others that originate from here and somebody sits on it and brings us a similar Bill.

**The Speaker** (Hon. Ethuro): Precede Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I want to inform Sen. Elachi that being a leader in this House that there was a very important Bill that was signed recently by His Excellency the President concerning the youth. That Bill did not come to the Senate and the reason was that we delay the work of the National Assembly.

When somebody says that a Bill on youth does not concern the Senate, we need to ask several questions. This is because when it has been signed, it becomes an Act of Parliament. How can you give an excuse for things that are ideally unparliamentary on how we should relate?

It is now 12 months before the next General Election and the Senate Majority Leader, you are the one who carries the burden on your back for leading a House that passed only 6 Bills into Law for the entire period we have been in the Senate. The tragedy about it is that the works of the Senators sitting in this House, who have worked tirelessly in generating several Bills, has been put onto the back burners. This is because we have been fastracking the work of our sister House.

The idea of being a gentleman for too long is going to be detrimental. We cannot sit for so long when we know that they are sitting on our constitutional right of legislation. You can give excuses about constitutional deadlines, when we all know that there was no reason for extending those deadlines under Articles 261 and 262 of the Constitution.

We are now going to fastrack our Community Land Bill which is sitting in another House and another version is here, yet you are telling us to fastrack. We are asking who our Senate Majority is, so that he can stand up.

**The Speaker** (Hon. Ethuro): Who is the Senate Majority Leader? Before we look for him, search, rescue and deliver him in person, let us hear from Sen. Bule.

**Sen. Bule:** Mr. Speaker, Sir, today, I am very different. As you can see, I am wearing my white clothes signifying that I am more than clean. This Senate has been misused. I categorically say we can never be used as a rubberstamp again. It is a pity that many Bills have been passed by the National Assembly without passing through this Senate. Some very important Bills like the Sang Bill and others have been shelved and eventually thrown out of the window when they are referred to the National Assembly.

Let us stand firm and show that this Senate can also do some walkover. Today, we are showing that we are patriotic and let us remain so. Some of us can even resign if the work we are doing is not recognized. This Senate is very important. Unless we sit and strategise like men and women of integrity, we cannot be respected. Let us walkover this Bill and throw it out of the window.

(Laughter)

**The Speaker** (Hon. Ethuro): The question still begs; where and who is the Senate Majority Leader?

Proceed.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, as to the question who is and where the Senate Majority is; I answer humbly that the Senate Majority Leader is here, safe and sound and much focused on the job that Kenyans bestowed upon me as Senator for Tharaka-Nithi County. My party has added me the responsibility to lead the Government side in this House.

Let me say three things in quick succession. One, we have to be gentlemen and honourable people, irrespective of the amount of provocation and juvenile behaviour that we get from other quarters. I insist that we must remain sober because we are leaders in this country and we are not in competition with any other person. We are satisfied with our role and we will articulate it to the best of our ability. However, we cannot play into the trap of people who want to do the things that have brought this country down and put it backward for many years. So, I would detest any indication that we should abandon our sobriety and become hooligans in town.

Secondly, with great respect to my friend, Sen. Mutula Kilonzo Jnr. who is a lawyer like I am, he is misinterpreting and misunderstanding the legislative process in one particular area. This is a House of records. Therefore, it is not true to say this House has passed only six Bills. We must differentiate between a Bill originating from one House or the other. My argument, which is also the position of the law, is that all Bills that have been brought to this House, whether they have been initiated here or in the "lower" House, are Bills of the Parliament of Kenya to which the Senate is part of. So, we cannot say that simply because a Bill originated in the National Assembly, it is a National Assembly Bill.

**Sen. Mutula Kilonzo Jnr.:** It is an Executive Bill.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): It is a Bill of the Parliament of Kenya. Any Bill that has been brought here, whether at the first instance, or being referred to us by the National Assembly, is a Bill of this House. So, when you are doing the mathematics, you must include all those Bills. It is incorrect to say that only six Bills have been passed in this House.

From the way the Constitution is crafted, many Bills will ordinarily originate from the "lower" House. It is because of the constitutional arrangement that talks about money Bills and *et cetera*. So, we should not buy into this idea that unless a Bill has originated in this House, then it is not our Bill.

We must have a way forward out of this since we cannot be whining all the time. We, as a House, have had certain challenges in the past even with the National Assembly, but we resolved them. At some point, you will recall there was an attempt to pass certain Bills like the Mining Bill and others without our input. However, our interventions did help us, as a House, a great deal. Now, that is not an issue; Bills are now coming to us. You have seen a long list of Bills before this House.

In terms of the way forward, therefore, I suggest that maybe we need to again engage on this issue through the Business Committees of the two Houses. We do not want it to be a Speaker-Speaker thing. We can institutionalise it and the Rules and

Business Committee (RBC) of the Senate and the House Business Committee (HBC) of the National Assembly can have a meeting.

It is also not true to say that it is the Senate Majority Leader or the National Assembly Majority who makes a decision. It is the Speakers of the two Houses who make the decision. Let us read our Constitution again. However, we can exert our little influences from the Majority side. The best way to address this is the Business Committees of the two Houses to have a meeting and address this issue. I am very persuaded that one more attempt, well-articulated, well-choreographed and well-packaged can yield the results that we seek, other than say that we must now start sitting on Bills and threatening people that we will not pass these Bills. We will end up punishing the people of Kenya and not any particular person.

That is my humble recommendation. It is a recommendation from the humble Senate Majority Leader.

**The Speaker** (Hon. Ethuro): I am really convinced and persuaded to terminate this discussion at that particular point. This is because I have been carried away by the eloquent submissions by the Member for Makueni County. However, that was until the Senate Majority Leader spoke. Now that I have, at least, saved that level of understanding, I can entertain more.

*(Laughter)*

**Sen. Billow:** Mr. Speaker, Sir, you know lawyers can say anything to you. So, you have to be careful.

I find it very difficult to share the Senate Majority Leader's persuasion that we will fall into a trap if we do what some Members have suggested. What we see here is a very clear pattern of undermining this House by the National Assembly. It is not just about the Bills. That is the issue. This morning, the Senate Majority Leader was absent. However, the issue of the Monitoring and Evaluation Fund was discussed at a *Kamukunji* meeting. There is an obvious attempt to try and undermine the operations of this House by making sure we do not legislate and oversight effectively, thereby failing as representatives of the people. That is clearly coming out and to continue hiding behind this story that we do not want to engage in juvenile behaviour, is beside the point. It is time this House fought for its space. It is time the leadership of this House stood up to the leadership of the other House and demanded for that space. If it means frustrating the business of the other House in order to ensure that this House gets its space, so be it. We need to do that. That is my point.

**The Speaker** (Hon. Ethuro): Sen. Bule, you may have a second bite at the cherry.

**Sen. Bule:** Mr. Speaker, Sir, while appreciating the sentiments of the Senate Majority Leader, this House is part of Parliament. Parliament is Parliament. Therefore, we cannot work like subordinates. Let the Senate Majority Leader understand that Parliament is Parliament and we are the "upper" House. We cannot be subordinate to the "lower" House. That is what I am trying to say.

**The Speaker** (Hon. Ethuro): Hon. Members, obviously, this is very interesting to the extent that it has excited the hon. Senator for Tana River County. That in itself demonstrates that it is a serious matter.

I want to thank Sen. Mutula Kilonzo Jnr. and Sen. Ong'era for raising this matter. If you look at the key in which we prioritize our business, it is clearly marked with four stars which denote a Majority or a Minority Party Bill and three stars denote the National Assembly Bills. You will appreciate that it means that all the three stars are actually subsumed in the four stars under the Majority Leader. All the Bills of the National Assembly come under the name of the Senate Majority Leader. You can see the top priority that they are occupying. You will also notice that the Minority party will hardly bring many Bills because of the nature of the business. The Bills from the National Assembly occupy significant time of our business.

You have made your point and you are absolutely right and that is why I am saying I am still persuaded because from my desk, I have raised similar questions. We have given sufficient time and it cannot continue in that manner. You have reminded me of the famous lawyer's question in Donoghue vs. Stevenson case. The lawyers question was; "who is my neighbor?" So, we ask; who is the Senate Majority Leader? Whatever action you propose, you should have your neighbour in you contemplation. I think for either House, it is reasonable to contemplate the other House.

The Majority Leader has given our position in terms of the way we have taken it as a leadership; that this business is for the people of Kenya. We exercise this power on delegated sovereign authority of the people of Kenya.

The argument you have raised and which is even closer to the Senate Majority Leader, and we have said as much, is that when you have your own Bill, you should look at the issue of plagiarism and taking advantage of other people's work; this cannot just be limited to our understanding of the sovereignty of the people. There must be other sanctions that we can employ, not necessarily to punish, but to ensure that the process as articulated in the Constitution is actually followed by both Houses.

That is what the membership of this House is asking. It is asking for the same kind of prioritization and attention that you have given to the other House. I submit that it is not too much to ask. In any case, this is the very minimum that you can ask. This issue is so fundamental because at the end of the day, when the President signs a Bill into law, it becomes "an Act of Parliament". Therefore, when one House has not participated, how does it become an Act of Parliament? However, as to inviting himself to a judicial process; this is a case that does not need a lawyer to determine the outcome. This is a case any litigant can process. I am not asking them not to hire the good services of Sen. Mutula Kilonzo Jnr.

