

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 13th November, 2019

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

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

PRAYER

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

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. It looks like our gadgets are down; they are not working. Therefore, we cannot follow the proceedings.

Can the Clerk supply a hard copy of the Order Paper, please!

PETITIONS

DELAYED OPENING OF NJIRU SECONDARY SCHOOL, NAIROBI CITY COUNTY

Sen. Omanga: Thank you, Mr. Speaker, Sir. Citizens of the Republic of Kenya and the residents of Njiru Ward, Kasarani Sub-county want to draw the attention of the Senate to the following:-

That there is no public secondary school in Njiru Ward, Kasarani Sub-County, making it difficult for students to access subsidised secondary education.

That in the year 2014, as residents, we petitioned our then area Member of Parliament to assist in the construction of a public secondary school which was agreed and the school was built using public funds drawn from the Constituency Development Fund.

That the school is built on public land LR No.13468/787 measuring six acres.

That Njiru Secondary School has not been opened although the infrastructure has been completed in the Financial Year 2016/2017.

That attempts by the residents to have the school opened for intake has been fought by the Deputy County Commissioner and the Ministry of Education officials, thereby infringing on the rights of the residents and students to access education, contrary to the provisions of the Constitution.

That we have made the best efforts to have this matter addressed by the relevant authorities all of which have failed to give a satisfactory response.

That none of these issues raised in this Petition is pending in any court of law, constitutional or any other legal body.

Therefore, our humble Petition prays that the Senate -

- (1) Investigates why Njiru Secondary School has not been opened considering that completion of the infrastructure dates back to 2016/2017 Financial Year.
- (2) The Senate should intervene to have the school opened to benefit the community as it is the only public school in the area.
- (3) To make any other order or direction that it deems fit in the circumstances of the case.

Thank you.

The Speaker (Hon. Lusaka): Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I want to make a comment on that Petition by Sen. Omanga on the delay of opening of Njiru Secondary School.

The right to education is a constitutional right and the fact that the school remains closed is very unfortunate and many children around and within Njiru should not be in any way denied the basic access to their education.

On the issue of land or ownership of land by many secondary schools in this country; there was a directive by the Ministry of Education that every school must be assisted by the Ministry of Lands to get ownership and possession of their land, where the school is situated, be it a primary school or secondary school.

Therefore, we would have expected the Ministry of Education to come up and ensure that they assist on the issue of land and infrastructure. Therefore, I think these children need the necessary support so that the school can be reopened.

You remember that the Kenya Certificate of Secondary Schools examinations are ongoing and so, it is very unfortunate that this is happening to the residents and children in Njiru Ward, more so, that the Constitution has provided that the right to education is a fundamental right that should not be denied by anybody.

Mr. Speaker, Sir, I support this Petition and I hope the relevant Committee will deal with this matter expeditiously and ensure the people and students who read and study in Njiru get that opportunity.

Thank you.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.232 (1) the Petition stands committed to the Senate Committee on Education.

In terms of Standing Order No. 23(2), the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

Next Petition by Sen. Cherargei.

IMPLEMENTATION OF CLINICAL OFFICERS' CBA

Sen. Cherargei: Thank you, Mr. Speaker, Sir. This is a Petition on refusal by the Ministry of Health and county governments to conclude the collective bargaining agreement negotiations.

We the undersigned citizens of the Republic of Kenya and officials of the Kenya Union of Clinical Officers (KUCO), acting on our behalf and more than 20,000 clinical officers registered and practicing in Kenya, draw the attention of the Senate to the following:

- (1) That on 5th October, 2017 the Union, 47 county governments and the Ministry of Health entered a return-to-work formula where we were to sign a recognition agreement and commence negotiations on Collective Bargaining Agreement (CBA) within 60 days.
- (2) That on 10th January, parties agreed on negotiable and non-negotiable items in the proposed CBA which would guide the negotiations going forward. The union agreed on extension of negotiations up to April, 2018.
- (3) That in April, 2018 the Government team indicated that they were no longer willing to negotiate on disputed clauses unless the Union ceded its position on internship allowances, contracts and comprehensive medical cover would be up for negotiations resulted in a stalemate.
- (4) That on 11th April, 2018 the Ministry of Labour and Social Protection appointed a conciliator, but after three meetings, the counties through the Chief Executive Officer (CEO) to the Council of Governors (CoG) declined further summons. However, after the Cabinet Secretary (CS) intervened, it was agreed that the counties would negotiate with the union, including the disputed clauses that had earlier been declined.
- (5) That on May, 2019, on the first day of negotiations, the employers reaffirmed their earlier stand of not negotiating on contentious clauses.
- (6) That despite Kshs2.9 billion allocation and KShs1.2 billion budgetary allocation for internship programme, the Ministry remains non-committal on payment of diploma clinical officers leading to a second trade dispute.
- (7) That on 17th October, 2019, after the Alternative Dispute Resolution (ADR) mechanisms had failed, the Union resolved to call a strike.
- (8) That the matter is not pending before any court of law or any other constitutional or legal body.

We, therefore, humbly pray that the Senate:-

- (1) Directs the Ministry of Health and all counties to pay clinical officers under internship.
- (2) Ensures the Ministry of Health and all counties conclude the CBA negotiations with KUCO and the negotiations are registered and implemented.
- (3) Ensures the Ministry implements the return to work formula of 5th October, 2017, including the matters on promotion and re-designation of clinical officers; and,
- (4) Compels the Ministry of Health to rectify clinical officers reviewed Scheme of Service, 2018, as was agreed on 5th October, 2017.

Mr. Speaker, Sir, those are the prayers. A total of 4,920 clinical officers work in dispensaries; 143 in health centres and 349 in Level IV hospitals as per the recent study by the Ministry of Health.

The clinical officers are primary healthcare providers. To emphasise for the benefit of the House, most health centres and dispensaries do not have a medical doctor. Most of them rely on clinical officers. So, these are primary healthcare providers that we have at lowest level of dispensaries.

Therefore, I call upon the relevant Committee to expeditiously deal with this matter, so that we avoid many Kenyans suffering from not getting the basic healthcare from dispensaries to Level IV hospitals.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to support this Petition. It is unfortunate that clinical workers who are rendering what we would call critical service must resort to the Senate to seek our assistance for them to get a Collective Bargaining Agreement signed.

Labour relations under Article 41 of the Constitution is a fundamental right for all workers; fair work, fair remuneration and fair pay for work done. They are not asking for this country or somebody in the Ministry to lend them a limb. They are just saying “pay us!” Fortunately, this Senate has one person who is from that profession.

Somebody asked yesterday, and I read somewhere, why we are broke. People would not go on strike unless they did not have money. These people work for 16 hours a day. I represented doctors; the young people, some of whom were jailed because they wanted an increase of something close to Kshs20,000.

Why would we not conclude a Collective Bargaining Agreement? It is worse when we read in a Petition that our county governments, through the CoG, is one of the parties that is being belligerent towards this service.

Mr. Speaker, Sir, I do not know how true it is, but I read in one of the articles concerning something that will come up soon; that in fact, there is a proposal for a Health Commission and to take away the function of health from counties to national Government. If this happens, it is because the governors of this Republic have let us down and mismanaged the health sector, which is a critical service.

If there was ever a constitutional amendment that would make sense, it would ring-fence the budget for health, so that governors and the executives whether it is at the national who do not behave any better---

It is sad to live in a country where Kshs2.9 billion and Kshs1.2 billion respectively is set aside to pay interns, and it is not paid to them. Where does this money go to? It goes to private hands.

The *ad hoc* Committee on the Managed Equipment Services (MES) has verified that we have wasted billions of shillings buying stretchers and beds that are not needed. The brightest students in our medical schools have become doctors and nurses, and they are being mistreated. It is only in a primitive country where you behave like that.

Mr. Speaker, Sir, I beg to support.

Sen. Halake: Thank you, Mr. Speaker, Sir. I also rise to support this Petition that has been brought to the House by Sen. Cheragei. Anything that touches on the most vulnerable does not see the light of day in our country, which is really sad. This group consists of people from the community health volunteers, to the community health workers, to what we used to call community health extension workers, to now even our clinical officers. We are seeing real disrespect and disregard for the people that carry the health sector on their backs.

Mr. Speaker, Sir, the Collective Bargaining Agreement (CBA) of 2017 was also part of the return to work formula that was given. However, we have seen wanton disregard for anything that is touching on the most vulnerable communities, and clinical officers are the ones that serve in the dispensaries, in Level Two, Level Three and the lower level hospitals. So far, from what I have seen, the Ministry of Health continues to look down on the health personnel and a lot of resources that are supposed to go down to the counties.

How do we expect to get Universal Health Coverage (UHC), especially in the counties, even in the pilot counties? Isiolo is one of the pilot counties for UHC, and it was chosen for a reason. The reason was that there was almost near absolute absence of personnel, resources, equipment and the existence of long distances between existing dispensaries.

Now, with the advent of the non-honoring of this CBA, many people that used to work in these dispensaries have gone back. We now do not have anybody looking after people in these places. You will even find *mkokoteni*'s carrying people for 50 kilometers all the way to town centers where they can find a doctor.

This is unacceptable, and it is about time the Ministry was compelled to do what it is supposed to do, because it is not going to be business as usual. The UHC cannot just be on paper and on podiums. The components of UHC are the personnel, resources and equipment, yet all these are missing. I, therefore, do not know in which vacuum we are going to achieve the objectives and principles of UHC.

Mr. Speaker, Sir, I support and look forward to the Committee of Labour and Social Welfare or the Committee on Health – whichever is the case – going to the bottom of this issue, because counties and our villages are suffering.

Thank you. I beg to support.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I support the Petition and the Petitioner. This is a very timely Petition. Health is a very important issue in life. I believe that it is the most important component of human welfare.

Mr. Speaker, Sir, I request the Committee to which this matter is being forwarded to find out how to deal with the strikes and stand-offs on labour related matters. This is because health in counties, particularly, Migori County, is dogged by incessant strikes. These are things that we can deal with when it comes to negotiations and compromise. We need the committee responsible to find a solution that will make the parties have a framework through which they can dialogue and conclusively deal with the challenges that lead to labour unrest.

If this is not dealt with, then life becomes meaningless; paying taxes becomes meaningless, and we have a society where life is brutish and short. Some of it will be self-instigated or inflicted upon us by our own behavior.

With those remarks, I beg to support the Petition.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I also support this Petition.

Apart from health being 95 per cent devolved, it is a very critical component of human life. Under the Geneva Convention, health workers are protected even in war zones in terms of physical protection, nutrition supply and remuneration.

It is disheartening to note that here in our country, a function that is devolved to the extent of 95 per cent still has over 90 per cent of health resources controlled at the center. That is why we have scandalous activities such as MES and others.

It is incumbent upon county governments, having taken up health as a devolved function, to ensure that health workers are properly remunerated, motivated and are enabled to work to save lives. These health workers carry out probably 80 per cent of the treatment of our citizens. If you go to health centers, dispensaries and many of the health facilities in the countryside, you will hardly find doctors. Doctors are found in Level Four and Level Five hospitals. In the other facilities, it is the nurses and other health technicians who do the work, and they heal people.

Today, if you go to the villages, there are too many inexplicable deaths of people. The people are dying from very preventable diseases because of the de-motivated workers in the health sector. Therefore, the Committee on Labour and Social welfare that is likely to be looking at this matter – or whichever committee you refer it to – should make sure that this stand-off between the health workers and the county management system is brought to an end, so that people do not suffer unnecessarily.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I support the Petition as well. Medical personnel in this country suffer a lot. They are in every village and center in this country, where they help the communities. However, when it comes to remuneration and taking care of them, they are usually put in the back seat.

As some of the Senators have already mentioned, UHC is there and there is a lot of money being wasted, like on this so-called MES. Billions of shillings are being wasted while members of the health profession are suffering. I do not see how we will succeed if we do not have proper personnel. Doctors, nurses and clinical officers are running away from this country; they are going to look for greener pastures overseas.

Mr. Speaker, Sir, when I was in medical school during those days, nobody wanted to go anywhere. With the few shillings we were getting, medical officers, clinical officers and nurses were okay and happy in the country, working for the people. But of late, I do not know where the rain started beating us because things are going haywire in this country.

On this issue, we usually have problems between health and labour, and most likely, it should go to the Committee on Labor and Social Welfare, because they are the ones who deal with remuneration and suffering.

Thank you.

Sen. Faki: Asante, Mheshimiwa Spika, kwa kunipa fursa hii kuchangia maombi ya Sen. Cherargei.

Kwanza, ninampongeza Sen. Cherargei kwa kuleta maombi haya katika Bunge la Seneti. Juzi tulikuwa safari Tana River ambapo tuliona wananchi walivyokuwa wakipata shida kwa sababu ya kusimamishwa kazi kwa madaktari pamoja na wauguzi. Wagonjwa wengi waliokuwa Hospitali Kuu ya Hola, walikuwa hawana huduma kwa sababu madaktari na *clinical officers* wote walikuwa kwenye mgomo.

Mhe. Spika, kwa hakika sijui kuna shida gani kwa sababu hata amri za mahakama za wafanyi kazi haziheshimiwi. Hiyo inaonyeshwa kwamba, tunapoteza mwelekeo. Ikiwa mahakama itatoa amri na isitekelezwe inamaana kuwa, tunapuuzwa tasisisi ambazo zinaweza kutusaidia kutatua mizozo yetu.

Mhe. Spika, ninampongeza Mhe. Cherargei kwa maombi haya. Tunaiomba Kamati husika isizembe katika swala hili. Tunafaa tupate utatuzi wa haraka kwa sababu wananchi wengi ambao wanategemea huduma za madaktari hawa, wanapata shida katika kaunti zetu.

Asante Mhe. Spika.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I rise to support this Petition. Up to very recently, I was quite ignorant on the challenges in the health sector until I received a very interesting phone call. For the four years that I was in high school, there was a gentleman called Kenneth Shinga Mwarabu. He remains to be my good friend. For the four years that we were in high school, he led in every exam that we sat for.

Eventually, when we did our Kenya Certificate of Secondary Education (KCSE), he was among the best 100 students in the country. He moved on to University of Nairobi (UoN) where he studied medicine. After six years, he moved on to study a Master of Surgery degree at one of the local institutions.

About one month ago, this young man called me requesting if I could assist him secure a working opportunity. I could not reconcile the fact that such a brilliant, talented and gifted person---

The general thinking is to whom much has been given in terms of intellectual endowment, then with so much ease they will be able to secure employment opportunities. That is how it works the world all over. However, because of the mismanagement of the health sector under this framework of county governments and the poor labour relations that have followed since the onset of devolution, medical practitioners continue to suffer.

Clinical officers who have brought this Petition before this House are an example. I now understand why sometimes the headquarters of the Ministry of Health is mischievously referred to as "Mafia House" as opposed to Afya House. The thinking at the Ministry of Health is the fact that people believe so much in brick and motor as opposed to the soft skills and ensuring that the people who provide the skills in terms of treating people are well taken care of.

They are more interested in the hiring of all these equipment. There is no fool in this House; everybody knows what the motivation is in terms of buying all the equipment that they are flooding our hospitals with and not ensuring that they take care of our medical practitioners.

Mr. Speaker, Sir, having listened to the request made by the Vice-Chairperson of the Committee on Health, I agree with him that this is a labour issue. When giving your direction, because of the other reasons that are known to them; why they have thought that it would better handled by this Committee, please accede to that request.

Thank you.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I also rise to support the Petition. This could be the sixth or the seventh Statement or Petition with regard to health issues in this country. I personally have brought a Statement to this House. It is high time that we asked ourselves, as a Senate, what is happening.

If it is possible, I would recommend to the Committee to hold a huge stakeholders' forum where the Senate will pronounce itself on the way forward on issues of health in the counties.

We also need to ask ourselves whether what the doctors have been asking; that they need a medical practitioners commission is probably the way to go, so that this issue of salaries is well dealt with by a commission like the Teachers Service Commission (TSC).

Mr. Speaker, Sir, we all know that the health sector is ailing. The other day, there were huge cries all over, that there was no insulin, no HIV/AIDS and malaria drugs. Everybody in the Ministry was working in panic. If the Committee can agree, let us have a forum where we will deliberate on the issues once and for all. As the Senate, we will pronounce ourselves on the way forward on this very essential devolved function.

With those few remarks, I support the Petition.

The Speaker (Hon. Lusaka): Hon. Senators, in the interest of time, pursuant to Standing Order No.232, the Petition stands committed to the relevant Committee, in this case, the Standing Committee on Labour and Social Welfare.

In terms of Standing Order No.232, the Committee will be required, in not more than 60 calendar days from the time of reading the Prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the table of the Senate.

I hope the committee will do a commendable job because as you have heard, we have had similar Petitions and they are lying somewhere.

