

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 25th June 2019

The House met at 2.30 p.m.

[The Speaker (Hon. Justin Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

PROPOSED AMENDMENT TO THE PRESIDENT'S MEMORANDUM TO THE INSURANCE (AMENDMENT) BILL, 2018

Hon. Speaker: Hon. Members, let me make a communication at this point due to its requirements.

Before the House undertakes consideration of business indicated as Order No. 11 on the Supplementary Order Paper, I wish to inform you that the Chairperson of the Departmental Committee on Finance and National Planning proposes to amend New Clause 11 as proposed in the reservations of the President to the Insurance (Amendment) Bill, 2018.

I have, after scrutiny, determined that this amendment has the effect of negating the President's reservations in terms of Article 115(4) of the Constitution. It, therefore, follows that pursuant to Article 115(4) (a) of the Constitution, this particular amendment may be passed only if supported by not less than two-thirds of the membership of this House.

(Applause)

The Committee of the whole House on the President's reservations to the Insurance (Amendment) Bill 2018 is accordingly guided.

Therefore, Hon. Members, the Mover – who is the Chairperson of the Committee – should now begin working on getting the requisite numbers of Members when the House proceeds to the Committee of the whole House.

Thank you.

MESSAGES

MESSAGES FROM THE SENATE

Hon. Speaker: Hon. Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received Messages from the Senate regarding its decision on the following Bills:

1. The Impeachment Procedure Bill (Senate Bill No. 15 of 2018);
2. The Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018);
3. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 27 of 2018);
4. The Tea Bill (Senate Bill No. 36 of 2018); and
5. The Care and Protection of Older Members of Society Bill (Senate Bill No. 17 of 2018).

The first Message relates to passage of the Impeachment Procedure Bill (Senate Bill No. 15 of 2018) which seeks "to provide for the procedure for removal from office, by impeachment, of a President, Deputy President, Cabinet Secretary, Governor, Deputy Governor and member of a county executive committee."

The second Message is in respect of the passage of the Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018) seeking "to amend the Prevention of Terrorism Act to provide for the duty of administrators in educational institutions to counter radicalization and violent extremism."

The third Message is with regard to the passage of the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 27 of 2018) which seeks "to establish a framework for the preservation of human dignity for the promotion, monitoring and enforcement of economic and social rights, and to establish mechanisms to monitor and promote adherence by county governments to Article 43 of the Constitution."

The fourth Message is in respect to the passage of the Tea Bill (Senate Bill No. 36 of 2018) which seeks "to provide for the regulation, development and promotion of the tea industry."

The Fifth Message relates to the passage of the Care and Protection of Older Members of Society Bill (Senate Bill No. 17 of 2018). The Bill seeks "to provide a framework for the care of older members of society; to establish a framework for the empowerment and protection of the elderly and maintenance of their well-being, safety and security."

Hon. Members, the Messages read: "That the Senate considered and passed the Bills with amendments on Wednesday, 12th June 2019 and now seeks the concurrence of the National Assembly."

Standing Order 143(1) (a) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a Message from the Senate. Accordingly, I direct that the Bills be read a First Time during the next sitting.

Paragraph (2) of Standing Order 143 provides that –

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

The opinion envisioned under Standing Order 143(2) is a pronouncement by the Speaker, as to whether a Bill originating in the Senate is a ‘Money Bill’ in terms of Article 114 of the Constitution.

In this regard, I direct that, after First Reading, the five Bills be referred to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated under Standing Order 143(2). Thereafter, I shall guide the House accordingly on how to proceed with the consideration of the said Bills. Hon. Members, there is yet another message from the Senate. May I allow the Members to make their way into the Chamber.

(Hon. Members walked into the Chamber)

APPROVAL OF THE MEDIATED VERSION OF THE PHYSICAL PLANNING BILL

Hon. Speaker: Hon. Members, the House having approved the mediated version of the Physical Planning Bill (National Assembly Bill No. 34 of 2017) under Order No. 9, I wish to report to the House that I have since received a Message from the Senate conveying that the Senate had also approved the said mediated version of the Bill.

Hon. Members, the Message reads in part, and I quote: “...the Senate, by way of resolution passed on Wednesday, 19th June 2019, approved the mediated version of the said Bill in the form developed by the Mediation Committee.”

Hon. Members, this therefore concludes the bicameral approval of the Bill and paves way for me to present the Bill to the President for assent, in accordance with the provisions of Article 113(3) of the Constitution.

I thank you.

Hon. Members, before we move to the next Order, allow me to recognise the presence of, in the Speaker’s Gallery, Students from Kitise Secondary School, Makueni Constituency, Makueni County; students who are accompanied by Senator Mutula Kilonzo Junior, who is the Minority Chief Whip in the Senate; Kavingoni Secondary School from Makueni Constituency, Makueni County and Cavina School, Dagoretti South Constituency, Nairobi County.

In the public gallery, we have students from Githunguri Girls’ School, Kandara Constituency, Murang’a County and Kibutha Girls School, Kangema Constituency, Murang’a County.

They are all welcome to observe the proceedings of the National Assembly this afternoon.