That is the position. I will definitely look into this matter because it is time we pronounced ourselves, at the very minimum. That is my position on record. I will do so without fear or favour. I can assure you that it will be earth shaking.

*(Applause)*

Next Order!

Hon. Senators, you will recall that we deferred Order Nos.15 and 16. Order No.15 has an effect on Order No.17. So, we will now go straight to Order No.18.

**COMMITTEE OF THE WHOLE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

*[The Temporary Chairperson (Sen. Mositet) took the Chair]*

**THE COUNTY ALLOCATION OF REVENUE BILL  
(SENATE BILL NO.3 OF 2016)**

**The Temporary Chairperson** (Sen. Mositet): Hon. Senators, we are in the Committee of the Whole to consider The County Allocation of Revenue Bill (Senate Bill No.3 of 2016).

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Temporary Chairman, Sir. It is a tradition of this House that where we have the Committee of the Whole, the proposed changes are listed in the Order Paper. This Order Paper does not contain any proposed changes in the Committee of the Whole on the County Revenue Allocation or any other Bill. Are we in order to proceed that way?

**The Temporary Chairperson** (Sen. Mositet): We normally have them if there are amendments. If we do not have amendments, we do not need them.

**Sen. Mutula Kilonzo Jnr.:** I am aware that in this Bill, we have changes from the Committee.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Chairman, Sir. Is it in order for Sen. Mutula Kilonzo Jnr, who ordinarily is reasonable and intelligent, to mislead this House? If it is true as he alleges, which I doubt, that they had amendments, then Sen. Mutula Kilonzo Jnr. is implicating the Committee. It is either their amendments are on the Order Paper or the Committee is here to prosecute them. He should just withdraw that point of order and allow this Committee to proceed. Anybody who has an amendment can move it. If there are none, he moves on. How can he tell us that he has amendments which he does not know and which he is not ready to prosecute?

**The Temporary Chairperson** (Sen. Mositet): If there are amendments, the Chairperson will come and explain. As of now, the amendments are not reflected on the Order Paper.

Have you been mandated to prosecute on behalf of the Chair?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairman, Sir, I will not stand here to say something on record which I am not aware of. You and I, sat in a Committee today with proposed amendments to the County Revenue Allocation Bill. If those amendments have not found their way into the Order Paper, it would be advisable to drop this Order until Tuesday, so that they can be brought.

The amendments that we have proposed are important. They are serious. We have made several changes on the allocations that will go to county assemblies and many other

things. Therefore, we cannot sit here today and feign ignorance. Ignorance of the law is not an excuse and you know that.

**The Temporary Chairperson** (Sen. Mositet): I am aware that there were serious amendments proposed in the Committee. If the Chairperson was here, he could have informed us whether he is ready to proceed.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Chairman, Sir. The Senate waits for no man. What they are telling us is actually like indicting themselves as a Committee. First and foremost, we passed the Second Reading of this Bill long before the recess. It was intended that during the recess, the Committee will prepare themselves if they have any amendments. This Bill is urgent. Therefore, I will not sit here and entertain the Committee telling us that they have some amendments which we do not have here and that the Order should be dropped. They had enough time. The Senate does not waste time. We wait for no Senator nor Committee. If you are not ready, that is not for the Chair to determine, an Order has been called out, that is it.

**The Temporary Chairperson** (Sen. Mositet): The Senate Majority Leader, you have a point. The Member of the Committee on Finance, Commerce and Budget also understands well what we went through.

Sen. Murungi, do you have an intervention?

**Sen. Murungi**: Mr. Temporary Chairman, Sir, I do not have a copy of the Standing Orders in front of me. However, I recall that there is a Standing Order which requires that amendments be introduced at least two hours before the debate begins. If those amendments are not there, or they come from the Mover, he or she can introduce the amendments at anytime. In this case, it is possible for the Mover to introduce the amendments in the course of the debate. Sen. Mutula Kilonzo Jnr. has a point, but he is out of order. First, he is not the Mover and, therefore, cannot introduce the amendments. Two, he did not come with his amendments two hours before this debate begun. Therefore, any amendments that are not before the Committee cannot be looked at.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Temporary Chairman, Sir, I am glad that Sen. Murungi, my senior in the profession, has adduced more justification why we should not entertain what Sen. Mutula Kilonzo Jnr. is trying to introduce.

My last point, in the same vein, is that the Standing Orders allow the Senate to proceed if a Committee does not work. We give them time to consider the Bills as the expert group. This Bill has been with us for a long time and the Budget will be read next week, and Kenyans are waiting. These are some of the things that give this House a bad name. I would have been happy to see those amendments. We cannot prosecute unknown amendments where there is no Mover and nobody from that Committee with any brief. This Order Paper has been on the website since last evening and we have had a whole month of recess. This is one of the most critical Bills that we have every year.

Mr. Temporary Chairman, Sir, with all due respect, I want you to find this Committee contemptuous of this House and lethargic in their work.

**Sen. Mutula Kilonzo Jnr.**: Mr. Temporary Chairman, Sir, I want to be very clear. There has been a delay because there was a mistake committed by the Commission on Revenue Allocation (CRA) on county assemblies and the allocations. There was no consultation when they prepared the schedules. They were to have as many as four

sittings. Some counties, including Meru County, have an increase of up to Kshs52 million. Out of the amendments, Meru County is one of the county assemblies that have been considered by the Committee and the CRA, purposely because at the time the CRA prepared the schedules, they mistakenly used Regulation No.25 of Public Finance Management Act (PFMA), which does not apply because we amended the PFMA. They had capped the recurrent expenses.

I plead with you, my seniors, that for once, you should listen to this young Senator. There is wisdom in what I am talking about. There was a problem in the schedules. Throughout the recess, there were some sessions and I chaired one of them. The CRA had to sit continuously with 47 counties to amend the recurrent expenses, because they had made a mistake.

I plead with you, therefore, under Standing Order No.1, to allow the amendments which we approved this morning to be put in the Order Paper on Tuesday. It is a small request and I do not think there will be any prejudice suffered by any person.

**Sen. Murungi:** Mr. Temporary Chairman, Sir, Sen. Mutula Kilonzo Jnr. is one of the most serious Senators in this House. He has given good reasons the amendments are not before the Committee. I do not want to go into the details.

Mr. Temporary Chairman, Sir, I want to change my position, in view of the cogent reasons that have been given by the Senator. Indeed, it will not do us any harm for this matter to be deferred, so that the Committee can be given a chance to bring those amendments when the House sits on Tuesday. Indeed, the Senator is right to say that you have immense powers under Standing Order No.1 to do justice, especially to our counties. I would like to plead with the Senate Majority Leader to accommodate Sen. Mutula Kilonzo Jnr. We appreciate the seriousness with which he approaches his tasks in this Senate. I plead that we listen to him and accommodate the Committee.

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

**The Temporary Chairperson** (Sen. Mositet): Before Sen. Mutula Kilonzo Jnr. apologizes for what he said, I will allow the Chairperson to say something.

**Sen. Billow:** Mr. Temporary Chairman, Sir, I seek the indulgence of the Chair for Order No.18 to be deferred until Tuesday. The report of the Committee will be ready on Tuesday because we have some amendments.

**Sen. Chelule:** On a point of order, Mr. Temporary Chairman, Sir.

**The Temporary Chairperson** (Sen. Mositet): Sen. Chelule, do you have something to say?

**Sen. Chelule:** Mr. Temporary Chairman, Sir, I have been requesting to seek a clarification from you for long time. I thought we are in the Committee of the Whole because of the amendments. I have been listening keenly to contributions made by Sen. (Prof.) Kindiki and Sen. Mutula Kilonzo Jnr. with regard to amendments. However, why should we waste time in this Committee of the Whole when we know that we cannot do much without amendments? I would like clarification from the Chair.

**The Temporary Chairperson** (Sen. Mositet): Sen. Chelule, we can always go to Committee of the Whole on a Bill even without amendments. However, the Chairperson has already deferred the matter to Tuesday.



**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairman, Sir, although my Chairperson and Vice Chairperson are in the House, I would like to apologise for the inconveniences caused to the Senators. However, in support of the work that we do in protecting county assemblies, this is just one of the rare instances where we ask for forgiveness. Kindly, allow us to defer this to Tuesday.

**The Temporary Chairperson** (Sen. Mosistet): I hope that the Senate Majority Leader can now afford a smile.

I call upon the Mover to move.

**Sen. Billow:** Mr. Temporary Chairman, Sir, pursuant to Standing Orders No.139, I beg to move that the Committee do report progress on its consideration of the County Allocation of Revenue Bill (Senate Bill N0.3 of 2016) and seek leave to sit again on Tuesday, next week.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **PROGRESS REPORTED**

### THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO. 3 OF 2016)

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Allocation of Revenue Bill (Senate Bill N0.3 of 2016) and seeks leave to sit again tomorrow.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

**Sen. Mutula Kilonzo Jnr.** seconded

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Mosistet): Next order.

## **BILL**

### *Second Reading*

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No. 48 of 2015) be read a Second Time.

This Bill gives effect to three articles of the Constitution; Article 11 on Culture, Article 40 on Right to Property and Article 69(1) on the Protection of the Environment. This Bill is about a very important aspect of our national life which is the protection of traditional knowledge and cultural expression.