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. Originally, I had assumed that this would go, but I am happy that you have sent it to the Committee on Labour and Social Welfare.

I would like to give you an assurance that the Committee will expedite and deal with it thoroughly. For the record, what we said was directed to other committees. The Committee on Labour and Social Welfare has dispensed with each and every matter that has been brought to it and has brought the reports both to the Members who asked and to the House. It is the most hardworking Committee. I have very serious Members like Sen. Madzayo, Sen. Were and Sen. (Dr.) Milgo who are very outstanding.

Mr. Speaker, Sir, in addition to that, we have a legislative proposal that we are bringing to harmonize what is happening in our counties with respect to labour. We hope that next year, after we bring the proposal, we will have a National Labour Summit because the biggest challenge today is different schemes of service, different kinds of people hired to do the same job, but different allocations to different counties. I hope that the Senate will be able to support that process as we streamline devolution with labour being a key factor of devolution in our country.

Thank you.

The Speaker (Hon. Lusaka): What is your point of intervention, Sen. Kihika?

Sen. Kihika: Thank you, Mr. Speaker, Sir. Now that we have heard the Chairperson of the Committee on Labour and Social Welfare on the Floor, I would like to bring to his attention through you, that I had a Petition here sometimes back. It may be about six months ago where street children from Nakuru County were thrown away into a forest. I have never heard anything regarding that Petition. I would like the Speaker to give direction on that.

The Speaker (Hon. Lusaka): What is your point of intervention Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, in view of your direction, the prayers that were sought, part of them where summaries are being sought, I thought it would be appropriate to truncate this Petition into two. Where there are immediate issues, the Chairperson can possibly inform the Senate before we go for our Christmas holidays whether these people have been paid.

To tell them to come after 60 days is to tell them to go and sleep hungry over Christmas. I do not think it would be fair to them. That would defeat the purpose of having an efficient Senate and Committee on Labour and Social Welfare led by Sen. Sakaja.

The Speaker (Hon. Lusaka): I will be making a communication in relation to that. First, I have a Petition to present.

HISTORICAL LAND INJUSTICES AGAINST THE
KIPSIGIS COMMUNITY BY THE BRITISH

Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk, by Mr. Joel Kimeto, a citizen of the Republic of Kenya on behalf of the Kipsigis Community Clans Organization. As you are aware, Article 119 (1) of the Constitution states that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.

The salient issues raised in the Petition are-

(a) The colonial government forcibly took away Kipsigis ancestral land during the colonial period following the enactment of laws that discriminated against indigenous African communities, including the Crown Land Ordinance Act, 1902, the Removal of Natives Ordinance Act, 1909 and the Crown Land Ordinance Act, 1915 which effectively evicted and displaced the Kipsigis community from their land.

(b) There was no form of compensation given to the Kipsigis community for the land taken for the settlement of the British. Instead, the Kipsigis Community became squatters on their own land and were forced to provide cheap labour to the white settlers.

(c) The Kipsigis Community is seeking redress in the form of compensation and a formal apology from the British Government for the damage caused during the forcible eviction and use of ancestral land during the colonial period.

(d) Upon gaining independence in 1963, no efforts have been made to return land that had been forcibly taken away from the Kipsigis Community.

The Petitioners, therefore, pray that-

(1) The Senate investigates the matter with a view to ensuring the Kipsigis community clans are resettled on the land that had been forcibly taken from them during the colonial period.

(2) Appropriate compensation for the loss of property and livelihoods for the affected communities given.

Hon. Senators, pursuant to Standing Order No.231, I shall allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Before you do that, I have the following Communication to make.

(Interruption of debate on Petition)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM
KAJIADO COUNTY ASSEMBLY

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting members of staff from the County Assembly of Kajiado.

They are-

- | | | |
|-----------------------|---|------------------------|
| (1) Mr. Dickson Ndemo | - | Chief Serjeant-At-Arms |
| (2) Mr. Isaac Ketura | - | Serjeant-At-Arms |
| (3) Mr. Julius Siyiai | - | Clerical Officer |
| (4) Ms. Martha Kinyua | - | Personal Secretary |

(5) Ms. Esther Nailante - Personal Secretary

(6) Ms. Mercy Maet - Board Secretary

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

I thank you.

(Applause)

(Resumption of debate on Petition)

Sen. Cherargei: Mr. Speaker Sir, I have seen this Petition from the Kipsigis Clans Organization. This is a very critical Petition, considering that in Nandi County, we also have similar problems of historical land injustices.

This House adopted a report on historical land injustices for the Talai, as we stretch from Kericho County, where my good friend Sen. Cheruiyot is Senator, all the way to Nandi.

The issue of historical land injustices does not only affect the Kipsigis and Nandi communities, but it cuts across the country. This issue is very important. Following the adoption of the report on historical land injustices, Sen. Mutula Kilonzo Jnr. and Sen. Dullo, with the former Senator of Nandi visited the Talai community.

The report was adopted by the committee. Up to now, the recommendations of the Senate that were unanimously adopted by the House have not been acted upon by various agencies such as the National Land Commission (NLC) and the office of the Attorney-General.

The request of the Senate was to assist the Talai community pursue justice in London and to also receive an apology from the British. Up to now, the relevant stakeholders who were directed by the Senate---

I hope that by the time my Committee will have concluded this matter and because of its wisdom, the House will adopt the report on the historical land injustices on the Kipsigis, and thereafter, pronounce itself on how to follow up on this. This is because we have the Mau Mau case where those affected received compensation.

I expected the national Government, through the Attorney-General's office, in liaison with the British High Commission and with the British Government, to try and conclude this issue. This is because if the issue of historical land injustices on the Talai is addressed appropriately, the percentage of many cases of historical land injustice which have been forwarded by the Kipsigis Clans Organization in Bomet and Kericho counties will be addressed adequately.

Mr. Speaker Sir, it is well that Senators adopted the report on the issue of historical land injustices relating to the Talai community. However, those issues have not been followed up by the relevant stakeholders. Therefore, as we look into this Petition by the Kipsigis on the issue of historical land injustices and by various multinational companies in Kericho, Nandi and Bomet counties, the Senate should have a mechanism of ensuring that directions that are issued by the Senate are followed to conclusion.

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

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

Sen. Sakaja: Mr. Speaker, Sir, kindly allow me to make one quick clarification on the other Petition. There was a request from Sen. Mutula Kilonzo Jnr., as well as an intervention by Sen. Kihika on a Petition she had brought.

On the issue that Sen. Mutula Kilonzo Jnr. suggested, just to divide this into two, the fact of the matter is that it is not a generic issue. All of these unions signed Collective Bargaining Agreements (CBAs) with their respective county governments. There are some county governments that are implementing it while others are not. Therefore, we will be able to see quickly which ones need urgent intervention, so that the Petition is heard within 60 days. We will not start hearing it after the 60th day.

The Speaker (Hon. Lusaka): Order, Sen. Sakaja. Since we are in the middle of another Petition, you can raise this afterwards.

Sen. Sakaja: Mr. Speaker, Sir, will you allow me to raise it afterwards, because something remained hanging when Sen. Kihika raised an issue which---?

The Speaker (Hon. Lusaka): It is okay, I will allow you.

Sen. Sakaja: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Thank you, Mr. Speaker, Sir. I wish to support this Petition and make a brief comment by saying that one of the biggest failures of the National Land Commission (NLC) is on historical land injustices. Under the Constitution, there is a specific mandate given to the NLC to address issues of historical and current land injustices. This is one of the areas that the NLC has failed to address.

When it comes to the question of the Kipsigis community, I am familiar that apart from the Nandi, Kipsigis, Kikuyu and probably some of the communities at the coast, these four communities really suffered out of displacement with regard to colonialism in Kenya.

Of course, I forgot the Maasai community. They lost a lot of land. In fact, if you trace how the Maasai were moved from areas as far as Nanyuki and corridors created from Trans-Nzoia, those injustices need to be addressed.

Mr. Speaker, Sir, there is a clan within the Nandi called the Talai, and some of them are found in Kipsigis. This community really suffered under colonialism. Some of them were shipped to Gwasssi. I have met some of them who speak Luo more fluently than I do, yet they are from the Kalenjin community. When you go to Gwasssi and talk to some of them who were living in villages - little ghettos in Kericho - if you speak to them about independence, it does not ring a bell because they were removed from their land by the Colonial government. Now, 50 years after the end of colonialism, they are still suffering.

I support this Petition, but hope that the report by the Truth, Justice and Reconciliation Commission (TJRC) will become public so that we get mechanisms of resolving this problem. Something needs to be done, immediately.

If the Jubilee Government cannot do this, I suggest that Sen. Cherargei brings a Bill that will change categories of public land so that those that are placed under the national Government can be placed under the county governments. Hopefully, they will not be managed by the governors because we cannot trust any governor with even a quarter acre of land because of the things that we have seen happening in Nairobi and other urban areas. In fact, it is worse in the cities and major towns.

Some of those tea estates in Kericho own acres and acres of land and the communities have been pushed into tiny pieces of land which is actually part of the problem in Mau. The truth about Mau is that a lot of people were squeezed out of their land and pushed into the forest. We need to find a solution instead of politicizing, grandstanding or posturing about some of these problems. Let us look for practical solutions.

I hope that the Jubilee Government will rise up and address some of these issues before the end of its tenure. It only has two and a half years to go. If they cannot do it, we can begin addressing it from the opposition and have it see the light at the end of the tunnel by the year 2022.

Sen. Seneta: Thank you, Mr. Speaker, Sir, for giving me a chance to add my voice on this very important Petition but allow me to first welcome the delegation from Kajiado County who are in the Public Gallery. I wish them well as they observe the proceedings of this House and learn the procedures from the respective departments that they are visiting.

The issue of land is a very sensitive issue and I wish that the Committee takes the shortest time to address the issue raised by the Kipsigis community even as they look at other social historical injustices faced by other communities.

We heard of the people of Isiolo whose land is being curved and given to different Government institutions. The same thing is happening in other regions in this country. People have been forced to give their ancestral land to certain Ministries or certain departments because the Government wants to do projects, yet those projects do not benefit those people. This Committee, through the Ministry, should take the shortest time possible to address this Petition, so as to give our people confidence in this Senate.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also support this critical Petition. Historians like the Senior Counsel, Sen. Orengo, who also served as the Minister for the Ministry of Lands, have spoken. I am also a historian and I need to add that there are two limbs regarding the land that was taken away by the white men.

After the First and the Second World War, the queen sent the soldiers to East Africa with the intention of compensating them for services well rendered during the war. The problem is that the Government retained the land even after Independence. The other problem is how the independent Government distributed that land.

We do appreciate that money was given by the Colonial government to the independent Government for land to be distributed equitably or for land to be given back to the Government just as it happened in Zimbabwe, but the new Government, which took over in 1963, duped Kenyans and that is why we have a problem. That Government did not compensate Kenyans and that is why we have had problems across the country. We have had problems in Mombasa; the one thousand nautical miles land issue and that problem has also been experience in Northern and Western Kenya.

The problem is that certain individuals, who were powerful in the first Government took the land away from the citizens. They even enacted a law, Section 27 and 28 of the defunct Registered Land Act which was very clear and it was put there by the first Attorney-General. I do not want to mention names because I do not want to be asked to substantiate. He said that he will get the best lawyer to fight anybody who was going to touch his private land. This was a way of punishing those people who went to

the bush to fight. It was also a way of creating a black bourgeoisie. They are the people who are controlling the economy and the industries to date. In fact, they are called petite bourgeoisie. Hon. Wanjala used to call those people petite bourgeoisie when he was teaching us Land Law.

I know that most people have read the book, 'How Europe Underdeveloped Africa' by Walter Rodney. That book came to mind when I was in New York last month where I saw very tall buildings. I wondered how those people got such mammoth wealth to develop such big cities. Those people stole our wealth, minerals and took our strong men though that does not mean that we are not strong. They put them in ships and exported them to their countries. Therefore, it is sad for this country.

We keep on asking for compensation but my question is; why is it that the national Government has never seen it well to compensate? That is why I have a bone to chew with one of our Senators here, our Senate Minority Leader, who was also the Minister for the Ministry of Lands at a certain time. He should have put a policy---

The Speaker (Hon. Lusaka): You should conclude because our time on petitions is over.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I hope that you are not helping him. He should tell us the policy that he put in place for people---

The Speaker (Hon. Lusaka): He does not need any help.

The Senate Minority Leader (Sen. Orendo): Mr. Speaker, Sir, having too much knowledge can also be dangerous. I will invite the Member to go and look at a document known as the National Land Policy which I prepared, placed before the Cabinet and was passed by the National Assembly but the implementation was left to Government.

Unfortunately, that National Land Policy came towards the end of the NARC Government. If you would still want to know, we were fought by huge land owners in this country who were against that National Land Policy including people in the Cabinet at that time. I said it on the Floor of the House that it is people in the Government who did not want that National Land Policy.

The Mau Mau have never been compensated because all the land which was occupied by the settlers originally belonged to the 'black' people who were taken to the Rift Valley and put in Villages. If you go to Nyeri you will find a colonial village there and it looks just like it did in 1963. I think Sen. (Dr.) Kabaka should read a little bit more history and then he will find us.

(Laughter)

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I am guided. Give me one minute, I finish.

The Speaker (Hon. Lusaka): Okay, wind up.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. I am guided by Senior Counsel on the same and I will do much digging. The point he has supported is that we should not blame the 'White Man' *per se* as it were. He has confirmed that, indeed, the problem is those senior people, especially those in Cabinet. The problem is from within not without.

I support.

The Speaker (Hon. Lusaka): Hon. Senators, in the interest of time, pursuant to Standing Order No. 232(1), the Petition is required to be committed to the relevant Standing Committee for consideration.

In this case, I direct that the Petition be committed to the Standing Committee on Justice, Legal Affairs and Human rights. The Committee is required in not more than 60 calendar days, from the time of reading the prayer to submit a response to the petitioner by way of a report to the petitioner and laid on the Table of the Senate, pursuant to Standing Order No. 232(2).

I thank you.

Hon. Senators, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

ORDER OF BUSINESS IN THE SENATE

Hon. Senators, on several occasions, Senators have raised concern over the unavailability of sponsors of Business appearing in the Order Paper. Standing Order Nos. 38, 39 and 40, provide for the preparation, publication and circulation of the Senate Order Paper and weekly programs of Business as well as the sequence in which the Business shall be disposed of in the Order Paper.

Hon. Senators, true to the aforementioned Standing Orders, the Order Paper is prepared and published in the parliamentary website and also circulated to Senators via other means on the eve of the sitting to allow Senators with Business to prepare adequately and avail themselves when their respective Business is scheduled.

Hon. Senators, lately there have been several cases where Senators are not in the Chamber to move their Bills, Motions and Amendments to the Bills forcing the Chair to defer their business and inconveniencing fellow Senators, particularly in the case of Committee of the Whole where the Sponsor of the Bill may be present yet the Mover of the amendments is absent or vice versa. These deferments lead to some business clogging the Order Paper thus preventing the scheduling of Business by other Senators whose Business is pending.

These cases have become more frequent and persistent derailing the legislative mandate of the Senate.

Standing Order No. 250 states:-

“(1) A Senator intending to travel outside Kenya whether in an official or private capacity shall give to the Speaker a written notice to that effect indicating-

- (a) The destination intended to be visited;
- (b) The dates of the intended travel and period of absence from Kenya; and
- (c) The email, telephone contact, postal or physical address of the Senator during the period of absence from Kenya.

(2) All information submitted under this Standing Order shall be kept in a register which the Clerk shall maintain for that purpose and shall not be disclosed to any person without the permission of the Speaker.”

This Standing Order also applies to general absence from the Senate on a sitting day.

The purpose of this Standing Order No. 250 is not only for your own security but to assist the Senate Business Committee (SBC) in prioritizing Business for consideration by the Senate. I urge all Senators to observe the provisions of the Senate Standing Orders

and ensure they are available in the House to transact their business as scheduled in the Order Paper.

Going forward, failure to adhere to this shall result to strict application of Standing Order No. 59 which states as follows:-

“(3) Where no Senator moves a Motion at the time specified by or under these Standing Orders, such Motion shall not be published again in the Order Paper during the same session except with the leave of the Speaker.”

Movers of Amendments to Bills who will not be in the Chamber at the requisite time shall also be subjected to the provisions of Standing Order No. 59(3) translating to their Amendments being dropped and consideration of the Bill will proceed as scheduled.

Be guided accordingly. I thank you.

Next Order. Sen. Cheruiyot what is your point of intervention?

Sen. Cheruiyot: Mr. Speaker, Sir, I was on the queue waiting to speak on that Petition, you never---

The Speaker (Hon. Lusaka): It is overtaken by events because the time for the Petitions is over and we are now eating into Statements.

Sen. Cheruiyot: Mr. Speaker, Sir, how can a Petition about the Kipsigis come to the House, then you give everyone a chance to speak, except for their spokesman in this House?