PETITIONS

SETTLEMENT OF SHAREHOLDERS OF NGWATANIRO MUTUKANIO LAND COMPANY

Hon. Speaker: Hon. Members, you can now make your way in.

(Hon. Members walked into the Chamber)

Hon. Members, Standing Order No. 225(2)(b) requires the Speaker to report to the House any petition other than those presented through a Member.

I wish to convey to the House that my office has received a petition submitted by one Mr. Peter Kairang'a, P.O. Box 7183 Nakuru, calling for the settlement of over 25,000 shareholders of Ngwataniro Mutukanio Company in what the Petition asserts is their rightfully owned parcels of land in Nakuru and Laikipia.

The petitioners have stated that the Ngwataniro Mutukanio Company raised money from its shareholders with the objective of investing the funds in buying land for settlement. The company, according to the petitioner, owns a total of 82,000 acres in Nakuru and Laikipia counties as well as the Amigos House, Oyster Shell Building, three plots in Nakuru Town, farm houses in Bahati, and various buildings in Laikipia and Rumuruti among other properties.

Hon. Members, the balloting of land is said to have been undertaken in 1983 in a bid to ensure that each shareholder got a piece of the company's land, an initiative that was extremely flawed and as a result, over 25,000 shareholders did not obtain any land.

Further, in certain areas balloting was done on unsurveyed land and several companies' properties including Amigos House, Oyster Shell Building and other properties were grabbed or illegally sold without the consent of the shareholders, under the direction of company directors and the provincial administration.

Hon. Members, it is on account of these misgivings that the petitioner seeks the intervention of this House, primarily in spearheading investigations in the affairs of Mutukanio Ngwataniro Company in view of attaining the recovery of the irregularly allocated plots of land and other lost properties and conduct of a fresh survey of the Mutukanio Ngwataniro Land.

Hon. Members, pursuant to the provisions of Standing Order 227, this Petition therefore stands committed to the Departmental Committee on Lands. The Committee is requested to consider the Petition and report its findings to the House and the petitioner in accordance with the provisions of Standing Order 227(2).

I thank you.

Before I allow comments, there is a Petition by the Member of Embakasi East, Hon. Ongili.

Proceed.

DEMOLITION OF HOUSES IN CHOKAA AREA BY KENYA POWER LIMITED

Hon. Babu Owino (Embakasi East, ODM): Thank you, Hon. Speaker. This is Public Petition No. 48 of 2019 regarding demolition of houses in Chokaa area by Kenya Power Limited.

I, the undersigned, on behalf of the citizens of Chokaa, Mihang'o area in Embakasi East Constituency, draw the attention of the House to the following:

THAT, Articles 39 and 40 of the Constitution entitle every citizen to the right to residence and protection of property;

THAT, residents of Chokaa, Mihang'o area in Embakasi East Constituency have lived in the area for many years;

THAT, in December 2018, Kenya Power issued a notice of demolition and shared guidelines clarifying that demolitions would strictly target buildings within 15 meters from 132 kilovolts power lines and 20 meters from 220 kilovolts power lines;

THAT, on December 2018, His Excellency the President intervened in the matter and ordered suspension of the impending demolitions and no further Notice has been issued by Kenya Power;

(Loud consultations)

Hon. Speaker, kindly can Hon. Members keep quiet before I proceed. This is because they are interrupting my Petition.

Hon. Speaker: Hon. Ongili, this could be your first petition. Proceed. The consultations cannot disrupt you.

Hon. Babu Owino (Embakasi East, ODM): Thank you, Hon. Speaker. I have had several ones.

THAT, in disregard of the President's order, Kenya Power proceeded to demolish several houses in Chokaa, Mihang'o area in March 2019, on allegations that they were built on delineated power line way-leaves;

THAT, the demolitions rendered close to 500 families homeless, caused massive loss of property and disrupted learning for many children whose schools were also demolished, thereby curtailing their right to education;

FURTHER THAT, some of the residents had their houses demolished despite earlier assurance by the Kenya Power Limited that they had not encroached on the wayleaves;

THAT, as a result of the demolitions, close to 500 families have been rendered homeless and most residents have lost their business premises, which were their only source of livelihood;

THAT, efforts to resolve this matter with the relevant bodies have been futile; and

THAT, issues in respect of which this Petition is made are not pending before any court of law or constitutional or statutory body;

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Energy:

- (i) inquires into the status of ownership of land in Chokaa, Mihang'o area to establish whether or not the said land falls within power line wayleaves;

- (ii) inquires into the circumstances under which demolitions were indiscriminately effected, hence affecting residents who had not encroached on Kenya Power wayleaves;
- (iii) engages the Cabinet Secretary for Energy to provide information regarding the demolitions in Chokaa, Mihang'o area and measures the Government has instituted to resettle the displaced residents, assist them return to normal lives and compensate innocent residents whose property were destroyed; and
- (iv) makes any other recommendations that it deems fit in the circumstances of this matter.

Your petitioners will ever pray.

I thank you Hon. Speaker.