This Bill is one of the many Bills that we will enact in the next month or two to give effect to the Constitution of Kenya 2010. Therefore, I hope that through this debate, we will enrich it and pass it in record time because we have so many of such Bills that we must deal with. For a long time, African developing countries like Kenya and others have been living in a very difficult scientific and technological world where knowledge has been classified as modern knowledge and traditional knowledge. However, the definition of modern knowledge and technology has always been warped in the sense that any knowledge that is not Western knowledge has been frowned upon and looked upon unfavorably in the definition of “knowledge” in world affairs.

Mr. Temporary Speaker, Sir, Kenyans will recall a while ago, there were some incidents in this country. The first incident was about ten years ago and it involved a sixteen year old boy in Kitale who was in Form Three. He used some locally available material to develop his own version of an aircraft. He promised Kenyans that he would fly that aeroplane. He used some tarmacked road in Kitale as his runway. Unfortunately, there was no take off. The machine made a lot of noise and emitted a lot of smoke. What surprised me was the aftermath of that attempt. That boy was ridiculed by very many people. According to me, that underscores why a country like ours, is doing very badly in the area of science and technology.

If I was the Minister for Science and Technology at that time, I would have engaged that boy. Despite the fact that the boy did not succeed, he is a person who should have got an internship opportunity in a well established and leading aircraft manufacturing institution to go and learn aeronautical engineering. The fact that what he was doing did not succeed, does not mean that he was not bright. You will recall that when the Wright Brothers made their first aircraft in 1903, the Minister in charge of transport in Britain at that time dismissed them and said that they will never fly. Only for the first Trans Atlantic flight to take place ten years later. Today, everyone in the world understands how critical aviation has become to modern life. We have had a lot of innovations in this country. However, the way we look at attempts at scientific research and innovation has been lopsided.

Mr. Temporary Speaker, Sir, there was a similar attempt by some fellow in Nyeri and the treatment was the same. The fact that he did not succeed made people ridicule him. There was no attempt by the State to support that kind of innovation. That is as far as the so-called modern knowledge goes. Today, the world is governed by a broad body of traditional knowledge which has not been respected or given effect in international legal frameworks. It is for this reason that our Constitution has recognised culture.

Secondly, it has recognised that traditional communities and societies in our country have certain wealth in terms of knowledge and intellectual property that may not be written in text books, but is passed from generation to generation in those

communities. However, this knowledge and cultural expressions are not protected by any law, and, therefore, it does not benefit those communities or the individuals who generate that knowledge. Therefore, this Bill is as complex or as simple as that; trying to simplify traditional knowledge and make it part of the body of knowledge in modern life.

Mr. Temporary Speaker, Sir, allow me to mention each of the three Articles of the Constitution that this Bill is seeking to give effect and what it says. Article 11 of the Constitution of Kenya, 2010 recognises culture as the foundation of the nation and the cumulative civilization of the people and nation of Kenya. It recognises culture for the first time. It goes ahead to provide that the State shall make effort and provisions to ensure that there is promotion of all forms of cultural expressions through literature, arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage.

This Article also recognises the role of indigenous knowledge that may not be documented or articulated in any form. It also calls on the State to ensure the promotion of intellectual property rights of the people of Kenya. I will revisit the issue of intellectual property in a short while.

Mr. Temporary Speaker, Sir, Article 40 talks about aspects of traditional knowledge or cultural expressions that are property in nature; they are intellectual property. Article 40 is about the right to property. However, for a long time, the world looked at property in terms of the tangible; either in terms of real property; land and buildings or intellectual property. However, intellectual property for a long time in international law and western civilization was seen in terms of patentable material or material that has been written in a book and protected in terms of copy right.

One of the things that has been missing from the understanding and protection of international law in terms of property is intellectual property that arises from traditional knowledge. So, the right to property in Article 40 should not be seen as the right to own land, vehicles and cash in the bank. It should also be seen as the right of Kenyans who have certain knowledge that can be translated into property rights by virtue of the traditional and cultural knowledge. I will simplify this in a short while.

Finally, Article 69 talks about protection of the environment which include protection and conservation of certain plants and animals that could be used for scientific research and the knowledge associated in how these plants and animals can be used for science and research.

Mr. Temporary Speaker, Sir, allow me to decode this a little bit. As I have said, property can be categorised into two; property which is real or chattels, movable and immovable property. However, there is that arm of property called intellectual property. For a long time intellectual property has been given a western notion of patentable material in terms of western scientific ideas and western literature which is copyrighted, *et cetera*. Traditional intellectual property has not been recognised yet we know there has been a lot of traditional knowledge. This is what this Bill is about. There has been a lot of traditional wealth in this country owned by individuals and communities but it has been misused and sometimes stolen. This is because the current legal framework does not recognise and protect that knowledge and cultural expression. I will give a few examples.

Some 20 or so years ago, some crafty business people went and registered a patent of a product of this country called the *Kiondo*. They used a very small loophole in the law of patent. For you to register a patent, there is a rule called first registration rule

that applies. The first person to patent an idea or invention is protected. Therefore, since our women in this country have been weaving *Kiondos*, but have never registered that patent, the first person to do it carries the day. Of course, there is a caveat. There is a proviso in that rule. If you can show that the registration was obtained by fraud or misrepresentation, you can challenge it.

I heard the former Minister for Trade, Dr. Mukhisa Kituyi, say that he was considering Kenya challenging that matter - that registration of *Kiondo* - in the Tribunal which is established under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement; the WTO agreement on trade related aspects of intellectual property rights in Geneva. However, I do not know how far that matter went.

That is an example of traditional knowledge that could have given a lot of weight. The trade implications, for example, of patenting that product as a product of Kenya would have been great. Every time a *Kiondo* is bought whether in South Africa, Mexico, Turkey or whichever country, it would have been an export to this country and, therefore, could have earned foreign exchange for our country. However, as we stand, that product is a product of Korea.

Mr. Temporary Speaker, Sir, another example is traditional medicine. For a long many communities in this country, including the community where the Senator for Makueni comes from, have many people who are doctors. Of course, because of brain washing and other things, some of these people have been given the wrong names, for instance, witchdoctors. However, even in the context of that convoluted understanding of traditional medicine, I am told by those who know, like Sen. Mutula Kilonzo Jnr. that there is a difference between a traditional healer and a witchdoctor. A witchdoctor combines medical knowledge, spirituality and maybe witchcraft.

A traditional doctor simply applies traditional knowledge to cure diseases. I will give an example. Many of us who were born 40 years ago and above will understand that in our tradition, every adult male or female is a doctor. When one gets sick, shivers, vomits or shows signs of malaria, a parent would recommend to you the herbs that you would take and get healed without going to hospital. I am sure that even among the community where the Speaker comes from there are people who take herbs and are cured. There is no witchcraft involved. They dig up some roots or take the bark of a tree, boil it and there is no magic or witchcraft involved. It is pure traditional knowledge.

Some of these healers would even even tell you that if you have a certain kind of symptom, you go to a certain place in a certain forest where you get a bark of a tree or roots, mix with some leaves from a certain shrub and you would get well. There is no magic. It is just traditional knowledge that certain plants can cure certain diseases. Is it protected under law? It is not. What have Western multinationals done in this country?

They come under the pretext of being tourists, go to some part of Kajiado, Tharaka-Nithi or Makueni County; find out what our parents used to do in case of diseases, and are directed to plant species from which they extract biological material.

In modern science, you do not have to carry the whole tree to Europe in order to reproduce it. You only need to extract a microorganism; cell or enzyme and that can help you to grow a forest. You can genetically produce a plant by just getting a small part of it.

We have had a lot of theft and I will give two examples because I know my time is running out. There was a case in Lake Bogoria. There is an area protected by Kenya Wildlife Service (KWS) with certain enzymes growing in the water on the shores of the

lake. The enzymes have components which are useful in the manufacture of a cancer mitigating medicine. I am told that around fifteen years ago, some tourists went and paid US\$20; the little money they pay as tourists to access the lake. Their aim was to extract that material. You just get some water in a bottle and go to the airport. Our airport security does not check these people properly, yet when some of us go to Europe and Scandinavia we are checked like criminals. This happens to even important people like everybody in this House. Sometime you altercation with those customs officers and tell them you are an important person where you come from and you have a home. If they do not like you, you can board the next flight back home. They think we are refugees who have gone there to look for jobs.

This enzyme or microorganism was extracted, taken to a laboratory in Switzerland, and multiplied. It has been used to produce a drug used to mitigate the effects of cancer using chemotherapy. Some of those drugs cannot be afforded by the people of Kenya and many developing countries. Once it is patented, it is a product of Switzerland, and Kenya gets nothing out of it.

I have already given an example of traditional medicine because that is a huge area. The drug industry, hon. Senators, is a multi-billion dollar industry. We can protect some of these things, and only require technological transfer because we lack the capacity to transfer that into a viable drug industry. In the near future, we must demand technological transfer so that in ten years or so, we are able to do what they do in Switzerland and start exporting drugs to the rest of the world.