The Speaker (Hon. Lusaka): I was following the order of how you requested to speak. Even Sen. Wetangula, Sen. Wambua and others were all queuing but you will have an opportunity to contribute. What is your point of order, Sen. Orengo?

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, did you hear what Sen. Cheruiyot said; that the spokesman of the Kipsigis was not given a chance to speak? I do not know of any county known as Kipsigis. Is there a spokesman for the Kipsigis? If there is a claim for somebody being a spokesman for the Kipsigis, I deserve that title more than he does.

(Laughter)

The Speaker (Hon. Lusaka): I think he has heard. Proceed, Sen. Kihika.

PETITION

THE ALLEGED TRANSFER/DUMPING OF STREET CHILDREN BY NAKURU COUNTY GOVERNMENT

Sen. Kihika: Mr. Speaker, Sir, it was just a reminder on the time set aside for Sen. Sakaja, Chairman of Labour Committee, to respond to my petition on dumping of street children by Nakuru County.

The Speaker (Hon. Lusaka): I have seen him. Sen. Sakaja, you wanted to say something?

Sen. Sakaja: Mr. Speaker, Sir, when the person who asked the question reminds you for the answer, it means there is something to be afraid of. I just want to give a quick clarification on the matter on Nakuru where street children were taken in the dead of the night, dumped into a forest in Baringo because they looked like they come from one part of the country. Six of them still cannot be found; they were around 60 children.

Mr. Speaker, Sir, as a Committee we started working on this matter. We have listened to the Street Families Rehabilitation Trust, the Ministry and the Senator herself. We have received further, a written communication. We had scheduled a county visit but it was not approved because the other counties wanted to visit at the same time.

We will bring the report because it has taken long. The report will be tabled next week; the Committee has adopted it. Beyond that, we will meet the county government during our scheduled county visit which will be earlier on next year. Sen. Kihika should stand assured of our support and my personal support because I have been there.

On top of the county visit, we will visit the Mututho Center and former MP Mututho who took these children under his care without any support from the county government or national Government. He must be applauded for the good work he is doing in Nakuru. So we are on this matter.

Thank you.

The Speaker (Hon. Lusaka): Next Order.

Sen. Ali, what is your point of intervention?

STATEMENTS

SALE OF CONTAMINATED MAIZE MEAL PRODUCTS

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I rise to make a Statement pursuant to Standing Order No.47 on a national matter of general concern regarding the sale of contaminated maize meal products.

On Wednesday, 8th August, 2018, this House voted to establish an *ad hoc* Committee to investigate the then maize crisis in Kenya. The Motion was co-sponsored by Sen. (Prof.) Margaret Kamar, of Uasin Gishu County and yours truly.

(Loud Consultations)

The Speaker (Hon. Lusaka): Sen. Omanga, consult in low tones. This is a very heavy Statement, please.

Sen. Wetangula: Mr. Speaker, Sir, the Committee carried out thorough investigations, including visitations and public hearings in various parts of the country. The Committee was able to establish and bring to the fore the deep rot and decay that was the norm in the operations of the National Cereals and Produce Board (NCPB). For instance, bean seeds and fertilizer stocked in Nyansiongo Depot in Nyamira County was found to have long expired and farmers were recording a 100 per cent germination failure.

You were able to attend the public hearing in Eldoret during the Senate *Mashinani* sittings and you saw, heard and felt for yourself the farmers' outrage on the state of maize farming in the country.

Sen. (Dr.) Ali: On a point of order, Mr. Speaker, Sir. Standing Order No.249 about sitting in the Chamber, and one of the people who are allocated seats in the Chamber is the Senate Majority Leader. Why is the Senate Majority Leader moving up and down without a seat?

The Speaker (Hon. Lusaka): Senate Majority Leader, you have heard. Why are you becoming nomadic in the Chamber? Will you take your rightful seat and listen to Sen. Wetangula?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I would like to thank Sen. (Dr.) Ali for raising that very important point of order. I was not complaining. When I came to the Chamber, very distinguished lady Senators of Jubilee were consulting over very serious matters of national importance.

(Applause)

And so, you know, the Bible says that, he who wants to be the greatest must humble himself like a child. So, I sought another seat.

The Speaker (Hon. Lusaka): Proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, it is obvious that the Senate Majority Leader would not dare to disturb the gracious lady.

In the course of the conduct of the inquiry, specialist Government agencies were summoned to testify on the state of maize cereals in Kenya. Among such institutions was the Kenya Bureau of Standards (KEBS).

The *ad hoc* Committee on the maize crisis directed the Kenya Bureau of Standards (KEBS) to test the maize in the National Cereals and Produce Board (NCPB) stores and report back on the status of its quality and fitness for human consumption. The results of the tests by KEBS was startling; over 80 per cent of the maize cereals in the NCPB stores was highly contaminated and was declared unfit for human consumption. Most of this maize had been imported from Mexico.

This startling and frightening report was presented to the Committee sitting and hearing in this Chamber in the presence of the Cabinet Secretary for Agriculture, Livestock and Fisheries; hon. Mwangi Kiunjuri.

When the Committee visited Eldoret NCPB stores in Uasin Gishu County, it was able to notice and note that almost all the maize cereal in the stores was discolored.

On Thursday, 28th February, 2019, this august House unanimously endorsed and approved the Motion adopting the *ad hoc* Committee's Report. Members hailed the Committee for an excellent job done and urged speedy implementation of the Committee's recommendation to improve the maize sector and save Kenyans from possible consumption of harmful maize cereal products.

Mr. Speaker, in the last two (2) weeks, the country has witnessed alarming news about the level of aflatoxin in maize cereal products. Kenya Bureau of Standards has subsequently suspended licenses of five (5) major maize millers and banned the sale of products such as Dola, Kifaru, Jembe and 210 maize flour brands.

Apart from direct purchases from farmers and some direct imports, most maize millers purchase maize cereals from NCPB stores. The begging questions remain:

- (1) What did the Ministry and NCPB do with the huge stocks of maize cereals in their stores that were declared by KEBS to be contaminated and unfit for human consumption, 80 per cent and plus to be exact?
- (2) Were the stocks destroyed as is required by law, or the Government simply maintained a conspiracy of silence hoping the situation would remedy itself?

(3) Why did Kenya Bureau of Standards, which has legal authority to do so, not order and superintend the destruction of the contaminated maize as has been seen and noted in other products? We have seen with a lot of fanfare, KEBs supervising the destruction of sugar, edible oils and other things. We have not seen anything about maize.

(4) Is the same contaminated maize now the ultimate cause of dangerous maize flour on the shelves for Kenyans to buy and consume?

Over 90 per cent of Kenyans constantly eat the popular cereal product known as 'ugali/busuma/ngima/sima/kuon' or whatever name you call it. In view of the foregoing facts, how safe are Kenyans that depend on this staple food?

Will criminal charges be preferred against the millers that may have knowingly and willfully exposed Kenyans to harm by marketing contaminated maize flour? What about the NCPB that has kept contaminated maize and KEBS that has slept on the job by not destroying the contaminated maize? Will criminal charges also be preferred against retailers who have not taken the banned brands off their shelves and instead have been offering discounted prices knowing very well that this is contaminated food?

Lastly, the Senate Committee on Agriculture, Livestock and Fisheries should be continuously seized of this matter and give the House regular updates on the on-goings in the sector. Perhaps, it is also time that this House reinstated the once all-important Committee on Implementation to do critical follow ups on the implementation of House resolutions by the Executive.

I thank you.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, this is a very important matter and a very serious Statement.

I commend the distinguished Senator of Bungoma for bringing this Statement to the Senate and hope that the relevant Committee will deal with it expeditiously.

According to the World Health Organization (WHO), unsafe food containing harmful bacteria, viruses, parasites or chemical substances, and I emphasize; chemical substances, causes more than 200 diseases ranging from diarrhea, which we now and again experience, but cancers. I want to emphasize that the prevalence of cancer in this country as we witness almost every day, may be a direct consequence of this imported maize, which for now we are being told that licenses of some millers have been suspended.

Suspending a license is not good enough. I think that the Senator from Bungoma is asking the question; are criminal charges going to be instituted? It is not just about instituting criminal charges. I think through the work of the *ad hoc* Committee, it was good to see some people being taken to court on account of the Report of *ad hoc* Committee. Thanks to the Committee of Sen. Wetangula and the Senator of Uasin Gishu, Sen. (Prof.) Kamar.

Today, nobody knows what has happened to those cases and probably the outcome of those cases will be acquittals and dismissals. That is why some people are so brave. They said that irrespective of the measures taken by the Government, out of the rice crisis, they will not really care because even prosecutions do not end up in convictions.

Mr. Speaker, Sir, if you look at the annals of this Parliament, which includes the National Assembly and the Senate because originally there was a Senate, the issue

surrounding maize has been there for many Parliaments before either on account of fraud in the maize sector or importation of it.

Mr. Speaker, Sir, looking at the figures that are coming from the World Health Organization (WHO) in relation to Kenya of how many people die out of contaminated foods, you would be shocked. I hope that other than the Cabinet Secretary in charge appearing before an *ad hoc* Committee of the Senate in plenary, this matter should be dealt with, so that it is not a perennial affair. Year in, year out, we talk about maize. When you refer this matter to the Committee, let us pin the Government to taking lasting action in relation to this problem. There should, probably, be a follow up.

The first duty of this relevant Committee is to find out what has been done on account of the previous report of the *Ad hoc* Committee. This time around a little bit more action should be taken. We should express displeasure with the Cabinet Secretary in charge of agriculture and the Cabinet Secretary in charge of Kenya Bureau of Standards (KeBS) because this is where all the fraud happens. When there is an import, they are supposed to inspect it. Some of these imports are inspected at the port of origin and they are given a clean bill of health. However, it turns out that sometimes the import is not even from the port of origin.

I wish to suggest to the Senator for Bungoma that sometimes we may be calling the names of other states like Mexico, but I do not think Mexico would export contaminated maize to Kenya because they also export maize to the United States of America. Their reputation is very important. If it is from Brazil, I can say without fear or favour that the contamination is not from there because they have very strict rules.

I am talking of Brazil where one of the most popular leaders who was sent to jail, a former President and my hero, Lula, is out. Those who fought for freedom should rejoice at the release of Lula. The system of Brazil is so effective that even if you are a President and convicted you go to jail. He served with honour in prison and now he is out.

Sen. Ndwiga: Mr. Speaker, Sir, this Statement is very important at this time in this Republic. We need to be very concerned not just about maize, but also about the kind of food that Kenyans are eating.

When it is export commodities, such as peas, tomatoes *et cetera*, the inspection process is very stringent. However, if you go to Marikiti today to buy your normal domestic vegetables, nobody cares where it has come from. We have no authority that inspects the kind of food that Kenyans are consuming. The last time I checked, the pesticides residuals that we are consuming are shocking.

The other day in my Committee, we had issues of glyphosates and other pesticides. We, as a Committee of this House, are very concerned, and we are checking those issues. The information availed to us is that Kenyans are consuming high levels of pesticide residues. Maybe the high occurrence of cancer in this Republic is due to lack of stringent measures to inspect the kind of food we are consuming.

Mr. Speaker, Sir, I do not want to preempt where you will direct this issue to, but I believe that this is a situation that requires very urgent attention, so that we may save Kenyans from most of the things that are happening. As a Committee, we were thinking of establishing a food and drug authority. However, when we checked around we were informed that the National Assembly has already drafted such a Bill and it has been read the First Time. We, as a country, need that kind of an authority that will take care of the

kind of foods that we are eating. All of us consume *ugali*. We do not know the kind of *ugali* we will consume this evening or what we have already consumed. It is so serious.

Mr. Speaker, Sir, I am happy that the Senator of Bungoma saw it fit to bring this matter to the attention of this House. I hope the Committee that will deal with this issue will give it the urgency and importance that it deserves.

The Speaker (Hon. Lusaka): In the interest of time, I will only give one Senator. Sen. Were.

Sen. Were: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Statement by Sen. Wetangula. I was in the *Ad hoc* Committee that investigated the crisis in the maize sector. As Sen. Wetangula said, we found maize that was already in bad state in silos in Eldoret. We recommended in our Report that it be destroyed. We met KeBS and suggested to them to destroy it. However, it seems like that maize was never destroyed. It is in our shelves in supermarkets and on our dining tables.

Mr. Speaker, Sir, I was surprised to see in our supermarkets the price of maize suspected to be contaminated with aflatoxin reduced from Kshs139 to Kshs79, instead of it being destroyed. What does that say about our country? Are we saying that we would rather see people die than suffer losses? I very much wanted to contribute to this issue since I love *ugali*. About 65 per cent of Kenyans consider *ugali* as their staple food. They are not just from one community, but across the country. It is also a fact that about 35 per cent of all the nutrients that we take is from *ugali*. If we let a lot of contaminated maize into our country, then we are declaring death on Kenyans.

We should also remember that in 2009 the Managing Director (MD) of KeBS, the late Dr. Kioko Mang'eli, warned us that there was bad maize in the market and we were to suffer the effects in 10 years' time. That time is now. Instead of listening to him, we sacked and humiliated him. Last year, he died out of depression. We should be embarrassed even as we continue to pray for his soul to rest in peace.

The Speaker (Hon. Lusaka): Hon. Senators, this is a very serious matter. It is a national issue because we are talking about life and death. We should not just treat it like any other matter where we wait for one crisis to go, then another one comes up and we forget.

The Committee on Agriculture, Livestock and Fisheries who are taking up this matter must give us an interim report by Wednesday next week, so that we see the progress we are making. We cannot afford to handle such matters in a casual manner the way we are handling some of these things. We must follow it up to the end. We must get a lasting solution for Kenyans. Kenyans are looking up to us, as the Senate, to come to their rescue. This is the time for us to do so.

Next Statement by Sen. Malalah

What is your point of intervention, Sen. (Dr.) Ali?

Sen. (Dr.) Ali: Mr. Speaker, Sir, it is about what you said earlier regarding the business that appears on the Order Paper. For some of us, our business has been on this Order Paper for weeks, and yet we see Statements and Petitions from nowhere, which do not appear on the Order Paper, come to be discussed on the Floor of the House. Is that fair?

The Speaker (Hon. Lusaka): The Statement that Sen. Malalah is giving is on behalf of Sen. (Dr.) Musuruve, which is Number one on the Order Paper.

Sen. Mutula Kilonzo Jr.: On a point of order, Mr. Speaker, Sir. As much as I agree with Sen. (Dr.) Ali, I do not agree with his remark that there are Statements and Petitions from nowhere. I do not think it is in order to suggest that they have come from nowhere, because there are no strangers in this House.

Thank you.

The Speaker (Hon. Lusaka): I think that is clarified.

Sen. (Dr.) Ali: Mr. Speaker, Sir, my apologies about the comment “from nowhere”. I meant on the Order paper.

Sen. Seneta: Mr. Speaker, Sir, we would also wish to get direction from you on this important Statement from Sen. Wetangula on the contaminated maize because this is a very important issue.

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

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

There was a report that we did as the *Ad hoc* Committee on maize, but it has not been implemented. It was something to do with KeBS and contamination of maize.

Therefore, we want to hear from the Committee on Agriculture and a direction from---

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

Mr. Deputy Speaker, Sir, I need your attention.

The Deputy Speaker (Sen. (Prof.) Kindiki): You have it.

Sen. Seneta: Mr. Deputy Speaker, Sir, I was saying that we need direction from the Chair on this important Statement concerning contamination of maize.

The Deputy Speaker (Sen. (Prof.) Kindiki): I thought that matter has been disposed of---

Sen. Seneta: We need to also hear from the Committee on Agriculture regarding the implementation status of that report because we did some work on contaminated maize---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. I thought the Speaker has already given direction on what is to be done on that matter. Am I right?

Sen. Seneta: On the timelines?

The Deputy Speaker (Sen. (Prof.) Kindiki): On what to do and the timelines. You are demanding for my attention and it is you who had not paid attention to the Speaker.

We have run out of the Statements time allocation. We will proceed with precision and brutality to finalise all the other items in the next 10 minutes.

The next one is the Statement pursuant to Standing Order 48 (1) requested by Sen. (Dr.) Musuruve.

DISMISSAL OF WORKERS AT THE
MUMIAS SUGAR COMPANY

Sen. Malalah: Mr. Deputy Speaker, Sir, Sen. (Dr.) Musuruve delegated this noble responsibility to me as a Member of my delegation. I am pleased to---

The Deputy Speaker (Sen. (Prof.) Kindiki): Who delegates to who?

Sen. Malalah: No, on this particular Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, on this matter you are Sen. (Dr.) Musuruve's delegate.

Sen. Malalah: As you say, Mr. Deputy Speaker, Sir. On behalf of Sen. (Dr.) Musuruve, I stand to request for a Statement on the dismissal of workers at Mumias Sugar Company.