Hon. Speaker: I will allow comments and clarifications from Members. Hon. Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Thank you, Hon. Speaker. I would like to comment on the second petition by Hon. Babu Owino. The area he has talked about is one which I am very familiar with.

Hon. Speaker, as the Departmental Committee on Energy deals with this matter, it must lay a framework on how future demolitions, if at all, will be undertaken. We cannot correct a wrong with another wrong. There are agencies that are supposed to supervise and govern processes of putting up structures, not only in Nairobi, but everywhere else in the country.

Therefore, once ordinary Kenyans have invested in buildings, it is not acceptable that others wake up one morning to pull them down. We need a mechanism of ensuring that there is adequate compensation in the event any structure is pulled down. This is because there are agencies which sleep on their jobs and eventually subject innocent Kenyans to suffering for the wrongs they have not committed. I wish that the Committee on Energy looks at this matter expeditiously and gives the way forward.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker. This issue of demolitions has become a process of settling scores by some Government officers. A building of, for example, four stories is not built inside a pocket. It is constructed publicly and authorities such as the National Environment Management Authority (NEMA) are always aware. You cannot construct a building in secret. Constructions are done in broad daylight where everybody sees. It is at that point that they ought to stop construction. However, since they use that to settle scores, many investors have been scared away from our country. When you are told that a licence is fake, really, how will you know, as an investor, that the licence is fake and yet you got it from the relevant offices such as NEMA and the National Construction Authority (NCA)?

It is high time this House gave a directive that in case of any demolition, the Government should compensate the investors. Indeed, we need development such as the Standard Gauge Railway (SGR) and roads, but if somebody has built on a road reserve, the concerned authorities should stop the construction from the beginning instead of intervening much later when the property is in the hands of a third owner.

Thank you very much

Hon. Speaker: Very well. Your comments are not around this particular petition specifically. You appear to have a specific issue and I appreciate what you are saying, but petitions are not opportunities for debate. Let us have the Hon. Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to comment on the first petition. Land buying companies and co-operatives, similarly, have had problems as it has been said in the Petition. Many times, some people lose the value of their land during balloting. Some of them are left out and yet they invested in land buying companies. So, it is in order for this House to resolve land matters that are affecting people because those matters are very emotive. People have lost their lives in this sort of scenario.

Parliament should, therefore, give a way forward on what should happen. This is because we have lots of parcels of land in this country owned by land buying companies and co-operative societies. I support the Petition and will look forward to making contributions when the Committee sits. I thank you Hon. Speaker.

Hon. Speaker: Member for Alego Usonga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Speaker for giving me the opportunity to contribute to the second petition by Hon. Babu Owino, which is very serious. The Petition involves destruction of private property of hardworking Kenyans. Looking at this petition, you will find out that the houses had already been built and Kenya Power Company had even connected them to electricity. So, my question would be: Which one came first? How did Kenya Power Company connect houses with electricity and then come back later to say that the houses ought to be demolished?

Hon. Speaker, I know some of the people who have been affected by these demolitions. I, therefore, would like to urge the House to move with speed because many of our people have been displaced and some are stranded with no accommodation. They have nowhere to reside with their families. I urge the Committee that is going to deal with this Petition to move with speed so that we can get answers.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Hon. Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. I support the two Petitions. The spirit of the first one is the issue of historical injustice which should be within the purview of the National Land Commission (NLC). However, because the former NLC was preoccupied with compensations and there were massive cases of corruption, it forgot one of its key mandates. However, it is important that the directors of land buying companies be brought to account for the activities in respect of the processes leading to the allocation or allotment of shares to respective members.

On the second one, the Constitution, under Article 41, is explicitly clear about depriving a private individual interest or right in property without following due process. Based on international best practices, whether they built the property as an illegal structure or not for as long as there is demonstration that, indeed, the property was duly approved and allowed to be constructed, demolition should not proceed until just compensation has been made for the built environment.

Specifically, demolitions are an indication of a systemic failure on the part of City Hall or whichever authorities in question which approve building plans. It is also failure on the part of professionals in the built environments, especially the architects who do not countercheck the alignments of the wayleaves before they design and supervise construction.

I support and will seek to give my contribution during the hearing of the Petition. I thank you, Hon. Speaker

Hon. Speaker: Hon. Members, the first Petition is referred to the Departmental Committee on Lands to process and consider a Report as directed. The second Petition is referred to the Departmental Committee on Energy to proceed as provided under Standing Order No.227.

THE GLOBAL PARLIAMENTARY TB CAUCUS

Hon. Speaker: Hon. Members, before we proceed I wish to take this opportunity to introduce to you a delegation of Members of the Global Parliamentary TB Caucus, seated at the Speaker's row. The delegation comprises Members from the Parliaments of Uganda, South Sudan and Ethiopia. They are as follows:

1. The Hon. Fred Baseke, MP - Uganda;
2. The Hon. Yoweeri Ssebikaali, MP - Uganda;
3. The Hon. Catherine Peter Laa Ajawin, MP - South Sudan; and,
4. The Hon. Muntaha Ibrahim Ahmed, MP - Ethiopia.