My last example is the area of traditional music and folklore. Everyone in the world knows that if you want to identify a person from the Maasai Community, the red striped cloth and the moran dance is almost synonymous with the Maasai culture. The dance is very challenging because the moran has to jump and keep escalating. There is a cultural joke told without the intention of demeaning any person, but just to make people laugh. Some morans were singing and jumping while being ferried in a Pick-Up truck.

*(Laughter)*

It reaches a point where they must jump. So, one of them jumped so high that the Pick-Up left and the fellow had to meet with the tarmac. That is a cultural dance associated with the Maasai and the Maa Community.

Today, you will find people hosting shows in Miami, Colombo and London saying that they have a dance troupe. They do the Maasai dance. Some are whites and some are black people from other African communities, clad in that red garment and jumping like the Maasai. Since many people in those countries lack money to come to Maasai Mara and see the real Maasais; these people get a lot of money by plagiarizing, if I can use that for the lack of a better word, by copying a Maasai cultural expression and profiting from it. It should be protected as a cultural expression. The same way that you cannot sing Michael Jackson's songs and charge for them, it should be the same way that you cannot copy some cultural expressions, either in form of music or folklore and not give commercial benefit to the individual or community responsible.

Although it sounds scientifically complex, it is a very simple Bill that touches on each community in this country and can transform Africa's fortunes for the better.

The tragedy of Africa has been that we have been slapped with a very inconsiderate and lopsided intellectual arrangement. Otherwise, we would take off like any other continent. The world does not now depend on the sale of physical goods such as agricultural products, but is running on knowledge based products. So, if you patent a phone, you can sell one for US\$1,000, because it is a product based on knowledge. However, if you sell mangoes or flowers to Europe, they will go at a throwaway price because they are raw materials. In any case, you have not added any value and knowledge. You simply grew a mango tree. It produced mangoes and you harvested and sold. That is why you will not get much out of it. So, we must protect our intellectual property and traditional knowledge and make sure those communities and individuals who have certain cultural knowledge are compensated the same way musicians in the West are compensated.

Some of the richest people in the West are actually performance artists. Mr. Bean, who actually abandoned his career as a chemical engineer and went to act, is one of the wealthiest people in the whole world. We have very good comedians, cultural dancing troupes and a lot of knowledge here. As I have said, we have a lot of traditional knowledge in the area of traditional medicine which is wasted. Some of it is being stolen and used in other countries to bring huge profits to them.

This Bill recognises the role of counties and county governments to do two things. The first one is to have a system of registration of all cultural expressions and traditional knowledge in all its forms like traditional knowledge in the area of herbalists. If we have a herbalist who has some good traditional ideas, that knowledge should be harnessed, documented, registered and stored so that it is not stolen.

Mr. Temporary Speaker, Sir, I should also mention the area of meteorology. That is another area where many African communities were extremely great experts. A traditional elder, woman or man, would tell you that it will rain on Saturday. They would tell you that when you see that kind of lightening in that part of the sky or certain kinds of clouds, there would be no rain, but it will rain in two days' time. We call them rainmakers and make fun of them. We say they are superstitious people, wizards and such kinds of references. However, when somebody goes to the laboratory, analyses some things and tells you that it will not rain next week, that person is a scientist. However, when somebody else looks at the clouds, stars and the position of the moon, and they tell you it will not rain, you say that he is a wizard.

Mr. Temporary Speaker, Sir, county governments will do two things. First, they will document and register traditional knowledge and cultural expressions. Secondly, they will advise communities and individuals on how to protect that knowledge and make wealth out of it. How can a song sang in Samburu or Meru language be protected in the same way pop music from Beyoncé and other singers is protected? How can the traditional meteorologist in Kasikeu or Mbooni actually earn a living or benefit from his predictions? How can that be documented and made into use? How can a traditional healer in Murang'a or Narok be recognised as a doctor and a beneficiary of the products they produce through their knowledge?

Mr. Temporary Speaker, Sir, this Bill is that much simple or complex. I am happy that Kenya is moving in the right direction. The future of Africa and Kenya is not in selling mangoes and flowers to reluctant Europeans because when they are sad and there is winter or recession, they do not want your flowers. We must invest in knowledge

because knowledge-based products are irresistible. They will be bought with or without the mood swings that could be prevailing at a particular time.

Mr. Temporary Speaker, Sir, with those many remarks, I beg to move. I request my friend and colleague, Sen. Mutula Kilonzo Jnr. from Makueni County to second this Bill.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I rise to second The Protection of Traditional Knowledge and Cultural Expressions Bill (National Assembly Bill No.48 of 2015). I am actually very impressed by the drafting of this Bill. It is an interesting and nice Bill. It is very comprehensive and very innovative. The most important thing is that finally, I can see some element of light at the end of the tunnel in terms of a lot of traditions that this Republic has ignored or put in the back burner. There is a famous Kiswahili saying that *Mwacha mila ni mtumwa* which Sen. (Dr.) Zani knows better. Therefore, this is one of those things that we have taken too long to do.

I went to London and one of the things I found most interesting other than their old buildings is the British Library. If you want to know the origin of Christianity, you will find the First Bible in the British Library. If you want to see what Sir Isaac Newton used to do while he was crazy, because he was said to be a crazy man, you will find his hand-written writings in the British Library. There is a very famous treaty which I cannot remember which was signed in 1652 on a scroll in the British Library. There are also many other writings and many other things. If you want to see what William Shakespeare did, you will also find it there. They celebrated 400 years of his death on 27<sup>th</sup> April. That was last month. If you want to see his books and his history and how he started writing all the poems, songs and plays, you will find that in the British Library.

If you wanted to know the origin of Kambas, where would you get that information? There is a book that I am reading which has got the history of all communities. The portion of the Kambas is about three pages. I do not think the history of Kambas can be in three pages, where they are said to have originated in a place called Mbooni where I come from and then migrated to Chyulu Hills in search of water *et cetera*. Strictly speaking, if you wanted to find original writings in Kikamba, you most likely will not find them. If you want to find the most interesting history, in terms of literature in the Kamba language, you will find it in the Bible. The Kamba Bible is more interesting to read than the English Bible because of the expressions. Therefore, how do we progress the culture where you have a Bible written in Kikamba? Should we have story books of our history written in another language?

I watch the National Geographic Channel about historical sites. That is why some of the Members of my County Assembly have been to Israel several times because if you want to know places written in the Bible, you will find them in Jerusalem intact and they will explain to you and you will find it interesting. But can we find the places where the Kikuyus used to worship or the shrines that we read about in our history books? They are not there.

Mr. Temporary Speaker, Sir, there is a dance called the Samba in Brazil which is very famous. There is what Sen. (Dr.) Khalwale does; bullfighting, *El Matadors* in South America and the *Sombreros* that they wear, which are all traditional practices. If you go to the former Coastal Province and listen to the traditional stories, you will be amazed, but if you look for the records, you might not find any. I am happy that county

governments will be mandated to make a repository in every county, where you will find writings and books, among others, that are kept.

Mr. Temporary Speaker, Sir, it is possible that there are old men and women who are keeping records in their homes. That is what was done in the British Library, which is worth mentioning. They requested everybody who had writings, such as old poems, to bring them to the British Library at a fee. Some of them happily brought the information and not necessarily for a fee.

In Kenya we have the traditional attraction sites such as *The Crying Stone* in Kakamega and the place where water flows against gravity in Machakos. These sites ought to have been shown to Her Excellency the President of the Republic of South Korea when she visited the country, because we should take pride in them. If you go to the Republic of India, you will find that each region has got its traditional food and languages, which are well documented.

When you wear some of the Maasai bracelets, for example, they would tell you where they come from although you might not know. This is different from one community to another. The Maasai in Arusha, Tanzania, for example, have got their way of doing it differently from the Maasai in Kenya. I am a proud keeper of many Samburu paintings. These are things that could benefit the Samburu community to the extent that if it is patented, any person who draws it will pay dearly. The traditional *Shukas* that we are talking about, and which have also been mentioned by the Senate Majority Leader, would cost you an arm and a leg to keep in your house, if it has been patented.

However, I think we have left two very important things in the definition, one of them being the traditional sites. There are places in this Republic that should not be accessed for free. Once they are made traditional sites, they can be made museums, so that the community living around them can make money. Additionally, our children, regardless of the community they come from, would learn from the sites if they are well preserved. The definitions have been given in tangible expression. For instance, the difference in making pots among the Luo and Kamba, can be very important.

We take pride when the *nyatiti* is played nicely. We should keep those traditional expressions and instruments in Kisumu and former Nyanza Province, so that people can be proud of them. In most countries that we have gone to, you will find that various communities keep robes that were won by Kings unlike in Western Kenya, where we used to have kings as well. Where are the robes that the kings in western Kenya used to wear? Who keeps them?

Mr. Temporary Speaker, Sir, we have done poorly in history. Sen. Karaba, since your Committee is doing some of these things, note that we have done extremely poorly in history and record keeping. I was told that in Makeni County when the county government took over, they took the paperwork of the defunct local authorities and heaped them somewhere in a room to gather dust. These records can tell you how transition took place for over a period of 50 years and from the old Constitution to the Current constitution. This country does not keep even those simple things.

What was the purpose of having *Bomas of Kenya* and how can we protect it? The original idea of having it was to have a place to find traditional practices in one place. For instance, if you wanted to experience the Samburu dance, *Shuka*, writing, food, huts and other things associated with Samburu, you could easily access them in a single place.