I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Labour and Social Welfare concerning dismissal of workers at the Mumias Sugar Company.

In the Statement, the Committee should -

- (1) Explain the circumstances that led to the dismissal of all workers at the Mumias Sugar Company and clarify whether it was carried out in compliance with existing labour laws.
- (2) Explain the reasons advanced by the Receiver Manager at the company for the subsequent hiring of staff on contract.
- (3) Indicate whether the dismissed workers were paid all their dues.
- (4) Outline the measures that the Receiver Manager has put in place to ensure that the dismissed workers and their families do not undergo psychological stress as a result of loss of employment.
- (5) State the measures put in place by the Receiver Manager to revive the company.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Committee on Labour and Social Welfare, Mumias is in chaos. Please, do something. That is what is requested. Will you?

Sen. Sakaja: Certainly, Mr. Deputy Speaker, Sir. This is a matter that has taken some time. The workers are owed around Kshs1.18 billion because of working for 30 or more months without pay.

A Receiver Manager does not just come in and immediately sack people. Therefore, we shall take this matter up.

The Deputy Speaker (Sen. (Prof.) Kindiki): What in particular do you want to do before I allow one other comment and close the matter?

Sen. Sakaja: Mr. Deputy Speaker, Sir, the first thing to do is to invite the union as well as the Receiver Manager promptly.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you.

Sen. Madzayo: Thank you, Mr. Deputy Speaker, Sir. This is a very important issue, particularly where responsible people with families are affected. Right now, that decision to send them home has hurt the families. The children of those employees will suffer because the parent who is a breadwinner cannot earn a living as a result of unfair dismissal.

I believe that this is a very serious matter because it will bring economic death on the doorsteps of certain families for no reason at all. This is synonymous with Mumias Sugar Company. I would like to emphasise more because I sit in the Committee on Labour and Social Welfare. We will work very closely with the Chairman to ensure that justice is served to the people who have been dismissed.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Wetangula: Thank you Mr. Deputy Speaker, Sir. The case of Mumias Sugar Company is a very sad one. You may recall that 15 to 20 years ago Mumias Sugar Company was a case study of a successful rural enterprise in the entire Commonwealth. It was taught in universities how a rural village has turned into a massive successful enterprise.

Today, the workers of Mumias Sugar Company have not been paid a single cent for over a year, and then a Receiver Manager comes in and visits upon all of them instant dismissal.

I have asked this question loudly and the Chair of the Committee that will look at this may wish to find out. The national Government of the Republic of Kenya has substantial interest in Kenya Commercial Bank (KCB.) The national Government of Kenya has substantial interest in Mumias Sugar Company. Why would the left hand put the right hand under receivership? It is the same Government.

In 2015, I attended a very well attended rally in Mumias addressed by the President of the Republic, his deputy and many other leaders. The President said in our presence: "My Government will not let Mumias Sugar Company die." Looking at the figures of Mumias Sugar Company, with just under Kshs10 billion, you will turn around Mumias Sugar Company completely and take it back to where it should be.

How can a Government that is committed to industrialisation, creation of jobs and the Big Four Agenda let the existing industries die when its agenda is to set up industries? This is a serious issue

Mr. Deputy Speaker, Sir, this House passed the opening of the national debt ceiling to the Jubilee Government. Could the Chair of the Committee in his intervention find out how much of the trillions of Kenya Shillings that we have given this ever borrowing Government will be given to Mumias Sugar Company, Nzoia Sugar Company, Chemelil Sugar Company, Miwani Sugar Company, Sony Sugar Company, Muhoroni Sugar Company and all those factories that were started by the first Government of this Republic, to arrest rural-urban migration and create jobs in the rural areas?

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you very much. Sen. Malalah, are you satisfied with the Committee's undertaking?

Sen. Malalah: Mr. Deputy Speaker, Sir, I am satisfied. I have a lot of confidence in the Committee led by Sen. Sakaja. I encourage the Committee---

The Deputy Speaker (Sen. (Prof.) Kindiki): Is the confidence on the Committee or the Chairperson of the Committee?

Sen. Malalah: Mr. Deputy Speaker, Sir, it is on both. I encourage him to expedite the process because these workers are suffering. The company used to house them, but now that they have been dismissed from work, there is a plan to eject them from their houses.

I think you should give a ruling even on the timeline for the Committee to ensure that it is done immediately before we break for our long recess. This will ensure that we focus on helping the workers of Mumias Sugar Company.

As Sen. Wetangula has clearly put it, Mumias Sugar Company has been a pillar of the economy of the entire former Western Province. It is, therefore, important as leadership for us to have a focal attention towards reviving Mumias Sugar Company and ensuring that the workers and all the stakeholders who are interested in the revival of the company are taken care of.

Mr. Deputy Speaker, Sir, lastly, the law of natural justice states that if a receivership manager takes over a company, he takes over all the assets plus the liabilities. If the receiving manager took over the assets of Mumias Sugar Company including the nucleus, the ethanol plant and many other assets, it is important for him as well to take over the liabilities, which are not limited to the salary arrears of these workers.

It is important even as he takes over the factory that before dismissal, he should ensure that these workers are paid. I request Sen. Sakaja to expedite this engagement to ensure that justice is done to these very good people of Mumias.

Sen. Sakaja: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): He has already finished.

Sen. Malalah: I am willing to be informed.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is not a question of whether or not you are willing. The issue is that you have left the microphone, but he can inform the House.

Sen. Sakaja: Mr. Deputy Speaker, Sir, this just came to mind when the Senator was speaking because every time, I see him, I think about Kakamega. There was a taskforce that was led by the Governor of Kakamega. Some of the reports we are getting by one Kassim Were, who happens to be the CEC for Trade, are that the receiver is implementing the recommendations of that taskforce.

At some point, I think they wanted to include Senators on that taskforce, but we refused. We will first summon the taskforce to come and tell us whether its recommendations are being implemented before we go to the receiver manager, who might just be implementing those resolutions.

(An honourable Member spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): You will inform the Senator and the Committee at the Committee level.

Hon. Members, let us go to the second last Statement.

STATUS OF FUNDS DONATED TO COUNTIES
BY DANIDA

I do not see Sen. (Dr.) Ali. The Statement is deferred.

(Statement deferred)

Let us have the last one by Sen. Halake.

ELECTRICITY CONNECTIVITY IN ISIOLO COUNTY

Sen. Halake: Thank you very much Mr. Deputy Speaker, Sir. Pursuant to Standing Order 48 (1), I rise to seek a Statement from the Standing Committee on Energy regarding electricity connectivity to Isiolo County, and specifically, on the stalled Kina-Mbarambate-Mbiliko Power Line Connectivity Project.

In the Statement, linking to the fact that Isiolo is one of the pilot counties for most of our strategic initiatives in our country, including the Universal Health Care (UHC) and others, it is important that the Committee establishes the following: -

- (1) To explain why the Kina-Mbarambate-Mbiliko Power Line Connectivity Project has stalled for more than five years despite the fact that the Rural Electrification Authority (REA) bought the items required for the project five years ago.
- (2) The Committee should also help outline the status of the completion of the project and establish the measure, if any, that the Ministry of Energy has put in place to revive the project and state when the project will be completed.
- (3) To advise on the possibility of extending the connection on the national electricity grid to Merti Sub County and Kulamawe as per the initial plans at the beginning of this project.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us hear the Chairperson first. It is about commitments and electricity.

(Sen. Dullo spoke off record)

It is not a Motion. What are you contributing on? Maybe you can make an observation or comment.

One minute, Sen. Dullo.

Sen. Dullo: Mr. Deputy Speaker, Sir, I thank Sen. Halake for bringing this Statement. Secondly, in addition to what she has asked, as a county we have a lot of problems that I want the Committee to look into. We have several issues such as the one she has mentioned on Mbarambate. The wires are lying idle and the contractor was given the job. It is important for the Committee to look into why the contractor abandoned the work.

Secondly, in that area, there is a problem of connectivity or anything to do with electricity. Members of the public have to travel all the way to Meru County to sort out those issues. I remember in the last Senate, we requested that an office be opened in Garbatulla. They could look for a possibility of following up on that.

Thirdly, most of our schools have problems with connectivity. I think it is important that at this time of the 21st Century these issues be sorted out.

Mr. Deputy Speaker, Sir, the final one is on the issue of Oldonyiro Electricity where the Government promised in 2016, which is still outstanding. The Committee can look into that and also assist us.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

Proceed. Sen. Wetangula, for one minute.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. As I support this Statement, I thought the distinguished Senator for Isiolo would mention that last week, as the Ad hoc Committee on the Managed Equipment Scheme (MES), we visited Garbatulla Hospital. Radiography equipment delivered in Garbatulla in 2016 to date is not working because there is no sufficient electric power. Even when there are power pylons connected to Garbatulla, the strength of the power is not enough to power the equipment, yet the suppliers of that equipment are being paid every year. That is the mess that Isiolo County is in.

I ask the Committee that you will direct this matter to look at the entire profile of power supply in the country. The case of Isiolo as enumerated by Sen. Halake is everywhere. When you go to rural areas, there are power pylons, last mile, last kilometre or whatever, but there is no power. It is just Public Relations (PR) stunts.

The Senate Majority Leader should take it upon himself to save us from these gimmicks.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula. That is the end of this matter. The Committee responsible should liaise with Sen. Halake, Sen. Dullo and other interested Senators in disposing of the matter.

Proceed, Sen. Omanga. Kindly, be brief.

EXCESSIVE USE OF FORCE BY POLICE ON STUDENTS OF JKUAT

Sen. Omanga: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding excessive use of force by police and abuse of human rights against students of the Jomo Kenyatta University of Science and Technology (JKUAT).

In the Statement, the Committee should -

- (1) State disciplinary measures taken against police officers who were caught on camera using excessive force against students of JKUAT who were demonstrating against increased insecurity in the university's neighbourhood.
- (2) Present a list of insecurity incidences for the last 12 months reported to the police, where students have been victims and progress made in investigations.
- (3) State measures put in place to reduce cases of insecurity around the university and ensure safety of students and the public at large.

Sen. Mutula Kilonzo Jnr.: Thank you, Sen. Omanga, for raising this issue. This matter is appalling because after the hue and cry from the public on social media, the National Police Service (NPS) has taken action. However, the action appeared to be a slap on the wrist of the officers concerned.

First, they refused to name and shame the officers. Two, they have only been interdicted. The offences committed by these officers are under the Penal Code. The worst part is that adult men of sound mind and armed to the teeth were beating up a lady while striking her head and kicking her like a goat. It is a pity that the most we can do is interdict these officers. The Committee must seek serious answers.

If there is a time we should name and shame police officers who use brute, this is the time.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Proceed Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, if what I watched on TV is true, it is very shocking. It is upon the Committee to go and find out the truth. The admission of the Inspector General (IG) of Police is that, that brutal act was committed by police officers.

Police officers are supposed to be working for the NPS, whose mission is to serve the people. The manner in which that student was beaten and considering that one student was able to film that incident, I believe that there are many other incidences that have not been filmed that would have attracted even greater outrage in the country.

I believe it is time for us to sort out this issue. I have seen some of my friends who in the previous years were complaining about police brutality now celebrating police brutality in Kibra. A similar thing happened in Kibra during the just concluded by-election where policemen watched as a former Member of this House was being attacked, and they were laughing.

For the record, when our colleagues in the minority side brought statements about police brutality in this House, all of us condemned it. In fact, we took task to say that it had to be investigated and the truth must be found. I remind them that the normalization of police brutality that you are now supporting for political expediency, yet you do not know how long you have that political advantage---

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

The Senate Majority Leader (Sen. Murkomen): When the coin is turned – and I do not think it will be long - I hope none of them will come here and say that the police were watching and doing nothing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you predicting something?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I know how these things happen. The late Hon. G.G. Kariuki used to sit here with us and always reminded us that one of the things that blinds many politicians is the illusion of power. I am talking of the late Hon. G.G. Kariuki who when the former President Daniel Arap Moi took power, him and Sir. Charles Njonjo used to share the presidential limousine.

He was here and told us that there is something that is called illusion of power that blinds many politicians. We end up celebrating negative acts the moment we are on the side of power. However, when the power is not there, we become victims of the same brutality. Therefore, we must condemn this act.

This House must go out of its way to do thorough investigations. One of the Members of that Committee is Sen. Sakaja, who was a previous student leader. I was in the student leadership too and know the importance of student leadership in agitating for student rights and rights of the rest of us.

We condemn that kind of brutality. I support and ask that the Committee does a good job.

The Deputy Speaker (Sen. (Prof.) Kindiki): very well. We have run out of time. The Chairperson Committee on Energy should give their Statement.

The Vice Chairperson was here during the issue of violence on university students. It is almost 5.00 p.m. and we are still on Statements.

Finally, let us go to Statements pursuant to Standing Order 51 (1) (b)

ACTIVITIES OF THE COMMITTEE ON ENERGY

Sen. Seneta: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order 51(1)(b) to make a Statement on the activities of the Standing Committee on Energy for the period commencing 1st July to 30th September, 2019.

During the period under review, our Committee held a total of nine sittings and considered three Statements. With regard to Statements, pursuant to Standing Order 48 (1), the following three statements were requested from the Committee during the period under review:-

- (a) The statement on Oil spillage at Kiboko area in Makueni County, which was requested by Sen. Mutula Kilonzo Jnr.;
- (b) The statement on Gas *Yetu* – “The *Mwananchi* Gas Project,” which was requested by Sen. Nyamunga; and;
- (c) The statement on the billing scandal at the Kenya Power Company, which was requested by Sen. Khaniri.

The Statements were within the purview of the Ministry of Petroleum and Mining and the Ministry of Energy. The Committee held several meetings with the Cabinet Secretaries from the aforementioned Ministries to interrogate the Statement and invited the three Senators during the deliberations.

In respect of the Statement sought by Sen. Mutula Kilonzo Jnr., on the Oil spillage at Kiboko area in Makueni County, I am glad to report that following the interventions of our Committee were undertaken:

- (a) an Inter-Ministerial Committee was established comprising of the Cabinet Secretary, Ministry of Petroleum and Mining, Cabinet secretary, Ministry of Environment and Forestry and Cabinet Secretary, Ministry of Water and Sanitation;
- (b) The Inter-Ministerial Committee was established to investigate, coordinate the recovery and mop-up of the oil spillage, restoration of the environment, provision of safe and clean water and a free medical camp to the residents of Kiboko area;
- (c) Kenya Pipeline Company is providing and distributing safe and clean water to the residents of Kiboko area, while the recovery, mop-up of the oil spillage and restoration of the environment is ongoing;
- (d) Kenya Pipeline Company is also in the process of procuring a leak detection system to ensure that in future such spillage is detected in real time; and,
- (e) The Committee held consultative meetings with the Energy and Petroleum Regulatory Authority (EPRA) and urged them to judicially exercise its mandate as provided in the Petroleum Act, 2019 and apply sanctions and penalties to the Kenya Pipeline Company for failure to install the leak detection system on Line V.

On the Statement sought by Sen. Rose Nyamunga on the Gas Yetu; “The Mwananchi Gas Project,” the Committee noted that there is a court order filed by the Consumer Federation of Kenya (CoFeK) citing concerns over procurement of faulty cylinders, which could harm consumers. However, the Committee advised the Ministry of Petroleum and Mining to try and establish alternative methods to ensure that the project is effectively and urgently implemented and rolled out in all the 47 Counties without further delays.

With regard to the Statement sought by Sen. Khaniri on the billing scandal at the Kenya Power Company, I am equally glad to report that the Committee interrogated the matter with the Kenya Power Company and noted the following:-

(1) Tokens worth Kshs35,280,000 were irregularly generated and issued to customers on diverse dates between January, 2018 and February 2019.

(2) The irregularly generated tokens were found to have been sent to consumers through an unofficial channel and relayed to consumers through personal lines.

(3) Owing to the activities being criminal in nature, the Directorate of Criminal Investigation (DCI) is investigating the matter. The Kenya Power Company is continuously working to enhance customers experience and improve the existing controls, to forestall such occurrences in future.

(4) The Committee is scheduled to hold a follow up meeting with Ministry of Energy and the Kenya Power Company to interrogate the matter further.

Mr. Deputy Speaker, Sir, as I conclude, in the next quarter, the Committee proposes to focus and pay special attention to county visits and in particular, a visit to the Lake Turkana Wind Power Project in Marsabit County, oil sites in Turkana County and visits to Nakuru County and Isiolo County.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Seneta. Good luck in your next quarterly activities.

Next is the Chairperson of the Standing Committee on Finance and Budget. That item is deferred.

ACTIVITIES OF THE COMMITTEE ON FINANCE AND BUDGET

(Statement deferred)

Finally, Chairperson Committee on Health, Sen. (Dr.) Mbito. That is the last item under Statements today.