The delegation is accompanied by:

1. Mr. Samuel Njuguna - Africa TB Caucus, Regional Manager, Kenya;
2. Mr. Daniel Ndugire - Stop TB Finance Manager, Kenya; and
3. Ms. Katherine Thompson - West European Regional Caucus, United Kingdom.

Hon. Members, currently, in our Parliament, the Caucus is chaired by the Member for Matungulu, the Hon. Stephen Mule, MP. The delegation is in the country for a meeting that is aimed at bringing together Members of Parliament from the Eastern African Region to deliberate on TB response in the region. Further, the delegation is also to launch the Kenya Lunch Health Conference at the Nairobi Hospital today at 3.00 pm.

Hon. Members, on my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay in the country.

Thank you.

Next Order!

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No. 84 relating to the Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019;

Legal Notice No. 85 relating to the Miscellaneous Fees and Levies (forms) Regulations, 2019;

Legal Notice No. 86 relating to the Value Added Tax (Amendment) Regulations, 2019;

Legal Notice No. 87 relating to the Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2019;

Legal Notice No. 88 relating to the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019;

Legal Notice No. 89 relating to the Retirement Benefits (Individual Retirement Benefits Schemes) (Amendment) Regulations, 2019;

Legal Notice No. 90 relating to the Public Finance Management (National Government) (Amendment) Regulations, 2019;

Legal Notice No. 91 relating to the Insurance (Policyholders Compensation Fund) (Amendment) Regulations, 2019;

Legal Notice No. 92 relating to the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019;

Legal Notice No. 93 relating to the Insurance (Amendment) Regulations, 2019);

Legal Notice No. 94 relating to the Excise Duty (Excisable Good Management System) (Amendment) Regulations, 2019; and

Legal Notice No. 95 relating to the Capital Markets (Securities) (Public Offers, Listing and Disclosures) (Amendment) Regulations, 2019.

Bi-Annual Report for the Commission on Administrative Justice for the period January to July 2018.

Performance Audit Report on administration of Public Service Pensions Schemes by the National Treasury.

Reports and Resolutions adopted at the 5th Meeting of the 2nd Session of the 4th East African Legislative Assembly as follows:

- a) Report of the Committee on Agriculture, Tourism and Natural Resources with Stakeholders on Budgetary enhancement in the Agricultural Sector;
- b) Report of the Committee on Regional Affairs and Conflict Resolution on the Report of the Council on the progress made by the East African Community on the Development of its Common Foreign and Security Policies;
- c) Report of the First Annual General Meeting and Launch of the Eastern Africa Parliamentary Alliance for Food Security and Nutrition;
- d) Report of the Delegation to the Training Workshop on Research and Evidence use in the Parliamentary Context;
- e) Report of the Delegation to the 44th Plenary Assembly Session of the SADC Parliamentary Forum (SADC-PF) held from 26th November to 10th December, 2018 in Maputo, Mozambique;
- f) Resolution of the Assembly recommending to the Council to ban the manufacturing and importation of soaps and cosmetics containing hydroquinone in the Community;
- g) Resolution of the Assembly urging the Council of Ministers to expedite the introduction of the Climate Change Bill in the Assembly; and

- h) Resolution of the Assembly recommending to the Council of Ministers the establishment of an institution responsible for the development of Agriculture within the Community.

Annual Report and Financial Statements of the Public Procurement Oversight Authority for the period ended 30th June, 2015.

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2018 and the certificates therein:

- a) Parliamentary Service Commission;
- b) The National Assembly;
- c) Nzoia Sugar Company Limited; and
- d) Tourism Research Institute.

Thank you, Hon. Speaker.

Hon. Speaker: Order Members! For avoidance of doubt the first 12 Regulations are to be referred to the Committee on Delegated Legislation. The Regulation marked as No.14, that is Performance Audit Report on administration of Public Service Pensions Schemes by the National Treasury, is referred to the Departmental Committee on Finance and National Planning. The Resolution of the Assembly recommending to the Council of Ministers the establishment of an institution responsible for the development of agriculture within the community will be referred to the Committee on Regional Integration.

Hon. Members, it is important to make that distinction. The first 12 Regulations will go to the Committee on Delegated Legislation, the ones on performance audit to the Departmental Committee on Finance and National Planning while the Resolutions of the Assembly are to be referred to the Committee on Regional Integration. This is accordingly so ordered.

The Chairperson Departmental Committee on Justice and Legal Affairs, you have the Floor.

NOTICE OF MOTION

THE ANNUAL REPORTS ON THE STATE OF THE JUDICIARY

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House notes the Annual Reports on the State of the Judiciary for the Financial Years 2016/17 and 2017/18 submitted to the House pursuant to the provisions of Article 254(1) of the Constitution and adopts the recommendations of the Departmental Committee on Justice and Legal Affairs as contained in the Reports of the Committee laid on the Table of the House on Thursday, 9th May 2019.

Hon. Speaker: You have not tabled the Report.

Hon. William Cheptumo (Baringo North, JP): I have already tabled the report, Hon. Speaker.

Hon. Speaker: You already have. It was last week.

Hon. William Cheptumo (Baringo North, JP): It was just a notice.