There is a current trend where people are walking away from the huts as they were made. Fifty years from now, nobody would know the concept behind the huts that we used to make. These include the huts that Kambas used to make, with a traditional pole at the middle. The reason for having a pole in the middle of the granary was to access it from the top. Who will teach these lessons to the next generations? The granaries in *Ukambani* used to be built above ground level and something triangular put in between. The reason for this kind of development was to prevent the rodents from entering the granary.

Mr. Temporary Speaker, Sir, as I have said, I have not seen traditional sites and foods being recognised here. For us to do any justice to this Bill, that should find its way here. In terms of patenting, we should not just walk around with Maasai bracelets aimlessly unpatented. If someone attempts to use something that is copyrighted without the consent of its owner, she or he will pay dearly for it. It should be the same for people pretending that they can sing and dance to traditional songs without the consent of the people who came up with them or the community they originated from. These items are all here, for example, cultural events, folksongs and moral rights, among others. In law, we study morality and how to legislate on it. In this Bill there is an expression of moral rights as a result of culture, which is a very good invention.

Mr. Speaker, Sir, I want to recognise people who came up with this Bill as the drafting was well done. It goes into great lengths about disputes concerning the patents mentioned. If you have a culture that goes into various boundaries, for instance, Maasai community residing in different countries such as Uganda and Tanzania; the Kambas who are in Tanzania and Zambia, and have a disputes arising due to cultural practices and their recognition, the dispute mechanism has been put in the draft Bill.

Other aspects that have been inserted include how to market, carry and sell those traditional items. As I second this Bill, I am impressed with the collaboration between the National Government and county governments regarding what each is going to do. I would, however, be very happy to have an amendment that will recognize cultural libraries.

If you look at the Article 11 (2) of the Constitution on libraries, it says:-

“The State shall—

(a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;

(b) Recognise the role of science and indigenous technologies in the development of the nation; and

(c) Promote the intellectual property rights of the people of Kenya.”

It would be a good thing in this country to one day walk into cultural libraries of Merus. I am told that the Merus and Tharakas are cousins of the Kambas, but I cannot connect the dots as to where we parted ways. That can be easily found if we have a library showing how these communities came into being and how they share those cultures.

Mr. Temporary Speaker, Sir, as I second this Bill, it is important that we fast-track it, so that when Kenya has national holidays, we can also have cultural days, just as other jurisdictions. Can we have a day in this Republic when we can say that it is a Samburu or

Kamba Cultural Day? Those are the things that I want to see in Kenya, just like in other countries.

I beg to second.

*(Question proposed)*

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I thank the National Assembly and the Executive for bringing this Bill to this House. As I have always said, the constitutional Bills are Executive Bills, which must be passed by both Houses of Parliament.

We all know that protecting intellectual property started during the industrialisation age. This was when communities and indigenous groups realised that technology was setting in and their property was being copied by others. For example, we, as country, lost our *kikoi* to the Japanese. Our country has a lot of traditional property that we must protect. We have many shrines and treasure our rituals, artifacts like gourds used by communities to ferment milk in the former Rift Valley region. We have beautiful cooking pots from Turkana County. In the western part of Kenya, we have traditional baskets weaved using reeds. It used to keep food warm for a long time. However, people have stopped using these traditional methods to preserve food in favour of the new technological ways. Among the Samburus, there were certain *manyattas*, which were dear to women during birth of a child. In other words, these were traditional maternity facilities that were well maintained and maternal deaths were minimal.

However, as we talk about the protection of traditional knowledge, it is important to remember that the young people of this country are also coming up with digital innovations. Two weeks ago, I watched a young man from Nandi County who had assembled a tractor. He just picked a few scrap metals here and there and put them together, did some wiring and fixed a battery. That is how he came up with his own version of a tractor. Those who had been laughing at him for the last one year now appreciate his work. His tractor ploughs better than the usual tractors. In fact, he cannot cope with the demand from farmers. Many of them want him to use his tractor to plough their land for them. He was featured on the *Smart Farm* programme which is aired by *Citizen Television*.

Mr. Temporary Speaker, Sir, those are some of the innovations that I am talking about and they go beyond traditions. We should respect the traditional methods of doing things in this country. Currently, the modern technology is popular, but we can still use the traditional *jembe* to plough our land.

The Ogiek Community has lived with their traditions for ages and they would want to protect them. This Bill will ensure that, that happens. The Bill proposes that we preserve our traditional foods. I remember that on 26<sup>th</sup> December of every year in this country we used to celebrate culture day. Some counties have carried on with this practice. For example, in western Kenya, this day is celebrated by eating different types of traditional foods. Young people are taught how to prepare traditional delicacies like *mrenda*, among others.

Here in Nairobi we celebrate our cultural activities in Carnivore. We have Luhya, Kamba, Kikuyu, Girima or Kisii nights. Every tribe is proud of their culture and they celebrate it in style. The Maasai rite of passage is, in fact, a tradition that we really need to protect since it has not changed for years. This way, the Maa Community will

appreciate their culture and ensure that their young people learn and protect it, as much as they embrace technology.

Mr. Temporary Speaker, Sir, this Bill is among many others that have come to the Senate. I would plead with the hon. Senators not to introduce so many amendments that will water down this Bill.

Part 5 of the Bill is about Moral Rights. Clause 21(1) of the Bill says:-

“The owners of traditional knowledge or cultural expressions shall be holders of the moral rights in the traditional knowledge or cultural expressions.”

This brings in the issue of Article 10 of the Constitution on national values. If we remind ourselves of the traditions and morals that our parents taught us, then we shall operationalize Article 10 of the Constitution. We face many challenges today because of abandoning our traditions. The elders are no longer guiding the young people. We do not treat our elders with the respect they deserve. Some of us fight them and wonder why they exist. This Bill will help us to treat our elders with decorum. We must tap the wisdom from them so that we move forward as a country.

Clause 21(2) (b) and (c) of the Bill says:-

“The right not to have ownership of traditional knowledge or cultural expression falsely attributed to them; and

(c) the right not to have their traditional knowledge and cultural expressions subject to derogatory treatment--- ”

This is the one thing that we, as a country, need to express. I am sorry to say this, but today I look at the lawyers and the way they fight left, right and centre and then tell us that there is a crisis. My question is: Did we just replace the British Constitution with an American Constitution, which is confusing us? That is why we must go back to our own values and traditions. As much as we want to bury our heads in the sand and say that we do not need amendments to this Constitution, I think we need critical amendments. That way, all these moral rights that we are then talking about can align themselves in that Constitution. We will then be able to express ourselves as an African country that believes in Pan-Africanism.

Clause 32(1) and (2) of the Bill says:-

“The owners shall consider a user agreement application and determine whether to –

- (a) reject the application; or
  - (b) accept the application and enter into negotiations for a written authorized user agreement, in relation to the application within a specified period of sixty days.
- (2) The holders shall inform the national Government and the county government, in writing, of their decision and the Authority shall inform the applicant of the holders’ decision, in writing.”

That is where I would wish that we clarify, so that you do not find yourself in conflict with indigenous people, the law, the county and the national Government. It means that someone is applying for rights to property and traditional customs. This has to come out clearly, so that the owners of traditional knowledge and cultural expressions understand before entering into any agreement. I believe that there should be an agreement on compensation, fees, royalties and other payments.

Clause 34 stipulates clearly what is needed. The Somali Community, for example, believes in verbal agreements, which are taken very seriously. Therefore, it is important

to appreciate the noble way of doing things and agree on some of these things. As we amend this Bill, we must consider clear verbal agreements amongst the indigenous people. People should also respect the agreements made by clans which carry penalties against those who breach them.

Mr. Temporary Speaker, Sir, finally, as a country, we are losing our moral values, characters and changing our attitudes. We look at our country in a different way. Every morning we find ourselves *tweeting* about serious issues on our phones. Our neighbouring countries are running away because they are questioning our moral values. Countries like Uganda, Rwanda and Tanzania have protected their cultural values and morals. They fear our country because we have become so 'westernized' that they wonder whether they will get the same respect from us that they receive within their own country.

Therefore, we should safeguard our morals and traditions. We should be less 'westernized' and appreciate that we are Africans. Whenever Mr. Trump, one of the presidential candidates in the United States of America (USA), speaks you can clearly tell that he is a real American. Therefore, this Bill brings back the pride and belief in being African. Africa will achieve much if we appreciate what God has given us.

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

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, as Sen. Mutula Kilonzo Jnr. Said; *mwacha mila ni mtumwa*. I stand to support this Bill because it is important and critical. It refocuses on something that we tend to forget quickly. We forget about our cultures and take them for granted. We have a young generation of Kenyans that is very ignorant about their culture. Some of them are even ignorant about their languages, yet you will hear them on television saying that they are from the Luhya, Giriama or Kalenjin tribes. They have a sense of identity, but due to the conflict that ethnicity has brought in this country, they rarely talk about the beauty of ethnicity; where somebody comes from and what it should mean.

Therefore, this Bill is critical because it provides a framework for Article 11 of the Constitution that talks about culture, and that it is the foundation of any nation. Indeed, sociologists and philosophers now argue that the problems that we have with the youth may be as a result of the de-generation of culture over time. Many people want to go back and re-invent that culture; to look at how things were done.