ACTIVITIES OF THE COMMITTEE ON HEALTH

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order 51(1) (b) to make a Statement on the activities of the Standing Committee on Health for the period commencing 1st of July to 31st September, 2019.

Mr. Deputy Speaker, Sir, during the period under review, the Committee held a total of 13 sittings, considered three Bills, two Petitions and three Statements.

The Committee also held five engagements with the stakeholders. In respect of the Bills, the following were considered:-

- (a) The Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018)
- (b) The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No.38 of 2018)
- (c) The Cancer Prevention and Control (Amendment) Bill (Senate Bills No.9 of 2019)

With respect to the reports, the Committee considered the following reports, which were laid on the Table of the Senate.

- (1) The Report on the Petition to the Senate on health services conditional grant to the County Government of Uasin Gishu
- (2) Report on the Petition concerning deteriorating health care services in West Pokot County
- (3) Report on a fact finding tour of Kitui, Machakos and Kajiado Counties
- (d) Report on Kenya Medical Supplies Authority (Amendment) Bill (Senate Bill No.38 of 2018)
- (e) Report of the Committee on the Mental Health (Amendment) Bill (Senate Bills No.32 of 2018).

Mr. Deputy Speaker, Sir, the Committee is currently considering a Statement requested by Sen. (Prof.) Kamar on the nature of compensation given by the national Government to Uasin Gishu County following the conversion of the Eldoret District Hospital into Moi Teaching and Referral Hospital (MTRH).

The Committee considered the response from the Ministry of Health and observed that the explanation from the Ministry was inadequate.

The Committee undertook a fact-finding visit to Ziwa Sub-County Hospital. Further, the Committee also considered the Statement requested by Sen. Mwaura regarding the stalled construction of Thogoto Level 4 Hospital in Kiambu County and has scheduled meetings with the relevant stakeholders.

The Deputy Speaker (Sen. (Prof.) Kindiki): How long is your Statement, Chairperson?

Sen. (Dr.) Mbiti: Mr. Deputy Speaker, Sir, I will be through in a minute. The Committee is also considering a Petition concerning individuals with autoimmune connective tissue disorders.

During the period under review, the Committee participated in the Health Summit held on 14th and 15th of August, 2019, which was organized by the Ministry of Health.

Mr. Deputy Speaker, Sir, during the period under review, the Committee held meetings with the BIBA International to deliberate on a process of making the public aware on the issues concerning the environment, food safety, health and biodiversity.

The Committee also held a meeting with Blood Link Foundation regarding proposed legislation of the Kenya National Blood Transfusion Service and its necessity, owing to the withdrawal of funding to the fund operations by the National Blood Transfusion Service.

Mr. Deputy Speaker, Sir, to summarize, the Committee intends to carry out the following activities during the next quarter:

- (a) hold meetings to address the operations of Kenya Medical Supplies Agency (KEMSA), which will also look into why various counties are not paying the dues to KEMSA;

- (b) hold meetings with the Ministry of Health to deliberate and chart a way forward on the budgetary allocation that is retained within the Ministry yet health is a devolved function; and,
- (c) hold meetings with the Council of Governors, Ministry of Labour and other stakeholders with a view of addressing the welfare of health workers in the counties.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is the end of that particular item.

Hon. Senators, I will reorganize the Order Paper as follows: Orders No. 8, 9, 10, 11, 12, 13, 14 and 16 are deferred.

Next Order!

MOTION

ADOPTION OF CPAIC REPORT ON INQUIRY INTO FINANCIAL OPERATIONS OF VARIOUS COUNTIES FOR FY2014/2015

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

(Motion deferred)

COMMITTEE OF THE WHOLE

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) (AMENDMENT) BILL (SENATE BILLS NO. 2 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL (SENATE BILLS NO. 38 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO. 39 OF 2018)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY TOURISM BILL
(SENATE BILLS NO. 5 OF 2019)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE STREET VENDORS (PROTECTION OF LIVELIHOOD)
BILL (SENATE BILLS NO. 10 OF 2019)

(Committee of the Whole deferred)

BILLS

Second Reading

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

(Bill deferred)

Second Reading

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

(Sen. Kwamboka on 6.11.2019)

(Resumption of debate interrupted on 6.11.2019)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cherargei, are you on this one? No, you are not on this one. This is resumption of debate. Can the Mover reply? The Mover is not here and I see no requests.

I direct that debate closes and the Division be taken tomorrow.

(Bill deferred)

Second Reading

THE ALTERNATIVE DISPUTE RESOLUTION BILL
(SENATE BILLS NO.19 OF 2019)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kasanga, are you ready or should we go to the next Order first? If you are ready, proceed.

Sen. Cherargei, be patient. I am sure when you sit, you will exhaust your mission.

Sen. Kasanga: Thank you, Mr. Deputy Speaker Sir. I beg to move that The Alternative Dispute Resolution Bill (Senate Bill No.19 of 2019) be now read a Second Time.

Mr. Deputy Speaker, Sir, I want to notify the House that Alternative Dispute Resolution is also referred to as ADR. So, when I make the reference to ADR, I am referring to it. At least, it will help us to move faster.

Let me start by thanking several people who have walked with me in this journey. I wish to thank this House because we started this process with a sensitization breakfast courtesy of the Chartered Institute of Arbitrators Kenya (CIAK), where Senators learnt the different process of ADR. They were listed down for us to understand that mediation, conciliation, traditional justice systems are a part of what we call ADR.

I also thank the Rt. Hon. Speaker, Kenneth Lusaka, for giving me this challenge. After the sensitization breakfast, he said that we should live on and do a Bill. I took up the challenge, and I am grateful that he saw the capacity in me to do so.

I also thank the Chartered Institute of Arbitrators Kenya, of which I serve as a Committee member in the branch, for being champions of ADR in the country and giving me the support to do what we are doing here today.

I also want to thank the Attorney-General's Office for giving me the encouragement and support, and also for facilitating some of the drafters who came from there when we started this process.

Let me also thank the Nairobi Center for International Arbitration (NCIA) and the Judiciary because we started this journey together and they facilitated consultative meetings that led to the first draft of this Bill.

Let me also thank the court-annexed mediation team; National Security Council (NSC) from the Judiciary, who run the court annexed mediation programme that has been very successful in the country. They have been rolling out quite effectively around the counties. This committee has been very instrumental in this journey, and I want to thank them very much for their support.

I also want to thank the International Development Law Organization (IDLO), who have been a key organization that has really supported the Judiciary when it comes

to matters of mediation, as well as all research towards alternative dispute resolution - and especially the traditional justice systems.

In a very special way, I want to thank Dr. Charles Otieno, who was my consultant when it comes to matters legislation and policy. He was very instrumental in spearheading and guiding the process towards the policy and the legislation towards ADR. His commitment and the sacrifice that he gave to the process is absolutely commendable. I pray that God blesses him for what he has done for this purpose.

The Deputy Speaker (Sen. (Prof.) Kindiki): Who is being blessed?

Sen. Kasanga: His name is Dr. Charles Otieno. He is a consultant on legislative matters.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay.

Sen. Kasanga: Mr. Deputy Speaker Sir, the aim of this Bill is to put a legal framework for the settlement of certain civil disputes by conciliation, mediation and traditional disputes resolution mechanisms. As we know, we always have disputes in life and have come to learn that not all disputes need to go to court. As it is, the courts are already overwhelmed.

I was privileged to be invited for an ADR consultative meeting that was hosted by the Judiciary on Monday this week. It was graced by the Chief Justice himself. When the statistics on the costs of taking disputes as opposed to an alternative in other countries were forwarded, it is clear that we are losing a lot of money and a lot of it is being withheld. We know that the Kenya Revenue Authority (KRA) has been crying that a lot of their money is being held by court cases. This could easily be resolved faster through the ADR system.

Mr. Deputy Speaker Sir, Chapter 10 of the Constitution establishes the Judiciary as one of the three arms of the national Government. The mandate of the Judiciary is to deliver justice. We agree that these court processes may be lengthy, and it is time for us to look into other areas, so that we can save on the backlog that is affecting our Judiciary today.

Article 48 of the Constitution obligates the State to ensure access to justice to all persons. Article 159 (2) provides the principles to guide the courts and tribunals, while exercising this judicial authority. One of the principles is to promote the alternative dispute resolution mechanisms. In our case, we talk of conciliation, mediation, arbitration and traditional dispute resolution systems. However, we already know that arbitration is guided by a law which is already in use. Therefore, this Bill will be looking specifically to conciliation, mediation, and traditional dispute resolution systems.

This Bill seeks to implement Articles 48 and 159 (2) of the Constitution in this regard. We are looking to provide a framework. In fact, when Sen. Ochillo-Ayako was asking me what exactly I want to achieve in this earlier today, we concluded that what we want to do is make professional what is already happening in the industry. We already have mediators, conciliators and traditional justice systems that have been in place since time immemorial. The question is: How professional is it? What is guiding how they are regulated? How are they paid and trained? These are the issues we want to address in this Bill.

We also want to provide for the process of alternative dispute resolution. This is how persons can use these three methods; and the role of the parties, the court, and the

person who is facilitating the dispute resolution. All these steps have to be taken up for recognition and enforcement of the settlements that come out of it.

Part I of the Bill provides for interpretation, the objects and the application and the guiding principles of the alternative dispute resolution. Clause 3 of the Bill sets out the objects. Some of the main objects are to:-

- (a) give effect to Article 159(2)(c) of the Constitution;
- (b) provide an effective mechanism for amicable dispute resolution;
- (c) promote a conciliatory approach to dispute resolution;
- (d) facilitate timely resolution of disputes at a relatively affordable cost;
- (e) facilitate access to justice;
- (f) enhance community and individual involvement in dispute resolution; and,
- (g) foster peace and cohesion.

As you can see, this is a far-reaching Bill, which we shall be seeking a lot of support for.

Clause 4 of the Bill will apply to certain civil disputes. From the consultations we have had, it is clear that we need to define which these certain civil disputes are, so that we do not give a Bill that brings more confusion because of issues of public interest.

Whereas dispute resolution mechanisms are mostly party driven, the Bill, under Clause 5, will give some guiding principles. These are general guiding principles when it comes to alternative dispute resolution. First is the voluntary participation. You cannot be forced to go into a dispute resolving mechanism if you do not want to. There is right to information. You cannot be dragged through a process of which you do not have information.

The other one is confidentiality. We pride ADR for being confidential. This is also being entrenched in the Bill and in determination of disputes in the shortest time practicable. This is the true essence of ADR.

Impartiality of the mediator, conciliator or traditional dispute resolver and the importance of disclosure of any conflict of interest that might arise is very central and a key pillar to ADR. There is also the requirement for a conciliator, mediator or a traditional dispute resolver to facilitate disputes, which he or she is competent in to facilitate, as opposed to just anybody running along with the process.

Of course, there is the ability of the parties to use one or more dispute resolution mechanisms in an attempt to resolve their disputes. The beauty of ADR is that you are not tied to one process. If you try conciliation and it does not work, you can try mediation. If it does not work, you can try a dispute resolver. There is nothing that stops you from trying any of the methods to solve your dispute in the best, fastest and cheapest way possible.

Part II of the Bill provides for accreditation and registration of conciliators and mediators. Clause 10 is also pushing for code of conduct for conciliators and mediators. One of the issues that came out in the meeting that we had on Monday with the Chief Justice was their court annexed mediation and the need for a code of conduct for their mediators. The push for a code of conduct is part of what we are trying to do, so as to bring order to this profession of ADR. If we do not put measures as a country today, we will begin to lose our place in the global platform. I am passionate about code of ethics, standards and integrity. How can we play internationally or encourage disputes to be resolved on our land if we cannot guarantee integrity of our dispute resolvers?

Part III of the Bill provides for conciliation and mediation. It sets out how persons can use the processes through appointment, the role of the parties, the role of conciliator or mediator, the commencement and the entire process, attendance and representation. The Bill has gone ahead to give some structure to the process itself. This is an area where some of the stakeholders have felt that we should not put too much formality to the process. We shall be looking forward to debate for us to find the best way possible, so as to lay a framework that can be used by any person.

Clauses 11 and 12 provide that parties in the dispute can use mediation and conciliation voluntarily as may be directed by the courts. We have added a rider there and the courts are free to send parties to try the disputes through other means before going to court.

Confidentiality is in the heart of conciliation and mediation, and Clause 22 of the Bill provides for that. The Bill also provides that there may be necessity to disclose a matter that is in conciliation or mediation. Clause 22(5) states that:-

“The confidentiality requirement under this Act shall not apply where disclosure is—

- (a) required by law;
 - (b) necessary to protect a child or a vulnerable person;
 - (c) necessary to report or lessen a serious and imminent threat to the life, health or property of a person;
 - (d) necessary to report the commission or prevent the likely commission of an offence;
 - (e) necessary for the purpose of enforcement of the settlement agreement;
- or
- (f) necessary to prove or disprove a claim or complaint concerning negligence or misconduct of a conciliator or mediator based on conduct occurring during conciliation or mediation.

These are the only instances when confidentiality may not apply. Otherwise, confidentiality is a key pillar to ADR.

Clauses 24 and 25 provide that when conciliation or mediation comes to an end, the role of the conciliator or mediator also comes to an end. Their roles come to an end because the settlement has either been agreed or the parties have wished not to proceed with the process. It could also mean that they have seen that there is no reconciliation or resolution, hence they can opt to choose another method.

Due to the nature of diversity of traditional dispute resolution mechanisms, Part IV of the Bill provides for that purpose. The application of traditional dispute resolution mechanisms in the country involves customary laws and those traditional dispute resolvers are drawn from our communities. I am aware and the Committee on Legal Affairs and Human Rights is aware of the issues around the traditional dispute resolvers and the fact that we cannot formalize what is otherwise working as informal.

A few key fundamental issues have to be upheld in line with our Constitution. There are circumstances where traditional dispute resolution does infringe and violate on human freedoms and rights. This Bill seeks to address this under Article 24 of the Constitution, which requires customary laws to be consistent with the Constitution. Therefore, to ensure that the processes are fair, there is need for some degree of regulation.

We do understand that this regulation has to be very unique. Therefore, Clause 25 of the Bill provides that a traditional dispute resolver shall be impartial and apply the rules of natural justice, and shall be acquainted with the customary law under which he will practice.

Clause 28 provides that the parties can submit an alternative dispute resolution to a court of law, and this can be referred back to a traditional dispute resolution process. It is fairly open.

Whereas conciliators and mediators are required to be registered and accredited, it is not mandatory for the alternative dispute resolution committee to register traditional dispute resolvers. I want to be clear on this because I fear that Kenyans may think that we want to register every traditional dispute resolver, and it may not be practical in any sense of the way. However, we want to provide the possibility of a register for traditional dispute resolvers. This can help the courts to refer certain matters to traditional dispute resolvers. It is for that reason that we are requiring that the committee may keep a register of the traditional dispute resolvers.

Clauses 29 and 30 provide that when traditional dispute resolution comes to an end, then a decision has been reached. However, if for any reason, a party to that process is not happy with the decision, we have a part that will require or provide for recourse in court. That is under Part V of the Bill.

Clauses 29 and 30 are also proposing that the outcomes of traditional dispute resolution processes may be in writing and the words here are 'may be in writing'. This is there for the parties who have participated in this process, but may want to have recourse in court or may need the settlement to be enforced. There must be a way of having a written outcome.

I know that a lot of conversation will go around the traditional dispute resolution processes. I call upon the Senators to give as many views as possible towards this to help us enhance the Bill.

Part V of the Bill provides for recourse in court, as I had mentioned earlier, and this is for recognition and enforcement of settlements. Clause 31 requires an advocate to a person to advise that person to consider resolving a dispute by way of ADR before filing the case in court.

Equally, Clause 32 obligates a court to confirm that parties have considered ADR mechanisms prior to filing a dispute in court. This is the revolutionary part of it. It has happened in other jurisdictions. In certain civil disputes, there must be a demonstration that parties have first attempted other methods of dispute resolution. This Bill requires this to happen.

The purposes of all these is to ensure parties are aware of and there are afforded an opportunity to consider alternative dispute resolution earlier enough in their dispute resolution process. This also helps inform costs and case management. In the process of resolving dispute through alternative dispute resolution, certain issues may arise that require the intervention of the court. We have looked into areas in the dispute resolution process under Alternative Dispute Resolution (ADR), where the courts may have to intervene.

We agree that it is party driven process; it is confidential. The courts may not be part of it, but there are other times when the intervention of a court is required. Such issues have been identified in the Bill. For instance, the need for interim protection for

whatever issue, or the matter can be resolved through ADR. In that case, the court can intervene over an issue and say: “No, you go and solve that issue in that manner.”