Hon. Speaker: Very well, proceed. Then we had got to that Order.

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, allow me to inform Members that the Reports are actually in Table Office and there are enough copies. I want Members to have time to go through those Reports so that when we debate they will do so from an informed position. It is a very important discussion on the state of the Judiciary.

Thank you, Hon. Speaker.

Hon. Speaker: I encourage that when reports are made, they also be uploaded onto the system so that Members do not have to chase papers in the Table Office.

Next Order!

Hon. Speaker: That is the one that Hon. Cheptumo has already given. Proceed to the next.

QUESTION BY PRIVATE NOTICE

Hon. Speaker: Hon. Members, there is a Question by Private Notice by the Member for Kajiado North, Hon. Manje.

Question No.29/2019

COMPENSATION FOR THE DEMOLITIONS IN NKOROI AREA

Hon. Joseph Manje (Kajiado North, JP): Hon. Speaker, I want to ask a Question by Private Notice to the Cabinet Secretary for Lands and Physical Planning:

- a) Is the Cabinet Secretary aware that on 13th June 2019 the Kenya Railways Corporation demolished several buildings, properties and other structures in Nkoroi Area of Kajiado North Constituency to pave way for the construction of the Standard Gauge Railway line?
- b) Is the Cabinet Secretary further aware that the people affected by the demolitions and destruction are yet to be compensated?
- c) Could the Cabinet Secretary confirm whether there was adequate advance notice of the demolitions and provide the specific timelines within which the affected persons and land owners will be compensated for the land?

Hon. Speaker: The Question is referred to the Departmental Committee on Lands. The Committee is advised to observe the fact that this is a Question by Private Notice. So, it needs to be responded to within the shortest time possible, including not less than three days. So, the Departmental Committee on Lands, through the Office of the Clerk, please act on that.

ORDINARY QUESTIONS

Hon. Speaker: In Ordinary Questions, we have the Member for Turkana North, Hon. Nakuleu. Hon. Members, use your cards. If you know you have a Question, make sure that your card is ready. Hon. Nakuleu, proceed.

Question No.285/2019

REPORT ON DISAPPEARANCE OF MR. PETER MAKALE OF MAKUTANIO TOWN

Hon. Christopher Nakuleu (Turkana North, JP): Hon. Speaker, I wish to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- a) Is he aware that one Mr. Peter Makale of ID No. 21334490, from Makutanio Town of Nakalale Ward in Turkana North Constituency crossed over to Ethiopia in September 2017, through Kibish-Kangater border point using motor vehicle registration number 23CG056A, belonging to the Sub-County Administrator of Turkana County?
- b) Could he explain the whereabouts of Mr. Makale, considering that he was in touch with his family for the first six months before his disappearance and that his next of kin filed a missing person's report recorded at Kakuma Police Station, Turkana West Constituency vide Occurrence Book No. OB/16/21/03/19?
- c) Could he also provide the number and details of persons who entered Kenya through both Kibish and Todonyang Border posts in the period between August 2017 and August 2018?

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to prioritise. Next is the Member for Mwingi Central, Hon. Mulyungi.

Question No.287/2019

MEASURES TO ADDRESS CONFLICT AND INSECURITY IN MWINGI CENTRAL CONSTITUENCY

Hon. Gideon Mulyungi (Mwingi Central, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- a) Is he aware that in December 2018 a group of about 1,000 herders illegally invaded and occupied private and community land at Kalamba and Engamba villages of Wingemi Location in Mwingi East Sub-County, displacing local residents, and further creating conflict along the border of Tana River and Kitui County specifically at Kathungu, Ukasi, Sosoma, Ngooni, Iviani, Kamuluyuni and Engamba villages?
- b) Is he further aware that the insecurity and conflict caused by the invasion has led to low enrolment of students in Kamuluyuni Primary School and a complete closure of Engamba Primary School?
- c) Could he confirm when the herders will be evicted and what measures the Ministry is taking to ensure a lasting solution to the perennial conflict and insecurity in that area?

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to be responded to by the Cabinet Secretary for Interior and Coordination of National Government to appear before the Committee. Next Question is by the Member for Matuga, Hon. Tandaza.

*Question No.288/2019*MEASURES TO ENHANCE CAPACITY OF
LOCAL ENGINEERING FIRMS TO BUILD DAMS

Hon. Kassim Tandaza (Matuga, ANC): Hon. Speaker, I rise to ask the Cabinet Secretary for Water and Sanitation the following Question:

- a) Could he explain how many Kenyan construction firms and engineers are involved in the building of dams currently under construction and those awarded for construction, which number approximately 57?
- b) Could he provide the list of those dams and the names of the international and local firms awarded the construction works?
- c) What measures is the Ministry putting in place to enhance the capacity of local engineering firms to undertake such works and also fast-track the completion of all dams currently under construction?

Hon. Speaker: The Question is referred to the Departmental Committee on Environment and Natural Resources for the Cabinet Secretary to appear and respond. Next Question is by the Member for Westlands, Hon. Wanyonyi.