For example, they want to look at how men became brave by going into the forests and learning how to fight. They were taught how to kill animals like the lions. They were taught about culture and there was so much beauty. There was a transition from being a young person to puberty and all that went with it. The riddles, proverbs and anything cultural helped to bring about a cohesive, knowledgeable, stable and clear society that would protect its own. There was always an agreed format of reaction, starting with a key language that members of a community shared. Therefore, from the beginning it was easy for them to communicate.

Article 11 of the Constitution is given substance through this particular Bill, which is critical and important. As other Senators have said, it touches on the national and the county levels. This Bill would not have come at a better time when we are looking at county governments. Therefore, their role in emphasizing and strengthening that cultural issue becomes easy, unlike if we did not have the 47 counties. This gives us an opportunity to do that. It also gives a framework for Articles 40 and 69 (1), which talk

about cultural rights and the rights that Kenyans have and need to have for them to protect their society.

One of the good things that we have, which applies to Kenya and Africa in general, is the richness of cultures. Many of these cultures have not been documented. That is where the problems lies. We take everything for granted and as natural. The transmission of knowledge and culture comes through oral stories. Only a few people have bothered to look at the oral stories, to find out their meanings and teach the younger generation. For example, in my family, I have two uncles who really understand the culture and can trace their history from up to four generations. I told them to document their knowledge because no one will be able to trace and understand the value of having names when they are no more.

On Saturday, we had a function and we had different people with the name Nzale. One of the visitors and a friend who was in the function wondered how we had all the 'Nzales.' It happens in other families because that is the naming system. This culture expresses itself through naming and the action that people make, the reaction towards things like birth and funerals. Therefore, people do not get mixed up.

The irony for many Africans countries, including Kenya, is that we have been caught between our traditional cultures and modernity. Our understanding with the introduction of Christianity is that when you follow modernity, you should not follow culture. This Bill entrenches the realization that for us to know where we are going, we must understand our cultures, what is acceptable and what is not acceptable. When the Anglican Church stands strongly in saying that it is against the African culture to have homosexuals within our African cultures, it is taken as given. This is something we understand and can defend from a particular type of context. We must not be caught up in our transition to follow cultures of others that we do not understand, because that is where many people get lost.

This Bill advocates for the documentation of all cultural practices. Documenting all these cultural practices will be a lot of work so that it can be understood and for people to narrate about them. Definitely, a team will have to come to the fore to put all these together, have a library and an archive. I heard Sen. Mutula Kilonzo Jnr. talking about a museum. In some countries, you will find everything put together. But sometimes you get disappointed when you get fragmented information in a museum. The other day I went to watch the play *Mekatilili wa Menza* and was amazed. I have watched the story of Mekatilili, the Giriama heroine who many times is forgotten. She stood up against colonial masters and fought; she is recognized historically. The way they brought this play out made me feel so proud that I am a descendant of Mekatilili. When we stand up and have the bravery, forthrightness and foresight that she had, we begin to feel the strength to move on.

At the Coast, we have the *kishutu*, which is distinctively for the Mijikenda, just the same way we have the *shuka* from the Maasai. Many people are now buying them and making outfits from them. Recently, we had the *Kishutu* Night at the Carnivore Restaurant to raise money for development in the Coast. It was a theme that brought us together. We have to be careful every time we talk about communities coming together. We should not look at it as something divisive *vis-à-vis* another community. We need to get to a point in Kenya where I, from one community, can appreciate something else from another community.

Mr. Temporary Speaker, Sir, I am talking about the *mahandu*, the skirt that is worn by Giriama women, which is fantastic and beautiful. However, as the Senator who spoke before me said, most of these dresses have not been patented. We had to struggle for the *vigango* from the Coast that had been taken to museums abroad to be brought back to Kenya. We need to fight for the *Kayas* in the Coast, which are sacred places within the forest, where people go to commune with their gods. It is very important to ensure that no encroachment takes place within such sacred places.

As the Bill proposes, all those places have to be documented to protect the knowledge, riddles, folklore and stories. However, even as we do that because of the younger generation, it is important to re-enact what happened. Sometime back it was very popular to have the different ethnic community nights of celebration, which have now slowed down. We should revamp that so that we have a Coast Night, Kamba Night, Kalenjin Night, Kikuyu Night and many more community nights, so that we enjoy the music and food from the specific communities that we come from.

Mr. Temporary Speaker, Sir, we should tell the stories as they happened. A story that needs to be told over and over again is that of the *Mau Mau*. Recently, a young man grew dreadlocks on his head and the parents were against it. The young man in reply said that he was emulating the *Mau Mau*, as they were in the forest. That is a re-enactment of an understanding of what it means to belong to a particular generation.

For a long time, we have struggled with identity as a country of shared cultural heritage. Sometimes back, a group was tasked to look for a Kenyan outfit, costume and norm. We did not end up with a costume that became popular. We eventually came up with a costume after various trials, but I do not think that it became popular. We can have multilevel identities; at a national level and various community levels.

Mr. Temporary Speaker, Sir, all these should catapult into something key that can also earn revenues in the county governments. When you travel to various countries, you will discover that they develop their various sites or statues. When you go on tour and pay for the bus to take you round, you will be told about the statues and what they are all about. You will also be informed about the heroes of those communities as well as their artifacts. That is lacking in our country. Imagine if someone went to all the places that have been mentioned; *the crying stone*, the *kayas* and *vigango* in the Coast and the Rift Valley, where we have the wildebeest migration. All those are capable of attracting a lot of revenue and income.

In Clause 24 of this Bill, there is a provision that has been put in place on the benefit sharing from specific cultural activities, where money is collected and should be distributed. The mandate to decide on that distribution has been given to the Cabinet Secretary, but when we will be looking at the amendments, it is important to give proportions and be clear. If it is a benefit that is coming from the communities, we should have a clear proportion of how it can be shared. That way, whenever people go for tours, they will enjoy themselves.

The *Bomas* of Kenya has been mentioned as a one-stop place where schools go to see how different ethnic communities coordinated and danced. However, overtime that has diminished.

Mr. Temporary Speaker, Sir, this is a well thought and conceptualized Bill. It provides for civil action and remedies. The main conflict that is predetermined and premeditated by this Bill is with regard to areas where we have a shared culture by two

communities. It is clearly indicated that each community will record and document that particular culture. Therefore, they will take their sphere of that culture, while the other community will take another sphere of that very culture. Other rights and remedies are also identified. There are very clear ideas about public consultation that will take place. That should give a very vibrant situation where people can talk more about their traditional systems and cultures and how to document them. Issues such as moral rights that are key and critical in each of these communities should be given a voice.

If this Bill is enacted into law we will not only transform ourselves at our cultural level. The basis and foundation of any society is the cultures that they have. This should be entrenched even to a point of moving some of these things to the syllabus, so that some of the documented issues on cultural knowledge can become part and parcel of our curriculum. This will ensure that the young people grow up understanding how names are given and why ululations are made differently for the boy and the girl. They will also understand why people go through puberty and the specific rights.

Mr. Temporary Speaker, Sir, you will notice that some of these rights address health matters and disintegration of families because most of them encourage discourse and dialogue. We have had problems in this country because we do not dialogue enough. Whenever we talk about dialogue, we always think that we will lose power. We forget that it is through dialogue that even the biggest problems are solved. When people come together and have consensus, they decide which direction things should take. Therefore, apart from transforming the cultures, there is a definite direction at transforming the societal values; what is key and important is lacking in this generation. Going by the statistics and the studies that have been done among the youth, many of them say that they want to be rich by the time they are 34 years old, without caring about what they will do.

When it comes to issues of conflicts and how to acquire property, most of the cultures will address them. Let us entrench them in the syllabus by moving away from documenting and enactment to a level of training. That way, we will save the society and have a prosperous Kenya.

I beg to support.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, normally, I do not oppose Bills in this House. However, I would like to go on record as opposing this Bill, and I have my own reasons for doing so. As you know, I am a member of the *Njuri Ncheke* of Meru and this Bill is contrary to our morality and contrary to our culture. There are certain secrets of *Njuri Ncheke* which cannot be written. There are certain issues of culture, knowledge, traditions, language, songs and dance for us to enjoy, not for commercialization.

Mr. Temporary Speaker, Sir, this Bill is based on some faulty foreign theories. It cheapens, commoditizes and converts our culture as artifacts for sale. We do not do everything for money in this world. There are many things that we do for happiness. Much of our culture is for us to enjoy ourselves.

In our old days and in many traditional and rural societies today, this concept of performers which reduces people to spectators while only one person sings and everybody is clapping is not there. This Bill will benefit the performers and not the community. The performer will be merely performing a community song or dance.

Mr. Temporary Speaker, Sir, where I come from, we dance together. I can also sing. Everybody can sing, dance and come to the floor. We enjoy ourselves. You cannot translate that experience into shillings and cents.

**The Temporary Speaker** (Sen. Mositet): What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Our senior Senator, Sen. Murungi is about to dance. We would like to see a demo, how it is done.

**The Temporary Speaker** (Sen. Mositet): I did not see him dancing.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I invite the King of West Pokot to Meru so that we can dance and enjoy together, and then, he can forget all these things about professor and mathematics. You enjoy as one of the members of the community.