Through the appointment and partiality of a conciliator, mediator or traditional dispute resolver, the courts may help you in determining whether a conciliator, mediator or resolver is impartial. When there are times when you need to challenge an outcome or a settlement agreement, then of course, the courts must be called upon.

To address such issues, Clause 33 affords an opportunity to approach a court. Clause 34 provides for stay of the proceedings if they have already started before a court; that then these issues can be referred to a dispute resolution process.

Clauses 35 and 36 provide for recognition of a settlement agreement. Such an agreement is binding and is recognized by a court of law. These agreements may only be refused on grounds such as where there is party who is not in capacity or where the settlement agreement is invalid or the party in the process did not participate or failure to conduct the process in accordance of the law in terms of fraud or corruption or undue influence or where the settlement agreement is contrary to public policy.

Part VI of the Bill provides for miscellaneous provisions. Part VII of the Bill provides for transitional provisions. I want to dwell on this a little bit because I know there is a bit of debate that would come into it.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am not sure how much more time you have.

Sen. Kasanga: The light is not red yet.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is why I am saying I am not sure.

Sen. Kasanga: Mr. Deputy Speaker, Sir, I will not dwell too much on it. Let me just give highlights, so that the Senators can debate on this one.

Clause 40 seeks to protect the Employees and Members of the Mediation Accreditation Committee that was established under Section 59(a) of the Civil Procedure Act.

The Deputy Speaker (Sen. (Prof.) Kindiki): You can take time to finish in style; you have a bit of time. Finish in the manner you would have wanted to.

Sen. Kasanga: Thank you, Mr. Deputy Speaker, Sir.

Clause 40 of the Bill protects Employees and Members of Mediation accreditation Committee that was established under Section 59 (a) of the Civil Procedure Act.

Clause 41 partly says: “Registers kept registration effected and certificates issued-- Let me go into the depth of this change that we want to make in the Civil Procedure Act. The Civil procedure Act, under Section 59 (a) and (d), provides for resolution of disputes through ADR processes. However, there is a bit of detail that lacks in there. As a result, this Bill proposes under Clause 34 to amend this part, so that we can seek to rename Mediation Accreditation Committee as an Alternative Dispute Resolution Committee, so as to take into account conciliation and traditional dispute resolution mechanisms. They can all fall under that.

Secondly, we want to reduce the number of the membership of the Committee from 12 to 7. We want to provide the term for the members in the committee to be three years renewable once. This is not provided in the Civil Procedure Act. We want to revise the functions of the Committee and provide for the designation of the ADR registrar, staff

and functions of the registrar. We want to set out under what circumstances a Member of the Committee ceases to be.

We want this Committee to be the vehicle that keeps the register and give accreditation to the mediators, conciliators and keep a register of the traditional dispute resolvers.

It is in a time where our country is going through austerity measures, and we are looking at saving the country some money. It will be an easiest vehicle to adopt. We can also put order to already existing members who are practicing. We have mediators and conciliators who are now practicing. We have many traditional dispute resolvers who have been practicing for a long time. This is the easiest way of putting order without requesting or requiring that money be put in place or a new council be formed. As we know, the country has no money right now. We have been told and do not know where the money is.

The Deputy Speaker (Sen. (Prof.) Kindiki): We hear.

Sen. Kasanga: We just hear or read it in social media. So, I cannot quote anyone or anything.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is alleged that there is no money.

Sen. Kasanga: Yes, it is alleged that there is no money.

Mr. Deputy Speaker, Sir, whereas there is no data as to the number of disputes resolved through ADR processes in the country, it is believed there are no more disputes resolved through the ADR than through the judicial processes.

We accept that the backlog in the Judiciary is so big and we are losing a lot of money because of how long disputes take. I remember when we were at the ADR forum on Monday, where the Chief Justice (CJ) graced the occasion, there were statistics from the United States of America (USA) that were presented. They had actually gone ahead and done the statistics of showing when a case goes through the formal judicial process *vis-à-vis* if it goes through an ADR process. The savings in terms of time and cost are so significant. They are in the ten-folds.

It is only now that we have data because of the court annex mediation process that is going on. The Judiciary can tell us they have 2,500 cases so far that have been resolved successfully through the court annex mediation. We then know that we have a lot of success.

The fact that we have never documented before, we do not really know the impact of ADR. Through this process and amending the civil procedure Act to set up the dispute resolution committee and have the registrar with his functions described in the Bill, we shall begin to have tangible data. We can say for sure that the impact that ADR has in our economy is significant. The Cabinet Secretary (CS), Hon. Adan, who was at the function also alluded to this.

Additionally, through this Bill, we look forward to not only putting a lot more structure than just the dispute resolution aspect of it, but also our country in a platform where we can say that even others can come and resolve their disputes here. Given our international and huge contracts, we can have their disputes settled here. As you know, for many of our big contracts, the seat of resolution is not in this country. So, we miss out on the gains that we would have through this – I do not know whether I would call it dispute resolution tourism. There are countries where people go to resolve their disputes, but people cannot come to Kenya. Until we have our systems correct or deal with the

issues of code of conduct of our members, we continue to lose out on these potential areas.

There are potential areas where as a region we could be the centre. Kigali is already doing much better than we are through the centre. Increasingly, we are seeing a lot of disputes being resolved through Kigali. Kenya needs to wake up because we are losing a lot to the region. We are losing our centre and hub as being the pioneers and the best at doing some of these things.

Through this Bill, we will become a centre and let our mediators, conciliators and traditional justice system be in line with the Constitution. Let us show that we also have world class and standards towards our dispute resolution processes. As I beg for support from the House, I have shared a lot of notes, so that Members can acclimatize to the Bill and, at least, give their contributions to it.

I beg to move and request Sen. Faki to second.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kasanga. You have done very well today. I think these things come with experience.

Proceed, Sen. Faki.

Sen. Faki: Asante, Naibu Spika, kwa kunipa fursa hii kuunga mkono Mswada wa Sheria ya Mbinu M'badala za Kutatua Mizozo ya Kibiashara na ya Kijamii.

Kwanza, ningependa kumpongeza Sen. Kasanga, kwa kutayarisha Mswada huu; na pia kwa hisia nzito ambazo amezionyesha kwa kutaka kupitishwa Mswada huu. Namuunga mkono na kumshauri kwamba aendelee na moyo huo huo, ili aweze kuweka alama katika kazi yake katika Bunge hili la Seneti.

Pili, maswala ya kutatua mizozo kwa mbinu mbadala sio maswala ya sasa; bali yamekuwa nasi kwa muda mrefu katika nchi yetu ya Kenya. Kabla ya kuja Mkoloni, kila jamii Kenya ilikuwa na mbinu zake za kutatua mizozo. Kuna wengine ambao walikuwa wanatumia viapo. Wengine walikuwa wanachimba shimo, halafu unaambiwa ukiruka shimo hili, basi itakuwa haukufanya makossa. Iwapo utatumbukia katika hilo shimo, basi utakuwa umefanya makosa. Kwa hivyo, kila jamii ilikuwa na mbinu zake m'badala za kutatua mizozo yake.

Walipokuja Wakoloni, walituletea mahakama za kisasa, ambazo zilitumika kama njia ya sawa sawa ya kuamua matatizo na mizozo ambayo tulikuwa nayo, kama jamii; na pia baina ya Serikali na wananchi. Lakini jinsi muda unavyokwenda, tumeona kwamba mahakama zimelemewa na kazi hii.

Kwanza kabisa, ningependa kupongeza mahakama kwa kujaribu kupunguza mlumbiko wa kesi. Lakini utapata pia kwamba kwa sababu ya upungufu wa rasilimali za fedha, za binadamu na pia majengo, utapata kwamba mahakama nyingi zinakaa na kesi kwa muda mrefu, hadi baadhi ya wahusika wanafariki dunia kabla ya matatizo yao kutatuliwa. Kuna haja ya kuangalia mbinu mbadala ya kuweza kutatua mizozo kama hii. Ndivyo Katiba yetu, katika Kifungu cha 159(2), kinasema kwamba katika kutekeleza haki, mbinu za kitamaduni za kutatua mizozo zitatumika ili kuhakikisha kwamba haki inapatikana katika mahakama zetu. Kifungu cha 48 pia kimetilia mkazo kwamba kila mtu atakuwa na haki ya kutafuta haki katika mahakama, na mahali pengine ambapo haki inapatikana. Kwa hivyo, Mswada huu utachangia pakubwa ile ari ya Wakenya kutatua matatizo yao kwa njia ya usalama bila matatizo.

Tayari tuko na sheria ya Usuluhishi; yaani *Arbitration Act*, ambayo inatumika katika maswala haya. Lakini sheria hiyo suluhishi haipatikani kwa watu wengi sana, kwa sababu matatizo mengi huwa hayana mikataba. Tukiangalia zaidi katika Sheria ya Usuluhishi, yaani *Arbitration Act*, inaangalia zaidi makubaliano ya kibiashara. Sheria hii iko na kifungu kinachosema kwamba iwapo kutakuwa na mzozo au jambo lolote ambalo linaleta utata, utata ule utapelekwa kwa kamati ambayo itasuluhisha kupitia kwa *Arbitration Act* ama taasisi zingine ambazo zimewekwa kusuluhisha matatizo hayo. Kwa hivyo, sheria hiyo inalenga kusaidia upatanishi na usuluhishi, yaani *conciliation and mediation*, ambazo ndizo zilizolengwa na sheria hii.

Conciliation inafanyika hivi sasa, kwa sababu, ukienda katika sehemu nyingi katika kaunti zetu, kwa mfano kule Mombasa, kuna sehemu ambayo iko katika eneo la Miritini katika Jomvu *Constituency*, ambapo kila Jumapili, watu walio na matatizo ya kijamii – kama matatizo ya ndoa na matatizo madogo madogo kama ya mipaka – wanakuja kukaa chini na kuna wazee ambao wanakuja kuyatatua matatizo kama hayo.

Kwa hiyo, Sheria hii, itaweza kusaidia kuleta kutambulika kwa kazi ambazo zinafanyika kwa wale ambao tayari wanafanya kitamaduni, na vile vile watu wengine ambao wameingia katika taaluma hii kwa sasa. Kwa mfano hivi sasa, kuna vyama tofauti ambavyo vimeundwa ili kushughulikia masuala ya usuluhishi. Hivi vyama vyote vinataka sheria ambayo itahakikisha kwamba wanaweza kufanya kazi yao bila kupata matatizo.

Kwa hivyo, lazima tutumie mbinu za jadi za upatanishi sasa. Hii ni kwa sababu umefika wakati ambao tunaona kwamba mbinu za kisasa, kama vile mahakama, zimekorogeka, na wananchi hawawezi kupata haki kwa haraka invyotakikana.

Lakini ninapozungumzia mbinu za kijadi, simaanishi zile mbinu ambazo zilikuwa zinatumika wakati wa nyuma. Kwa mfano, kule Kilifi, kulikuwa kuna mahali ambapo watu wanapewa shoka la moto. Kwa mfano, ukishtakiwa kwamba umeiba na umekataa kukubali hayo mashtaka, unapelekwa kwa mahakama ile ya kitamaduni, na unaambiwa, “Shika shoka hili la moto; kama umefanya makosa, shoka litakuchoma; kama haukufanya makosa, shoka halitakuchoma.” Kwa hivyo, hatuwezi kutumia mbinu kama hizo katika karne hii ya ishirini na moja.

Vile vile, tumesema kwamba sheria hii inatoa fursa ya kuandikishwa kwa wanaotekeleza taaluma hii ya usuluhishi na taaluma ya upatanishi. Hii ni kwa sababu kwa sasa, wengi wao hawajakuwa na mwongozo ambao utawapatia nafasi ya kuwatayarisha. Kama alivyotangulia kusema Sen. Kasanga ni kwamba kitu muhimu ambacho tunafaa kuangalia, ni kwamba wale ambao watakuwa wanafanya kazi hizi za upatanishi na usuluhishi, watakuwa ni watu waadilifu. Tabia zao na hulka zao zinafaa ziwe sawa kabisa na wananchi ama jamii inawakubali kwamba hawa wanafaa kuwa wasuluhishi.

Naibu Spika, tumeona pia kwamba usuluhisho na upatanishi zote zinaweza kutumika kusaidia kupunguza gharama za mahakamani. Utapata kwamba katika mizozo mingi inayokwenda kotini, gharama za wakili, koti na labda za mashahidi zinakuwa nyingi, kiasi ambacho Wakenya hawawezi kupeleka kesi zao mahakamani ili zitatuliwe. Kwa hivyo, upatanishi na usuluhishi utasaidia pakubwa kupunguza gharama ya kupata haki katika jamii yetu.

Kfungu cha nne, yaani *Part 4*, kinatoa fursa kwa wale ambao labda hawakuweza kuelewana, kwenda mahakamani kutatuliwa tatizo lao, baada ya kushindwa kutatua tatizo hilo kupitia kwa upatanisho na usuluhishi. Hii sheria inaleta mwongozo, kwamba kabla

ya kwenda mahakamani, watu waweze kupewa fursa ili wakae chini, wajaribu kutatua mzozo ule bila ya kwenda kwa mahakama, kama nafasi ya kwanza ya kujaribu kutatua tatizo hilo. Sheria hii inatoa nafasi ya kukaa chini kabla ya kwenda mahakamani; na baaadaye, ikiwa hawataweza kuelewana, vile vile mwisho wanaweza kwenda mahakamani ili kutatua tatizo hilo.

Bw. Naibu Spika, sheria hii pia inatoa fursa ya kwamba yale makubaliano ambayo yataweza kupatikana, yataandikishwa na kupelekwa mahakamani kama makubaliano ambayo yamekubaliwa katika mzozo ule. Hii itasaidia pakubwa kuona kwamba haki inatendeka. Mara nyingi, makubaliano yanayofanywa katika vikao vya wazee huishia kwa chifu. Chifu anaposhindwa kuyatekeleza, mara nyingi huyapeleka kwa polisi, ilhali swala lile si la kupelekwa kwa polisi, bali ni swala la kupelekwa mahakamani kuhakikisha kwamba kunapatikana makubaliano.

Bw. Naibu Spika, fursa hii ya kuandikisha makubaliano yale na kuyapeleka mahakamani itasaidia pakubwa kuhakikisha kwamba haki inatendeka. Ie amri ya mahakama itakuwa rahisi kutekelezwa kuliko zile ambazo zinafanyika hivi sasa.

Sheria hii inatoa fursa ya kuhakikisha kwamba mbinu mpya za kutatua mizozo, suluhisho na upatanishi zinatumiwa katika kutatua mizozo kama hii. Kuna taasisi kadhaa ambazo zimeanzishwa nchini ambazo zinatoa mafunzo ya taaluma ya upatanishi na usuluhisho. Hizi taasisi zitasaidia pakubwa kuhakikisha kwamba watu wanapata mbinu mpya ambazo zitasaidia kutatua matatizo hayo. Pia, sheria hii inatoa mwongozo kwamba wale ambao wataweza kufanya upatanisho na suluhisho kuandika ripoti yao, ambayo itaashiria ya kwamba ule mzozo umetatuliwa ama haujatatuliwa, na kupelekwa mahali pengine.

Bw. Naibu Spika, sheria hii itasaidia pakubwa kupunguza malimbukizi ya kesi, na gharama ambazo ziko mahakamani. Kama ni tatizo la biashara na mahakama imechelewa kutoa uamuzi, ina maana kwamba pesa za mwekezaji zitafungwa katika mzozo ule, na vile vile hatutaweza kukuza uchumi wetu vile inavyotakikana.

Ningependa kutaadharisha kwamba kuna maswala mengine ambayo yanahusiana na mipaka. Kwa mfano swala la wasichana kubakwa. Wengine wangependa kupeleka kesi hizi mbele ya wazee ili walitatie; na wengine watasema kuwa lipeleke mahakamani ili polisi waweze kulishughulikia. Maswala kama haya ni lazima yaangaliwe, kwa sababu mara nyingi haki haipatikani. Juzi, tulipozuru Gereza la Kitui, tulipata kwamba vijana wengi ambao wameekwa ndani, wameekwa kwa makosa ya kusingiziwa, kwamba walibaka, na wale ambao walidaiwa kubakwa wako nje. Wameendelea na maisha yao na labda wameolewa na watu wengine, wakati wale wanatumikia vifungo na kuzuiliwa katika rumande kwa maswala ambayo yangeweza kutatuliwa.

Ningependa kuunga mkono Mswada huu wa Sen. Kasanga. Nawasihi Maseneta wenzangu wausome kwa kina, na waunge mkono swala kama hili.

Asante, Bw. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Order, Members.

(Question proposed)

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. I rise to---

The Deputy Speaker (Sen. (Prof.) Kindiki): Why are you smiling like you have been ambushed?

Sen. Halake: I thought I was not the next one.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is your request that has ambushed you.