Question No.289/2019

COMPLAINTS ABOUT HEALTH RISKS ASSOCIATED WITH ALWAYS SANITARY TOWELS

Hon. Tim Wanyonyi (Westlands, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Industry, Trade and Cooperatives the following Question:

- a) Is he aware of complaints that have been raised by a section of women in Kenya over the alleged health risks associated with the use of Always brand of sanitary towels?
- b) If so, what action has been taken to address these concerns?

Hon. Speaker: The Question is referred to the Departmental Committee on Trade, Industry and Cooperatives for the Cabinet Secretary to appear and respond.

Order, Hon. Members! Before we move to the next Order, allow me to further recognise pupils and students from the following institutions:

Pupils from Happyland Primary School, Makadara Constituency, Nairobi County in the Speaker's Gallery. In the Public Gallery, we have those from Magomano Girls' High School, Kinangop Constituency, Nyandarua County; Gikui Primary School, Kangema Constituency, Murang'a County; Kiawairegi Primary School, Kangema Constituency, Murang'a County.

They are all welcome to observe proceedings of the National Assembly this afternoon,

PROCEDURAL MOTION**REDUCTION OF PUBLICATION PERIOD
FOR THE APPROPRIATION BILL, 2019**

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order No.120, this House resolves to reduce the publication period of the Appropriation Bill (National Assembly Bill No. 46 of 2019) from seven days to one day.

This Procedural Motion is in line with our timelines as a House in making sure that the Budget process is completed. Now that we finished with the Committee of Supply last week, the only two items remaining are the passage of the Appropriation Bill (Bill No.46 of 2019) and the Finance Bill. The Finance Bill has a deadline of 30th September while the deadline of the Appropriation Bill is this Thursday.

For us to deal with all the three stages tomorrow afternoon so that Parliament, the Judiciary and the national Government can access their resources from the Consolidated Fund, we are under obligation by the Constitution and the relevant laws, including the Public Finance Management (PFM) Act to pass this Bill. In accordance with that, we felt that we should reduce the publication period. The House Business Committee will then sit tonight and give it priority so that we deal with all the stages of the Bill tomorrow.

I beg to move this Procedural Motion and ask Hon. Mbadi to second.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I am sure this House is aware that after the passage of the 2010 Constitution, we are required to pass the Appropriation Bill so that it is assented to by the President before 30th June. That means we only have tomorrow to deal with it and pass it. This House cannot allow the Government to spend on Vote on Account until and unless the Appropriation Bill is passed. We can pass the Vote on Account when the Appropriation Bill is awaiting the President's assent but before passage of the same, we cannot spend on Vote on Account. Therefore, it means that if we do not pass the Appropriation Bill by tomorrow then come 1st July, this country cannot spend on anything and public funds cannot be applied on anything. The country will come to a standstill.

This is a Procedural Motion. I ask the House to agree with us to allow the Appropriation Bill to be introduced for First Reading.

I beg to second.

(Hon. (Ms.) Odhiambo-Mabona and Hon. Mark Nyamita consulted loudly)

Hon. Speaker: There is a Member who is attracted to the Member for Suba North in a very interesting way; that is Hon. Mark Nyamita.

Hon. Members, it is important to pay attention to what Hon. John Mbadi has just said. I would also like to add that it is not just the national Executive. Remember that this Bill relates to the national Government and national Government institutions include Parliament and the

Judiciary. We do not deal with those other entities but at least it is important to appreciate that. This is not a Bill that touches on those others.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: It is the desire of the House that I put the Question.

(Question put and agreed to)

It, therefore, means that this Bill will be placed on the Order Paper tomorrow. I encourage all those who have been following this process to know that the Bill is proposed to go through the other remaining stages by the end of tomorrow.

Let us move to the next Order.

MOTION

REPORT OF THE MEDIATION COMMITTEE ON PHYSICAL PLANNING BILL

(Hon. Aden Duale on 20.6.2019)

(Debate concluded on 20.6.2019)

(Several Hon. Members walked into the Chamber)

Hon. Speaker: Member for Dagoretti South, please, take your seat. Just take your seats, please, so that we can continue.

Hon. Members, debate on this Motion was concluded last week as reported by the Leader of the Majority Party. Therefore, what remains is for the Question to be put.

(Question put and agreed to)

BILL

First Reading

THE APPROPRIATION BILL

(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

Hon. Speaker: Hon. Members, I wish to inform you that upon request by the Office of the Clerk, when the House moves into the Committee of the whole House, it will not consider the Kenya Accreditation Service Bill (National Assembly Bill No.17 of 2018) today because the staff have indicated that there are some parts of that Bill which they would want to include in the Bill so that the House can consider them appropriately. Some of the things which have been included as captured today do not reflect the intention of the Committee. Therefore, the House will only consider the President's Reservations to the Insurance (Amendment) Bill (National Assembly Bill No.21 of 2018).

Always remember that as earlier communicated, when considering the amendment proposed by the Chair of the Departmental Committee on Finance and National Planning, which is a direct negative of the President's reservations, the House will have to move in the manner prescribed by Article 115 of the Constitution to raise not less than two-thirds of the membership of the House to deal with it. The Vice-Chair is present. I am sure he is marshalling Members towards that.