Somebody said that this fallacy of registering patents, trying to capture and commoditize it is a recent creation which came with the industrial revolution. Nobody is paid royalties for major innovations which have transformed humanity. For instance, Fidel Castro raised one of these issues in the United Nations (UN) when he asked, "Who pays royalties to the stone age man who discovered fire?" Many innovations have come because of fire. However, we have not been able to pay royalties for fire to any person. It is even more important than electricity. More people enjoy it than electricity yet we are paying royalties to those who have discovered electricity, telephone, *et cetera*.

Mr. Temporary Speaker, Sir, the food we eat today, what we call traditional food – many people died trying to experiment with that food to know which food can be eaten, which ones are poisonous *et cetera*. Who do we pay royalties for *Nduma*, Cassava, *Ugali*, *Wali* and other foods?

They have been praising you, the Maasai community for wearing the Maasai *Shukas*. They say that even those should be patented. However, history shows the Maasais were not wearing *Shukas*. These were products of colonialism. The materials which make *Shukas* come from Scotland. You come from that community and you can correct me. It is the same material which is used to make the kilts, those skirts which the Scots wear. However, the Maasais are not paying any royalties to the Scottish people. They are beneficiaries of the knowledge which came from Scotland as part of humanity.

Therefore, we have to accept that there are people who invented what we treat today as the broad body of knowledge. Even the language we speak came from somewhere. The bulk of it is not paid for. So, why are we now trying a tiny segment of humanity who have immensely benefited from previous knowledge and innovations of the past? Why are we trying to commoditize and profiteer from this knowledge which should be the common heritage of humanity?

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

Mr. Temporary Speaker, Sir, I will allow the spokesman to sit.

We wear shoes. Who is being paid royalties for them? Therefore, all these things about us patenting songs and community dances are not appropriate. The most popular dance in the western region is *Isukuti* but it comes from the English word. The *Mzungu* was saying, "It is good." So the Luhya said *Isukuti*. So, the dance is good. They are not paying any royalties to the British even for giving them the name of this dance.



Therefore, there is a lot. If this Bill is implemented the way it is, we will be imposing on our counties an impossible task. It will be very difficult for us to document all the songs that I know of in Meru and trying to find out who should be paid the royalties for them. I have seen the definitions; it even refers to the rhythms and movements. It proposes that intangible things should also be documented, registered and paid for. Who will we pay for *Mwenjero*, is it the Tharaka or the Mbeere? We are likely to create major controversies to create unnecessary tensions in our societies trying to implement a Bill which is just borrowed; an alien concept being imposed on our tradition, society and culture.

Mr. Temporary Speaker, Sir, I appreciate what many Senators have said. It is true. The Swahili saying goes, "*Mwacha mila ni mtumwa.*" I am embarrassed when my friends and I visit each other. Sometimes a grandmother has come from the village. Children bear Meru names, others Kikuyu names, *et cetera*. In our naming system, each child is named after the husband or the wife of the grandmother or grandfather but they cannot greet each other. When President Obama came as a Senator and went to visit the grandmother, he was accompanied by his sister who was translating between *Dholuo* and English. The sister was away for a while. President Obama and Mama Sarah were left alone. This is a grandson but they could not talk, they kept on looking at each other and smiling until the sister came.

When the sister came, Mama Sarah told her that the boy is bright like his father. However, she wondered why he could not speak to her the way his father used to. Of course, the sister had to translate that. So, we are creating a very awkward society with people who have no backward linkages with their community and, therefore, we shall have a rootless society. That is why a few of my friends and I have decided to register a Kimeru Institute to have our children attend one week holiday training to be taught Kimeru greetings and relations of who is who and that is a very important bit of our history.

The Meru people came from a place called "Mbwaa." In Kimeru, that means "Pwani." That is a place near Lamu and Manda Island and that is where we came from. Some people have already made some bus trips there to trace the journey of how the Meru people came from "Mbwaa" near Manda Island to the foot of Mount Kenya. That is very good history. It is like what is in the Bible. For example, in the Bible, people crossed River Nile going to Israel. Likewise, the Meru people had a similar journey. So, we need this history to be told to our children. Sad will be the day when this history will be captured by Sen. Murungi and sold as if it is mine. The story belongs to the community and it should be for community benefit and enjoyed by the community.

I do not want to spend a lot of time because we have to move. Again, we need to look at the definitions in Clause 2. I think these definitions are very broad that even if the Bill was to be implemented, it would be impossible for either the national or county governments to implement all these things we are talking about. When you talk about cultural expressions, you are supposed to document verbal expressions including stories, epics, legends, poetry, riddles and other narratives, words and signs.

That is a whole language because a language is made of words and, therefore, it could also be documented. Musical expressions including songs and instrumental music, expressions by movements, including dances, plays, rituals and other performances, tangible expressions, drawings, archings, terra-cotta and mosaic are also supposed to

document cultural heritage. Others that can be documented include movable cultural heritage, immovable cultural heritage under water, intangible things and natural heritage including natural sites and heritage in the event of armed conflict. What heritage are we going to capture and sell? Is it the Post-Election Violence (PEV)?

Therefore, Mr. Temporary Speaker, Sir, this is a Bill that the intellectuals in this Senate need to look at again and redraft it in a manner that can be implemented. I know that the Constitution provides for such a law to be made but I do not think it is this law but another one. I will volunteer to be part of the drafting team because I am a trained legislative draftsman, so that we create a law which complies with the Constitution but at the same time does not destroy our cultures and create that class which Ngugi wa Thiong'o was talking about of people selling air to others. This is extreme capitalism and it will not be good for this country.

The Senate Majority Leader, you will be charged money for singing Kitharaka songs which you know because somebody else has registered them as his or her own. Indeed, we should protect our communities from such crop of exploiters which are likely to profiteer from culture and language which we have inherited from our fathers and which they inherited from their fathers and which has been there from time immemorial. We should not capture it in a moment and make it our own.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to oppose this Bill.

**The Temporary Speaker** (Sen. Mositet): At least we have heard that very convincing voice.

Sen. Karaba.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, thank you very much for allowing me to contribute to this Bill in support. This is a Bill that people need to have traveled to Paris which is the Capital City of France. It is also the Headquarters of United Nations Educational, Scientific and Cultural Organisation (UNESCO). It is there you get to know what happens and very many cultures which are intertwined in the world. That is why we can relate. I have been there quite a number of times. I feel like we have a long way to go in terms of catching up in order to know what happens in the whole world and countries which earn money from natural environment as it is captured by this Bill.

Mr. Temporary Speaker, Sir, until we rediscover ourselves, we shall always be labouring to get money and doing a lot of work without succeeding. When you go to Europe, you will see that rivers have been canalized to seas. For example, you can afford to sail from the Port of Basel of River Rhine in Switzerland all the way through Germany and France until you get to Amsterdam. As you sail along, you get to know what happens in the neighbourhood. You pass through various vineyards and take wine as you travel and that is amazing. The River itself also exposes one to vary many cultures in central Europe. It is used as a mode of transport and this is what we are asking for. We need to make use of the environment. That is the same River that has made Switzerland, which is landlocked, a rich country.

Most of us here have been to Switzerland very many times. We have gone to Geneva, Zurich and other majors towns because Switzerland is a peaceful country. Because there is not a common sea, they have to make sure that they are protected and make friendship with the neighbours. As a result of that, Switzerland is protected by European countries and that is what we are seeking to do here in East Africa.

A tributary of River Rhine called Maine – some of you might know that geography – is canalized to a point where it is connected to River Danube, the largest river in Europe. So, it is possible to move from the hinterland Port of Basel all the way to Hungary, Bulgaria and other countries in central Europe. They are making use of the rivers and doing it uninterrupted and with such scientific precision. If we can do so to the many rivers that we have here like River Tana, Athi, Galana and Turkwel in Keiyo, I am sure will make use of the environment that this Bill is calling for.

Mr. Temporary Speaker, Sir, it is also important to note that here in Kenya, we come up with many things, but we do not implement them. For example, we have school music festivals, science congresses and the drama festivals. The shows will start and end when they are performed before the President in State House. We fail to notice that there are some very good artists, musicians and scientific innovations. If these innovations were to be taken a notch higher, they would propel this country to greater heights. Therefore, it is very important to preserve our culture, that is, music, concerts and traditions.

Recently, there was a cultural competition in Paris in which Kenya took part. You could see a lot of cultures from around the world, including Africa. People would wish to come and see the Maasai Moran dance or the one from western Kenya, the *Isikuti*, that was awarded the most original dance. I am sure Europeans would admire the *Isikuti* dance to a point where they sat and even asked for a repeat just because it is nice and inspiring. This can earn our country foreign exchange.

Needless to say, our cash crops are going down in terms of foreign exchange earners. We even have minerals which are yet to be discovered. Our exports are in their raw form. We have not reached a point we can export them as finished products because the value addition is very limited. It is not like the kind of exports from Finland, Switzerland and so on. That kind of limit now forces us to concentrate more in our culture, dances, innovations and scientific prowess. If we note something in a science congress forum, let it be taken to great heights. Let the Government be interested in getting to know why the traditional *jiko* has been recommended by the United Nations (UN). The winner, who hails from Kajiado County, has gone international and even won recognitions in the world. The *jiko* uses minimal fuel. These are some of the things that we are yet to know.