Sen. Halake: Mr. Deputy Speaker, Sir, I rise to support this very important and timely Bill, The Alternative Dispute Resolution Bill, brought by Sen. Kasanga. She has been bringing very innovative pieces of legislation to this House. I would like to congratulate her for the innovation that she is bringing to the legislative process, and for being very persistent in making sure that the rights of citizens are assured, through very innovative pieces of legislation.

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

[The Temporary Speaker (Sen. (Dr.) Lelegwe in the Chair]

Mr. Temporary Speaker, Sir, I would also like to thank her for creating awareness on this issue. I did not think about the fact that we could have an alternative methodology for dispute resolution. She has also taught us a lot of the key players in this, and a lot of new terminologies, from ‘conciliators’ to ‘mediation process.’ Some of us who are not in the alternative dispute resolution space have also learned a lot.

This is very important, given the cost effectiveness and also the issues of access to justice. Many people who need disputes resolved are largely unable to do so, because of the exorbitant costs related to legal fees and travel to courts of law. This is especially so in the rural areas, where the closest court of law, if it is the High Court or Court of Appeal, is several kilometers or hundreds of kilometers away from where they live and work.

Mr. Temporary Speaker, Sir, this is also a rights-based approach, as given that under Article 21 of the Constitution on implementations of rights and fundamental freedoms, which states that”-

“(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.

(2) The State shall take legislative policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43.”

This policy measure is introduced in a very innovative process of alternative dispute resolution that will ensure access and cost effectiveness. It will also ensure that our elders and our traditional systems and mechanisms of dispute resolution are respected, and that our elders are given the relevance, respect and also the utilizations of their capital, which is the knowledge and experience they have gathered over many years.

Mr. Temporary Speaker, Sir, in the African tradition, we are all aware that our elders sat under a tree, and made sure that issues affecting their people were resolved without the exorbitant and sometimes very conflicting, controversial and adverse positions that are usually taken through a court process. These positions eventually lead to seeing people being killed through revenge happening, and so on, and so forth. I like

the idea within this Bill on conciliators, who are going to take care of this by using traditional mechanisms. These mechanisms in the African culture are very robust and have been tried over a long period of time.

Mr. Temporary Speaker, Sir, when we were prosecuting a Bill on taking care of the elderly, one of the things that I thought of and contributed on, was that our elders do not just need handouts. They can be used so that they can earn a living, using the wisdom and experience they have, especially in this area as proposed in this Bill.

Other issues around plight of review and appeal against the decision of the committee, and the system that is very robust within this Bill, the revocation of registration, accreditation and registration of conciliators and mediators. Initially, I had a problem thinking whether this will, once again, become an issue where we do not know how the conciliators have come about, and they might not be very useful. I was very impressed that this Bill has taken care of all these issues, because it is a very robust and clear process of accreditation and registration of mediators and conciliators.

There is also the content of it, as well, that has been taken care of in terms of the dispute, and it provides for resolution through alternative dispute resolution. The requirements of the law on how the dispute should be settled through alternative dispute resolution and all these processes have been taken care of. However, one thing I would just add is to make sure that even as we put in place all these very robust mechanisms, we should ensure that they are applied properly.

What happens is that we have got very good frameworks in this country that are not applied. Consequently, undesired consequences can arise, where we find we have the write-ups, frameworks, policies and procedures. However, because they are not implemented or adhered to properly, then we have an undesired consequence of perhaps the conciliators or mediators not being very effective. They may also be partisan as opposed to being impartial, as was intended by this Bill.

This Bill talks of contractual obligations that have clauses, which are going to provide for alternative mechanisms.

Mr. Temporary Speaker, Sir, I have been doing this quite often now, including a few months ago, during the Eid-ul-Fitr celebrations, when I visited prisons in Isiolo. I had a bit of a concern around Sen. Faki's assertion, that rapists were being held and the people that they raped are continuing with their lives; that is how it should be. May be it is my Kiswahili language that let me down.

I was in Isiolo prison. I saw a young lady with her baby, who was two months old, waiting for her hearing. She said that she bought a goat which had apparently been stolen. Instead of the community sitting together and deciding whose goat it was, who sold it and what happened, we found ourselves in a situation where a two-month old baby was condemned to a prison. Since the next hearing was a bit far away, the young mother was incarcerated there with her baby, waiting for her case to be heard. These are issues that would never arise if we had alternative mechanisms in place, or if we utilised the existing – even if not formal – written procedures and structures that are in place.

It is about time we embraced these alternative mechanisms, and a lot of money will be saved. Our courts are already suffering budget cuts. They do not even have proper communication because of the fact that their budgets have been cut. This would ease the burden on our courts and communities themselves. Many a times, communities themselves have had to suffer very much. They do not just suffer the cost, but the stress

of having to go through the court process and shuffling between their villages and towns, where these courts are.

Mr. Temporary Speaker, Sir, when people are fined or jailed, those fines do not really benefit the complainant. Yes, they benefit the State, which is okay, because it serves us. For instance, if somebody has stolen your animals, they do not return them if you take them to court; they only pay a fine. That fine does not come directly to the person whose animals were stolen. This is, therefore, a very timely Bill, and I am in support of it.

I had a worry around confidentiality, and through the mediation process, that worry has been taken care of under Clause 22. This clause has it that where a record settlement, agreement or any document submitted or prepared in the course of conciliation or mediation process, it shall be confidential and not submitted to any person who is not a party to the conciliation or the medication process. Once again, as I have said, this is a very good clause. We should make sure those written provisions are implemented.

What I like the most in this Bill is Part IV, which is the traditional dispute resolution mechanism. In the traditional mechanisms, cases like rape should never be taken so lightly as to give some two cows or three goats for the person to go scot-free. Therefore, let us be careful what we are subjecting to the traditional dispute resolution mechanisms, because we know that underage marriages or rapes have been sanitised through some of these traditional methods. We have to be very careful so as not to legalise something that would, perhaps, not be beneficial to our young girls and boys.

Mr. Temporary Speaker, Sir, I respect traditional mechanisms. I know what our elders have done for us. For example, the Borana Community have a very robust system called the *gada* system, which is almost a governance structure in itself. I have a lot of respect for it. If we apply these traditional methods or alternative mechanisms of dispute resolution to the letter, we will see a lot of changes in the way we solve disputes in this country.

The recourse to court, recognition and enforcement of settlement agreements is well taken care of. This is very timely, and it is about time we started to innovate. This is a very innovative Bill. The transitional clauses are reasonable. I support this Bill and look forward to other innovations in our legislative process, such as this that Sen. Kasanga has continued to bring to this House.

Sen. Were: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to contribute in support of this Bill by the distinguished Senator from Makueni, Sen. Kasanga. As usual, this is a well-researched Bill. She does a very good job and I am privileged to contribute to it. It seeks to provide for settlement of civil disputes by other ways other than the court.

Our forefathers had no courts, but no matter the complexity of the disputes or problems, including marital disputes, they were resolved in this manner that is suggested by this Bill. We had no divorce in those years, although there were no courts. This is because there was a better way of resolving issues.

Cases come about as a result of an emotional reaction to an issue. Most of the times when we have an issue, we react emotionally to it, and we sometimes drive the matter all the way to court when still carrying that emotion. Once that emotion wears down, which does not take long, regrets follow. For example, a case will have already

been lodged in court. Therefore, there is need for alternative dispute resolution so that when you reach that point and your emotions are down, you can go back and say, "I need this resolved in other ways."

Mr. Temporary Speaker, Sir, this Bill seeks to recognise and officialise, through legislation, the process of alternative dispute resolution. Court processes take a long time and a lot of money and energy, not just on the courts themselves, but for the parties involved.

In my small village in my county of birth, Busia County, there is a land case that has been going on since I was born. Over the years in market centres and in watering halls, we hear issues of that case. When I think about it, I realise that that matter could easily have been resolved through an alternative dispute resolution mechanism. This is because if you listen to the issues around the case, even if you have not gone to court yourself, in those market centres and watering halls, they are issues that elders could have sat down and resolved. It is case that has gone through a grandfather, a father, a son, and it sometimes takes lives. These are issues which could have easily been resolved by elders.

Mr. Temporary Speaker, Sir, Part II of this Bill seeks to accredit and register conciliators and mediators by a committee that is already established in law in the Civil Procedure Act. These conciliators and the mediators are checked and supervised by the said committee. This Bill also provides that both parties to the matter must agree to the alternative dispute resolution, the mechanism, the conciliator, the resolver, or the mediator. They must be agreeable and even the process must be agreeable to both parties. The Bill encourages the courts to consider or refer matters to Alternative Dispute Resolution (ADR).

This Bill also requires that a court first establishes if other mechanisms have been sought, mainly the ADR, before a matter goes to court.

Mr. Temporary Speaker Sir, Clause 16(2) provides that the mediators are also guided accordingly, so it is not just something that will be done according to the whims of the mediator. There are certain procedures or guidelines that the mediator will follow. The decisions of that dispute resolution mechanism are binding to both parties.

I thank Sen. Kasanga and this Senate for coming up, as usual, with very good Bills that seek to make this country run better, and that are in the true interest of Kenyans.

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I rise in support of the Bill by Sen. Kasanga on ADR. This Bill could not have come at a better time. I want to congratulate the Senator for coming up with this Bill at such a time as this. Why? It is because we are living at a time that this country has been told the budget for the Judiciary may have to be reduced because of what are being called 'austerity' measures.

This Bill seeks to give an opportunity to parties in a dispute to resolve their issues without necessarily going through the formal court process. I am supporting this Bill because there are examples within the region for us to learn from. After the genocide in Rwanda, the court processes that tried to deal with parties in the disputes were clearly overwhelmed. This included the tribunals that were set up by countries from the region. The revival and activation of the *Gacaca* Courts in Rwanda more or less resolved the issues for the people in Rwanda. Today, Rwanda is said to be one of the most peaceful

countries in this region. If those matters were left to the courts and tribunals that had been established by the then government of Rwanda and governments of the region, perhaps the lethargy that led to the genocide would still be present today.

Mr. Temporary Speaker, Sir, I like this Bill because in the eyes of many people, especially ordinary Kenyans, the court process is both punitive and adversarial. Every time a party takes another to court, the disputes almost always deepen instead of being resolved. The good thing about the Bill that has been brought by Sen. Kasanga is that it provides an opportunity for parties in a dispute to appear before arbitrators and dispute resolvers, who are familiar with them. These are people from the same community or village, who deal with their own issues in their own ways.

As it has been said by other Senators before me, before the advent of the Judiciary, as it is today, our elders used to resolve disputes relating to land, family issues, property and even cases of murder. In these issues, there were always ways that were set in which our communities resolved their issues within their jurisdictions without creating more animosity.

Mr. Temporary Speaker, Sir, I wish that Senators who will contribute to this Bill will speak in support of it, so that we may do two things. One, we reduce the amount of time that cases take to be resolved in court. Two, we make dispute resolution accessible and affordable to as many Kenyans as possible.

I beg to support.

Sen. (Eng.) Hargura: Thank you, Mr. Temporary Speaker, Sir. I support this Bill from the outset. First of all, it is in line with our Constitution which, in Article 159(2)(c), envisages or recommends to the courts that they consider alternative means of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. Maybe this is an Act that gives life to that Article of the Constitution. We are, therefore, just doing what we are supposed to do; which is to provide legislation which will operationalize the Constitution.

Mr. Temporary Speaker, Sir, I support this Bill because the normal judicial process, where one has to go to court, is not available in most parts of this country. In my county, it is only Moyale and Marsabit which have courts, yet the county is the largest in the country. We have the far-flung areas which are about 500-600 Kilometres from Marsabit town, where the court is. We have different communities which have been using the traditional dispute resolution mechanisms to sort out disputes, once they occur.

What we are doing here is that we are creating legislation to incorporate our traditional dispute resolution mechanisms into the law, so that it becomes officially a system where when a dispute occurs at the village level, where you do not think you must go the police or that it should be taken all the way to the courts that are available 500-600 kilometres away, you resort to ADR. Recently the Judiciary has started the mobile courts; but from the recent statement of the Chief Justice, it shows that they have already been crippled due to lack of financial resources.

It is good if we regularise our traditional dispute resolution mechanisms. In the rural areas, it is not easy to access the courts. Even when you access them, you need to hire a lawyer, even if it is a civil case, which is expensive. The person who has the problem does not participate in the process. He just sits there and allows a lawyer to talk for him. Therefore, if you have a lawyer who does not understand your traditions or the circumstances surrounding that particular dispute, you will be disadvantaged twice.

However, in the ADR, you can represent yourself and put your case properly. You are also dealing with people you know; not a judge or a lawyer you do not know; or a police officer who will intimidate you. You are dealing with your own elders or people you know. That way, you can articulate your problems well. The conciliators of the traditional dispute resolution, who are the elders, understand the traditions.

You will be advantaged in the sense that you are dealing in an environment which you understand, and which understands you. That way, you will get justice. When you try to sort out these disputes, it must not always be punitive. We must sort it out amicably and ensure that those people stay together without creating hostility among the community. Unlike a case where someone, because he or she knows their way round the courts, will take you to court and even take your own property, which creates hostility in that particular environment. However, this approach will have all of us sit there, justice will be served and the people will continue living together amicably.

I like the way the Bill is structured. The objectives of the Bill are to create effective mechanisms for amicable dispute resolutions; conciliatory approach in solving disputes so that you leave the community better, once that dispute is solved than having them hostile amongst themselves. It is also affordable, because it does not have unnecessary costs of filing a case, and maybe hiring a lawyer. Also, the individual and the community are involved in sorting out that dispute. Right now where we come from, you will find that because of the absence of normal judicial mechanisms, we only use the traditional ways. We have been running on that.

Disputes arise because where there are people, there must be disputes. Therefore, those kind of mechanisms help solve these disputes and communities move together. This also helps to boost cohesion, which is also part of the objectives of the Bill. The Bill aims at fostering peace and cohesion within the communities. That itself creates a positive way of dispute resolution.

The Bill also has limitations. It does not apply to all cases, as shown in Clause 4. This approach is also voluntary and, in the process, the person seeking out the arbitration will have right to information. There will be confidentiality and impartiality in terms of determination, which we expect from the mediators and the traditional dispute resolution elders. Then that way, we have a better alternative way of sorting out our disputes and communities will be able to co-exist.

As we move on, even the issues of congesting our courts will not be there. As it has been clearly stated by my colleagues, who contributed earlier, our prisons and remands are full of people, whose cases would have been sorted out, as much as they would be criminal cases. But still, once they come before the traditional mechanisms or through these conciliation or mediation, then we can sort some cases out, thus decongesting our courts. That is why the Constitution envisaged that when a case comes before the court, let people consider these other means of settling dispute, instead of just going into the regular system, where you have to come with your lawyers.

The other day, we had a civil case that concerns land. The judge referred that case back to the county assembly to mediate between the two parties. If we had a structure like this, maybe it would have been better. Maybe the people to whom it was referred to did not have the qualifications to do that mediation. However, if we have a law which registers the mediators or the conciliators, then it would have added value to that particular process. It required the county assembly Speaker to look for a qualified and

registered mediator to start the process. However, if a law like this was in place, may be the court would have directly referred it to that mediator.

This is the best way to go, because justice is always good if it is served speedily and impartially, unlike what Kenyans are going through when we have a lot of cases in court. This is because they have to go to civil courts, and there is no alternative mechanisms to solve their disputes.

I support the Bill, and I hope that it will go a long way in making sure that Kenyans access justice and resolve their issues amicably. At the end of the day, it will assist in bolstering cohesion, because everybody will be satisfied. The Bill says that if you are not satisfied, you still have the option of going to court. It will be the fast way. If disputes occur in a community, they could best be handled by people of that community. That is why it is always good that if a dispute occurs, it can be best handled by people in that community. That is why some of us have been telling the police that whenever they arrest people on civil issues, they should refer those cases to the elders. If the elders sort them out, that will be good for that community, because no one will feel offended.

Sometimes the systems we have in the place make cases so skewed because of the police practices of who has given what. Other people end up losing what is duly theirs because they did not deal with the police the way the other person dealt with them. This is unlike when you are dealing with elders or people you know, where you will present your case and justice will be served without usurping someone else's right because you know your way round the courts.

I hope that the other Members will support this Bill so that we have a system which will institutionalize our traditional systems of dispute resolutions. This is so that we do not necessarily suffer going to courts, which illiterate people do not understand how they operate. Some of them lose their own rights because they could not defend themselves, or could not afford to hire a lawyer; or the lawyer could not understand their traditional systems of why they behaved in a certain manner. Some of these people end up losing what is rightfully theirs, because those who made the laws did not provide them with the necessary laws which are friendly to the users. However, in this case, you can comfortably defend your case in front of the mediators or elders, whom you know; and coming from that community, they understand how the systems work.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Cherargei: Thank you, Mr. Temporary Speaker, Sir, for this opportunity. From the outset, I congratulate Sen. Kasanga for this wonderful Bill.