Hon. Members, the House can now move into Committee.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Justin Muturi) left the Chair]

IN THE COMMITTEE

[The Chairman (Hon. Moses Cheboi) took the Chair]

CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE INSURANCE (AMENDMENT) BILL *(Loud consultations)*

Hon. Chairman: Order Members. Order, Hon. Sankok! We are in the Committee of the whole House to consider the President's reservations to the Insurance (Amendment) Bill (National Assembly Bill No. 21 of 2018).

Hon. Sankok, you are free to leave now.

Clause 2

Hon. Chairman: The Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended by deleting all the following proposed new definitions-

- (i) “independent agent”;
- (ii) “tied agent”;
- (iii) “broker”; and,
- (iv) “intermediary”.

According to the President in exercise of his powers, the new definitions will reverse the common law principle of agency where the principal is responsible for the state of the commission and he enjoys the fruits of that agent as provided. In view of that, I recommend that Clause 2 of the Bill be amended by deleting the proposed new definitions.

(Question of the amendment proposed)

Hon. Chairman: I see that there is no Member who is interested to contribute to this proposed amendment.

(Question, that the words to be left out be left out, put and agreed to)

(Clause 2 as amended agreed to)

Clause 3

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, I beg to move: THAT, Clause 3 of the Bill be deleted and substituted therefor with the following—

Insertion of
new section
in Cap. 487

3. The principal Act is amended by inserting the following new Section immediately after Section 5-

Powers of the
Commissioner
On group wide
Supervision

5A. (1) The Commissioner may direct any member of the group to provide any information necessary for effective group-wide supervision.

2) In the event of any breach or failure to comply with the directives of the Commissioner or safeguard the interests of the policyholders, the Commissioner shall impose any of the sanctions provided in the Act on the holding company or any member of the group.

The proposed amendment requires the Commissioner to seek information from the principal officers of any group of companies that are in this business. However, we should note that the group does not have a principal officer like a registered insurance company. So, this proposed amendment will also hamper the power of the Commissioner to seek information directly from the member of the group where such information may be necessary for the protection or the interest of the policy holders.

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The President recommends that Clause 3 of the Bill be amended by deleting Clause 3 and substituting therefor with the new clause which is in the Memorandum before Members so that we align it and protect policy holders.

(Question of the amendment proposed)

Hon. Members: Put the Question.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 3 as amended agreed to)

(Clauses 4, 5, 6, 7, 8, 9 and 10 agreed to)

Clause 11

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, I beg to move:
THAT, Clause 11 of the Bill be deleted and substituted therefor with the following –

Repeal and
Replacement of
Section 156 of
Cap. 487.

11. The Principal Act is amended by repealing Section 156 and replacing it with the following new section-

Advance
Payment of
Premiums

156. (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premium payable thereon is received by insurer.

(2) An intermediary shall not receive any premiums on behalf of an insurer.

(3) An intermediary who contravenes subsection (2) shall be liable to a penalty equivalent to twenty percent of the unremitted premium on each contravention, payable to the Policyholders Compensation Fund.

(4) Any officer or director of an intermediary who contravenes subsection (2) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to an imprisonment term of three months, or to both.

(5) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

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(6) An insurer who contravenes subsection (5) shall be liable to a penalty of five million shillings on each contravention, payable to the Policyholders Compensation Fund.

Clause 11 of the Bill intends to repeal and replace Section 156 of the Act which provides advance payment of premiums to the insurance company. It negates the principles of cash and carry and it is likely to cause the problem of delay in settlement of claims. Close to Kshs40billion of claims are currently in the insurance industry. This amendment makes it possible that when I ask a broker to insure my car comprehensively, I have the powers to pay the insurer directly. We have a situation where you can pay the broker and he does not remit the money to the underwriter, and he will only run when your car gets an accident. If it does not get an accident the whole year, he might not even remit that money. So, this amendment will ensure that all payments of claims are made to insurers and that a period is set so that we reduce the huge claims. That proposed amendment introduces Section 156 which is in the President's Memorandum. The President proposes that Clause 11 be deleted and substituted thereof with a new sub Section 156.

(Question of the amendment proposed)

Hon. T. J. Kajwang' (Ruaraka, ODM): Hon. Chairman.

Hon. Chairman: What is it because I want to prosecute the amendment? Let me hear from Hon. Kajwang'.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Chairman, despite Article 115 of the Constitution, we have to speak to this so that the country knows that we spoke. They are the ones who passed the Constitution which we are dealing with. As Members, we must always make our positions known. It is only the Leader of the Majority Party who is exempted from this. I do not envy his position at all because he has to speak from both mouths at the same time. When we passed this clause, he was on the Floor of the House and prosecuted the amendment which forestalled the kind of the impasse that we are in now. However, you can see that he is supporting the President's reservations. I do not envy his position at all.

This is the only clause that has killed insurance brokerage in this country. It is dead completely. If an insurance broker cannot do business with an insurer and cannot hold premium on its behalf, there is no more business called insurance brokerage. This is the only amendment that we have done here, small as it seems, which will profiteer those insurance companies which are owned by foreigners. We have killed our local insurance brokerage industry. We have killed the people who were going to be students of brokerage and profited the giant insurance companies most of which are foreigners.