Mr. Temporary Speaker, Sir, when we get some of these people and some of these things going up to and including even Paris, it means that we have something that we can export. That is what we are asking. If every county can go down and try to find out what the tradition has been, the culture and background of each of the counties, they can then come up with a cultural competitions, libraries and county museums. With that, I am sure that we will have many visitors coming to see what we have here in Kenya.

We also have very many international sites that need to be recognised, but we seem not to know about them. Shungwaya, along the Coast, is the point where the Bantus dispersed from after coming from Angola. They then moved to the north along the coast and from there, they dispersed to Meru and others all the way to the north. From a place in Meru, they found themselves moving towards the east, forming the Kikuyus on Nyeri, Kiambu and so on. Not many people know about this dispersal point. It should, therefore, be treated as a shrine. It is a very important site worth visiting. All the roads should even

lead to Shungwaya to go and see how Bantus of the 16<sup>th</sup> to 17<sup>th</sup> centuries migrated. That can give us background history of our country.

Visit South Africa's Cape Town to see Robben Island where Mandela was jailed. It has become a monumental site. Many people from different nationalities visit the Island. The people on the shore know nothing other than just singing war songs and people are also keen to listen to what Mandela had to say. That alone earns South Africa a lot of foreign exchange.

These are some of the things that we need to address ourselves to and find out ways of improving on them. The moment we continue to improve some of these things, we are sure to increase and enrich our counties the way other countries do.

We also need to think of a small town along the coast called Witu. Until 1890, it was a colony of Germany within a British Protectorate in East Africa. An international agreement was signed in 1890 which saw Germany move away from Kenya to go to its own northern territory of Germany in order to surrender Witu to Britain. The British who were occupying an island called Heligoland in Germany, left the island to come to Kenya and consolidate East Africa. We need to know about the history of East Africa as far as Witu is concerned. So, we should have something to do with Witu as a town and as a historical point. These are some of the things that we tend to neglect. If we go by the spirit of this Bill, it will tell us a lot about what we should conserve.

Mr. Temporary Speaker, Sir, it is also important to compare ourselves to Uganda where they have selected sites where people visit, unlike what we have here in Kenya. Kampala is known as the Pearl of Africa because it is built on seven hills. There is a specific hill called Mengo Hill where you will find the history of the Kabaka Kingdom and the transition of the kingship in Uganda which is very interesting. Ugandans have preserved the history of their own country. In Kenya, most of these homes and sites were destroyed. So, we have very little that we can offer in comparison to our neighbours.

We have a great history which we should learn from and compare ourselves to. We need to know how our people made sure that Kenya survived. In Uganda, there was somebody called Semei Kakungulu. He was used by the British to make sure that the indirect rule was disseminated to the interior. That is a preserve. It is known that he helped a lot. Let us also hope that the same thing will happen here in Kenya because we are able to compare, lead and do a lot of things.

Mr. Temporary Speaker, Sir, I support.

**The Temporary Speaker** (Sen. Mositet): I call upon the Mover to reply.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I beg to reply. Given that we do not have numbers, I request that you defer the putting of the question under Standing Order No. 54 (3).

**The Temporary Speaker** (Sen. Mositet): I defer putting the question.

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

*Second Reading*THE HEALTH BILL (NATIONAL ASSEMBLY  
BILL NO. 14 OF 2015)

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the Health Bill (National Assembly Bill No.14 of 2015) be now read a Second Time.

This Bill gives effect to Article 43 of the Constitution on socioeconomic rights, but in particular the Fourth Schedule of the Constitution, which provides for the sharing of functions between the national Government and county governments. The health function is shared as follows. The management and operations of health facilities up to Level 5 hospitals are vested in the county governments. Level 6 hospitals, which are national referral hospitals, are vested in the national Government. Overall, all matters of health policy are vested in the national Government. This Bill, therefore, amplifies the complementary roles that should be played by the national Government and county governments so that devolution can work and help the people of Kenya.

The health sector is critical in our country. There have been some teething problems with this sector. There have been cases of unpaid wages, promotion issues and professional progression among health workers. The naysayers who do not believe in devolution have been agitating that staff working in these facilities under county governments be handed back to the national Government. This Senate must resist those kinds of suggestions.

I know that the National Assembly Committee on Health had made such a report, which is unconstitutional, illegal, unlawful and does not countenance where this country has come from. It is almost impossible that you will remove a function from the county governments and return it to the national Government. What is even more likely is the opposite. Going forward, we should convince Kenyans that some functions in the national Government should go to the county governments and not the reverse. Devolution is supposed to heal the wounds of a centralized system that has inflicted untold economic misery and suffering on the people of Kenya.

This Bill amplifies the roles of the two levels of Government. Whatever issues that are arising and affecting the performance of county governments in terms of delivery of the health services should be tackled. Therefore, I hope that when this Bill goes to the Committee on Health, they will engage with the stakeholders and all the players in the devolved county government system, including the Council of Governors (CoGs), health workers, the national Government and donors to ensure that all those challenges are removed so that devolution works as it is, without interference. I am hopeful that going forward our counties will realise that much of the health sector is devolved and they need to up their game and make sure that they do not just multiply the number of health facilities, but also ensure that those facilities have adequate facilities and drugs.

Mr. Temporary Speaker, Sir, finally, the national Government has gone out of its way to fund the health sector, especially the national referral hospitals that are vested in the national Government. More importantly, in accordance with Articles 186 and 187 of the Constitution, the national Government has gone out of its way to support health facilities that are under county governments with equipment. The law allows that one

level of Government can perform functions that are within the other level of Government, so long as they understand each other and consult on the issue.

It is in this connection that in every county the Jubilee Government is equipping two hospitals, which totals to 98 hospitals, with modern equipment to deal with critical illnesses like cancer, heart problems and kidney problems. Therefore, this Bill will help us move devolution to the next level in the health sector.

Mr. Temporary Speaker, Sir, without much ado, I beg to move and request the Senator for West Pokot - I almost referred to him as the Senator for Kapenguria - to second.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, he was almost right because Kapenguria is synonymous with the Kapenguria Six. Without them we would not be enjoying the peaceful environment that we have.

I stand to support this Bill, which seeks to establish a unified health system that shall coordinate inter-relationships between the national Government and county governments' health systems as put in the Fourth Schedule of the Constitution, where the activities take place on the ground and the policy issues at the national level. For the last four years there have been a lot of happenings like strikes and lack of medical attention for patients in the health sector in the counties. This is because of an uncoordinated health sector in Kenya. In Nandi County, for example, the health personnel have not yet resumed work. My county has prepared a petition which will come here anytime soon because of some things that are not coordinated. This Bill, therefore, has come at the right time, although slightly late because health is of paramount importance.

At a glance, Part 4 of the Bill talks about the establishment of the Kenya Health Human Resource Advisory Council, which will determine and give a key directive in terms of the number of personnel that are supposed to be in health centres, dispensaries, sub-counties hospitals, county hospitals and Level 5 hospitals. In Part 6, there exists the establishment of the Kenya Health Professional Oversight Authority. This will cater for professionals whenever there is an issue or dispute of any kind. Even at the county level there should exist a small oversight body that will be coordinating the staff and reporting to the higher national oversight authority, which will be positioned in the national Government. When we address this, we will have a clear policy of what is required.

In conclusion, in the current structure, the county service boards do not perform their roles as required. They are just rubberstamps for the governors and their people. They have circulated some class of staff rather than auditing them to get those who are required. It is, therefore, important that we address this and put a structure that will guide this nation now and in the near future regarding the health of every Kenyan.

Mr. Temporary Speaker, Sir, I second this Bill and ask that my colleagues who will contribute after me make serious contributions on the same.

Thank you, Mr. Temporary Speaker, Sir.

*(Question proposed)*

**Sen. Karaba:** Mr. Temporary Speaker, Sir, thank you for allowing me to support this Bill. This Bill should have been brought earlier before devolution or the equipment was supplied to the counties. Although most things have been moved to the counties and the governors are in charge, the Senate has its role to be seen as taking part in county

matters. We should be consulted to know the hospitals to benefit from the equipment which is being supplied to counties because we are also part and parcel of the administration of the county. Therefore, as much as we support this Bill, it should be noted that the Senate has a big role to play in making relevant decisions on what happens in those hospital's administration and equipment and where they are going to be posted.

Mr. Temporary Speaker, Sir, in a county like Kirinyaga County, one person decides everything that happens including recruitment, equipment, location and construction of the Level 6 hospitals. It is therefore important to note that there should have been consultation with the Senate before construction started so that we also give our opinion on how to go about things. Eventually, it is not the governor who will be running the county. It is the citizens of that county. That is why it is critical to involve all the elected leaders when it comes to deciding which area should benefit from development, unlike what has been happening with development projects in hospitals.

We should endeavor to have a medical research station in every county so that they are distributed evenly. All the centres should not be concentrated in one area; Nairobi and the periphery areas of Nairobi like Thika. The Senators should have a voice in the decision of where to locate the development of some of these facilities because we matter.

**The Temporary Speaker** (Sen. Mositet): Order Sen. Karaba. You will have 12 minutes to conclude your contribution when this Bill appears on the Order Paper.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, it is now 6.30 p.m. It is time to adjourn the Senate. Therefore, the Senate stands adjourned until Tuesday, 7<sup>th</sup> June 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.