I have interacted with this Bill for some time now through my Committee. I am happy that, in her own remarks, she has overwhelmingly noted various aspects that we have raised at the Committee level. We look into the future as the Bill comes to full life on some of those critical issues being handled properly.

This Bill is timely considering that the Judiciary and the Chief Justice David Maraga, as we speak, is meeting in Naivasha today the various prosecution organs of Government, led by the Ministry of Interior and Coordination of National Government, the Director of Criminal Investigation (DCI), the Director of Public Prosecutions (DPP). They will be discussing on ensuring speedy and timely conclusion of cases in the Judiciary. This comes at a time when the Judiciary, through Chief Justice Maraga, has raised concerns over the supplementary budget that has already been submitted to the

National Assembly on the intended budget cuts to the money that has already been appropriated to the Judiciary.

Kenyans complain because they say, "Justice delayed, is justice denied." We are complaining that Kenyans file over 400,000 to 500,000 cases in courts of law, where only a third of them are normally concluded within a year. If this Bill can be employed and be fully accepted by Kenyans--- Kenyans are litigious; they like litigation, which is good for the country, because it means that they know their rights. In as much most Kenyans are filing cases in courts, it means that they are aware of their rights.

How should we assist in ensuring that we have a timely, speedy conclusion and access to justice, which is one of the critical constitutional rights, that every Kenyan should be given access to justice?

Mr. Temporary Speaker, Sir, it is quite ironical that the Chief Justice of the Republic of Kenya, Hon. David Maraga, is meeting the Executive, yet barely a week ago, he was complaining about the same Executive imposing budget cuts against the Judiciary? These things are funny.

The other day, the Chief Justice of the Republic of Kenya and the Ministry of Interior and National Coordination, investigatory and prosecutor powers let by the Director of Public Prosecution (DPP), Directorate of Criminal Investigation (DCI) and Ethics and Anti-Corruption Commission (EACC) had a discussion on how the Judiciary is slowing majorly the economic crimes and the corruption cases. A few weeks ago, the same Executive were purporting to cut the budget that is meant for the Judiciary. It is in the public domain that the Chief Justice complained that the cutting of resources that are meant to assist in speedy and timely conclusion of many cases, which we have a backlog in our Judicial System. It is ironical that these are the same people who are now sitting with him.

Mr. Temporary Speaker, Sir, I hope that this matter will be concluded in the fullness of time. This is because any serious country or democracy should allocate at least 3.5 per cent of the total national budget to the Judiciary. We are doing badly, because we have allocated them 0.6 per cent. The highest was at one per cent, in Financial Year 2014/2015. These are some of the serious issues that we would want to see addressed.

If the ADR will assist us to clear the backlog of cases in our courts, then we have to support it. This is because it will be simple, efficient, and cost effective. One of the guiding principles in Clause 5 is to ensure that we have voluntary participation. In my county, there is a case that has been pending in Environment and Land Court for the last 40 years. The decision was made just the other day. We, as a Committee, have received numerous complaints from the members of public that our courts are slowing down the access to justice.

If the ADR will be adopted fully in this country, it will create what we call a win-win situation in the cases of plea bargaining. There is limitation in what the ADR can do, even in the economic crimes and corruption cases. We must explore this because we have been discussing it with a multiagency team that is being chaired by the Attorney-General, on the possibility of bringing plea bargaining. I know that the ADR has its own limitations.

Mr. Temporary Speaker, Sir, Sen. Hargura has said that our traditional dispute resolution has been provided for under Article 152 of the Constitution. In his country, there was an issue of murder, and the community elders were able to resolve it. I know

that those are some of the cases that we do not foresee the ADR using, but our traditional mechanisms were able to resolve them.

Mr. Temporary Speaker, Sir, even in Samburu County, where you come from, the issue of traditional dispute resolution is very strong. Where I come from, many things are being resolved at the lowest level of traditional dispute resolution. We have issues of land matters, succession, matrimonial differences, criminal nature, property and many other issues, that are being resolved at the lowest level of traditional dispute resolution.

Kenyans should understand is that at its root, the Alternative Dispute Resolution Bill is giving credibility and legality of the traditional dispute resolution mechanism. We are just putting it to pen and paper, but many communities in the country have been practicing conciliation, mediation and many others. It starts at the family level to the communality level. Even when somebody is getting married, it is part of negotiations. Those are some of the issues. Kenyans should understand that the ADR Bill is as simple as that.

Mr. Temporary Speaker, Sir, on the issue of classification of cases that can be handled, we should allow labour issues to be resolved through ADR. Today, we have a Petition on the ongoing Kenya Union of Clinical Officers (KUCO) and the Kenya National Union of Teachers (KNUT), where there has been an appointment of conciliation teams. I know that land matters are very emotive, because of their nature. The same applies to civil and commercial matters. I think we have a mediation centre in Kigali, Rwanda. In fact, in the modern world, commercial matters are handled by alternative dispute resolution.

I have heard my colleague allude to the fact if we allow this process to proceed in the civil cases, we might decongest our prisons. Currently our prisons are holding more than 60,000 prisoners, as of many months ago. Therefore, this will assist us in decongesting the prisons and ensuring that the process continues.

Mr. Temporary Speaker Sir, I know that the issue of requirements of accreditation is a contentious issue. We will agree with the Committee on how it should be formed, because there are so many industry players; the arbitration associations; issues of the Law Society of Kenya (LSK), *et cetera*. There is also the issue of the Judiciary and the bench roll. As we proceed with looking into the issues of accreditation at the moment, we seek guidance from your Office, through the Senate Business Committee (SBC). You have instructed my Committee to prepare a report on the same so that all the stakeholders, industry players, the Federation of Kenya Employers (FKE), and many other sectors can be part of this process, because we are looking into the future of it.

Fourthly, because I know that my colleagues also want to contribute, is on the discretion of the courts. A court where a dispute is filed or pending may refer the dispute for determination through conciliation or mediation. This is a straightforward matter, and it has been happening. Even on issues of labour, family, matrimony and succession matters, the courts have always referred to conciliation or mediation.

This discretion is very important, because before it is being referred, they would have been subjected to what I can call 'legal balance,' where the courts will determine whether that matter should be referred to mediation or conciliation. It will not just be a case whereby someone commits murder or a serious crime, and we decide to use ADR. This is important, because the courts will now have a balance on what and what matters should be referred to ADR.

I know that the areas where Sen. Imam and Sen. Farhiya come from, and even Africa in general, ADR is very strong, because of its nature and the way it is applied. Since our traditions, values, culture and religions are so different in terms of making decisions, we need somebody who is a neutral arbitrator, who can refer the case. The way Sen. Kasanga, who comes from the Kamba community, handle their issues, may be different from the way the Kalenjin handle their issues. Therefore, we need a neutral arbitrator.

There are many mediations happening at various places. Regarding the issue of death and time, we can decide to build a mediation centre to handle those issues. This is a very brilliant idea. The Government is complaining of austerity measures. This is a very brilliant idea. Instead of disturbing our Chief Justice, the Government should just build a mediation centre.

We will not need many judicial officers and judges, if the Government builds the mediation centers, and many cases are referred there. In fact, the Government will spend less because the judges will just focus on the few cases of criminal nature, or those that cover serious economic crimes.

The Government can build the mediation centers on neutral grounds that are accessible for people to seek justice. We have been discussing the issue of pending bills in the counties, which has now dropped from Kshs108 billion to Kshs74 billion. Pending bills are an example of a dispute that can be taken to a mediation center, where the county government and the contractor can agree on the mode of payment. We do not need a rigorous process of an adversarial nature like those that we see in a courts of law. The Government can build regional mediation centers across the country. We can have one in Nakuru, Mombasa, Kisumu, Eldoret, and we can also have one in Ukambani. In fact, the mediation center in Ukambani can be built in honor of Sen. Kasanga, now that she is the author of the Bill.

The other issue is the identification of issues in disputes, which I have talked about. The LSK and my colleagues in the industry might not agree with this Bill, because it makes the process simple. They might think that this Bill will make them lose the legal fees, but this process will be shorter and simpler, because people will sit on a table and agree.

We should avoid retributive justice. We should have a just system where we go home in a win-win situation. Our justice system should not be punitive, where someone goes home crying and the other person goes home happy. We should look for a win-win formula. We currently have a punitive system, which is more of win-lose situation. The criminal cases are retributive in nature, but we should look for a way of balancing that.

Finally, the traditional process is supposed to end when the parties reach an agreement. The Bill states that the traditional dispute resolver, upon consultation, determines that further traditional dispute is not feasible. We will now need to meet the old men and women in our villages. This will be an important recognition of the old people, who have been playing an important part in our society. These old people have been holding our society since time immemorial. It is important for us to factor in their input and support. The old people are institutional memories of our communities, and they are custodians of our values, culture and our way of life. They are actually critical in the dispensation of justice.

I, therefore, call upon our colleagues to support this Bill. It is an important Bill and we should have a conversation on it. I know that this is not the end of it. We should also invite the Judiciary and other stakeholders to look at it.

Members of Parliament from the coastal region who are in the National Assembly were complaining of floods in Mombasa.

They are forgetting that the Senate has transmitted a Bill called The Disaster Management Bill, which is lying in the National Assembly. If we would have effected it into law, it would have assisted in some of the disaster management situations in this country. When a brilliant idea like this comes, I urge my colleagues in Parliament to expeditiously handle them so that they could help Kenyans and many people across this country.

Thank you for this opportunity. I congratulate Sen. Kasanga for this noble idea.

Sen. (Prof.) Onger: Thank you, Mr. Temporary Speaker, Sir, for allowing me to make comments on this very important Bill.

The ADR is important because it touches on the social aspects of people. When people are living together and when families are staying together at a family, community, regional, county level and beyond the county level; there are bound to be some disputes of some nature in one way or the other. There are various ways of resolving these disputes through the process of courts.

I am glad to say that one of the biggest political disputes that ever arose was the Post-Election Violence of 2007, which resulted in the Serena Team. I dare say that in that Team, we had Sen. Wetangula – who I hope will have an opportunity to speak on this matter – the late Sen. Mutula Kilonzo, Sen. Orengo, Deputy President William Samoei Ruto, hon. Musalia Mudavadi, hon. (Dr.) Sally Kosgei and hon. Martha Karua.

What was the dispute? It was about the political elections, when the country was almost ablaze and the people were killing each other. It required people to sit down and settle a political dispute that will not find its way to courts. It required the normal traditional way of engaging and resolving issues, and an international arbitration and mediation to come up with a conclusion and give the nation the momentum to move forward.

What was the end result of that exercise? It gave birth to the Constitution of Kenya 2010. In that Constitution, the Bill of Rights is heavily entrenched, and several sections in that Bill that forms the platform of the basis upon disputes may arise, upon which either courts will resolve those disputes or the other mechanisms that can be looked at upon to resolve those disputes. Why this ADR? It is because sometimes courts take extremely long, and the parties to the dispute may not be conversant with the main issues of the law.

Therefore, the matter is left normally to either the defending counsel or the appealing counsel, or whatever the counsel to argue their case on their behalf. Many people are lost in this process. Even you and I appear in court, and we have a counsel appearing on our behalf, when they start quoting the various sections of the law, we get lost sometimes. It takes time for you to look around and the law to see what it portends, and what it means to come to the conclusion. What is the core basis of this ADR mechanism? The first element that comes out of it is that at the end of it, when this resolution is done, there is peace.

Therefore, peace is the main product of this process. There is no price for peace. If you can create peace in the family, community and regions, where there are quarrels, you would have achieved much, where a court of law may not have the luxury nor the time to go into the details of the things that are being canvassed at that dispute mechanism table. That is one element that must stand out, that this Bill is bringing out quite clearly. As I said, the normal courts will not have the luxury of time to delve into the details of the elements involved.

The mediator and the reconciliator must be somebody either from the local level, who is knowledgeable with the issues around there. They must be abreast with the problems that are affecting those communities, families or two parties that are disputing. They must have a full grasp of the knowledge of the events and things that are happening around them. Sometimes, they may fill in where these things are missing in the normal court process. This is because the court process is a procedure, and if you miss one procedure, you are done with it. That is another element that brings comfort to this process.

The other element that brings comfort to this process is if there are any economic disputes. In simple trading, back home at the rural level, you will realize that disputes arise out of a matchbox, people being lent money and somebody has not paid. This leads to a quarrel that may result to a fight. It becomes extremely expensive to go to court to recoup the money from the other party. You can actually call two parties, who are honest and sincere, men of dignity and of good standing in society, who can get into this matter and resolve it amicably.

He will ask you, "You owe so and so some money. Therefore, pay it in terms of monetary exchange or through a cow for this issue to be resolved." That way, it becomes very easy to do it. It is not only settling the matter, but you are also reconciling the families and the parties in the trade and those involved in disputes. Therefore, they will not live with a bitter taste in their mouth. They will live happy because this matter has been put to rest. Through this process, we will settle many disputes that may not have been settled through the normal court process.

There are major economic issues which need to be settled through this process. For example, there is a dispute between a taxpayer and the Kenya Revenue Authority (KRA). The manner in which the taxpayer is being hauled by KRA to courts is wanting. There should be a way of reaching some amicable arrangement on how the taxpayer, a trader, an entrepreneur or a businessman can settle his taxes through the KRA system. Sometimes, they may not have done it in time, there are penalties to it. How can we enable these people to have some arrangements on how to pay taxes so that the Government does not waste money through the court process and time in recouping the taxes that are due to it? We want to see taxpayers being given breathing space, where they can pay taxes without undue pressure and undue interest.

I want to talk about the political settlements. The best example is the Post-Election Violence of 2007, which required the Serena Team to resolve. This team was led by the late Kofi Anan, and they managed to reach an amicable understanding and acceptance by all Kenyans. That this is the way that we should go. He gave us a roadmap on how the Constitution should be promulgated. We are now recipients of that new Constitution, which gave birth to the devolved system of government. In doing so, the Constitution was quite clear that there would be disputes within the counties and inter-

counties. The only body in the Constitution that is mandated to resolve those disputes is the Judiciary.

The Judiciary, in being able to effect Article 48 of our Constitution, has drawn an inspiration from Article 159(2) (c) on ADR Mechanisms. That is the basis upon which this Bill is being brought before this House.

It is not void to talk about this Bill, because there is a context under which it is being drawn out of the judicial system; that under Article 159(2)(c) it gives the courts the opportunity to let this matter go for either private resolution or other ways.

Mr. Temporary Speaker, Sir, the court process is expensive, it takes longer for disputes to be resolved, which results in a huge backlog in cases. Similarly, the parties are not in control of the outcome of these disputes, and it does not always result in reconciling the parties. That is not a win-win situation.

Mr. Temporary Speaker, Sir, Part (i),(ii),(iii) and (iv) describe the process under which these ARD mechanisms can be done, and the methodology under which it should be done. It also indicates how the matters are brought before the parties, how the parties are appointed and reconstituted; and how the committee is to recommend people of integrity, high standing, people who are impeccable and cannot be swayed one way or the other; and people who understand the contemporary issues involved in dispute resolution. The Bill is indicating the mechanism on how this should be done.

Then there is outcome of that process; what should the Bill say at the end of this outcome? If they agree, how is the consent registered before the court? If it is outside the court, how is the consent registered? What does the consent mean? Sometimes it might protect the minors; it might also protect the Bills of Rights. As long as this Bill is being enacted, there are also areas which are a no-go zone for this Bill. You cannot create an alternative mechanism which flaunts the fundamental rights of people to be able to be heard in a particular manner or in a particular way.

Mr. Temporary Speaker, Sir, I wish to commend this on my colleagues, because it now gives us an opportunity to resolve issues which hitherto have remained unresolved, particularly land disputes in our communities. This includes the grazing rights, the water points, road reserves and the boundaries in our communities within our neighbors. It is within the reach of our own traditional people to resolve these matters. The court process is too lengthy. It is too expensive for the ordinary *mwananchi* to enable them access justice through this manner.

With those few remarks, Mr. Temporary Speaker, Sir, I support this Bill and recommend that we should pass it very quickly so that it can be applied immediately.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Wetangula: Thank you, Mr. Temporary Speaker, Sir. Let me secure my space for tomorrow.

Mr. Temporary Speaker, Sir, I support this Bill and, as I do so, I am moved by a case that happened in Nandi, two weeks ago involving land. It was a dispute between buyers of land and sons of the former owner of the land. The case was filed in court in 1979. An eviction order was issued last month, 40 years later. If there was no other reason to compel our support for this Bill, a case like that is a compelling reason.

Mr. Temporary Speaker, Sir, court processes are expensive, long---

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Hon. Senators.

Sen. Wetangula you will have a balance of 19 minutes when the Bill appears next in the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Thursday, 14th November, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.