Anyway, let me pick my point and after all there is Article 115 of the Constitution. I can tell you something, Hon. Chairman. I am giving the President my considered opinion on this matter: the High Court will annul this section, one way or the other. There will be a conscientious Omtatah somewhere, who will come to the public rescue. I want to see how the *boda boda* people who we said should take premiums... I want to see how AON Minet or those big people we are passing the Bill for will open branches in Mathare and...

Hon. Aden Duale (Garissa Township): On a point of order, Hon. Chairman.

Hon. T.J. Kajwang' (Ruaraka, ODM): Of course, there is nothing out of order.

Hon. Chairman: Leader of the Majority Party, you will have to make a decision whether you rise on a point of order or point of information. If you rise on a point of information, I have to seek concurrence from Hon. Kajwang' whether he requires any information. Hon. Kajwang', do you require any information?

Hon. T.J. Kajwang' (Ruaraka, ODM): The Leader of the Majority Party is a man I respect. He is a very intelligent person so let me hear the information he has. I concur.

Hon. Chairman: What information do you have for Hon. Kajwang', Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township): Hon. Chairman, this afternoon, we have known who owns Omtatah.

Hon. Chairman, we are not killing insurance brokers. Insurance brokers will exist, but today when you give them business, apart from getting their commission, they do not remit the money to the underwriters. Unless, you are involved in an accident, they do not remit the money to the underwriters. That is why the amount of money that has not been remitted by insurance brokerage firms to underwriters is close to Kshs40 billion, according to the Insurance Regulatory Commission. We are saying that insurance brokers, and I have experience, can still do business. They can pick their commission from the underwriter, but they must pay the money to the underwriter first. They should not keep the money. That is what the President is saying.

Hon. Chairman: I see that this is a fairly exciting bit of the reservation. So, I will give a chance to more Members, but let us first have Hon. Kajwang' wind up his contribution.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Chairman, I was waiting for the new information that the Leader of the Majority Party was going to give me.

Hon. Chairman: The information, as far as I gathered, was that you are the owner of one of these fellows. Probably, you needed to be informed a bit more sufficiently among others.

Hon. T.J. Kajwang' (Ruaraka, ODM): Now, I am properly informed. However, whatever else the Leader of the Majority Party will say, or whatever else these people will proceed to say here that it is only the commission and not the insurance, we had come to a middle ground and said that these people can hold that money for 30 days then remit it to the insurer. Under Subsection (3) there is a penalty for it. I can tell you without mincing my words that this is the sure killer of the insurance industry particularly the brokerage industry. I am on record for saying so. Thank you very much.

Hon. Chairman: Let me give a chance to the Leader of the Minority Party then I will pick two other Members then we will go to the amendment and Members will still speak to it. So, not all Members will speak. You will have an opportunity when the amendment is proposed.
Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, I have never doubted my good friend T.J. Kajwang'. His knowledge in law is definitely better than mine because I never studied law.

Hon. Chairman: I do not doubt that. Proceed.

Hon. John Mbadi (Suba South, ODM): But you may doubt it because you do not know if I have gone back to school to study law. Many of us go to school nowadays.

The reason I would agree with the President is that before you become a victim of the game that is played by insurance brokers... You never know. In fact, when I first came to Parliament in 2008, a friend of mine who was a Member of Parliament, but whose name I will not mention had a brokerage insurance firm and convinced me to insure my brand new vehicle with his brokerage firm. I only came to realise after eight months that my vehicle was not insured at all. In fact, I thank God I never had an accident in that vehicle. If I had an accident in it and it was written off or was stolen, and it was comprehensively covered according to my knowledge, I would have lost it in its entirety. Therefore, if there is a suggestion that payment should be made directly to the underwriters, I support it fully. Let brokerage firms negotiate and agree with clients, but after that the money should be paid directly to the underwriters. That is why I agree fully with the President's Memorandum and thinking.

I ask Hon. T.J. Kajwang' to let us try it because the House is there for the people of Kenya. If the people of Kenya will complain after trying it for some months, we can amend it to serve that interest. I do not support the brokerage firms in their behaviour.

Hon. Chairman: Hon. Ochieng.

Hon. David Ochieng' (Ugenya, MDG): Thank you very much, Hon. Chairman. The issue before the House is that in the country we only have 3 per cent penetration of insurance holders. The guys who do most selling of insurance products are the intermediaries. They are the ones who have ensured that even the 3 per cent has been reached. I wish the President would have consulted these people and entities and agree with them about the best way to go. This is very major policy shift. It is so huge that it is going to affect even those already covered under insurance.

There are things we do in this country that are good for business, but not everyone is doing business. There are things we need to do because they help everybody like the *boda boda* people we are talking about. No insurance company will go to them. It is the intermediaries who will do that. I wish to acknowledge that, as much as we cannot get the numbers, this is a very wrong proposal from the President. He knows we cannot overrule him, but he is wrong. He should withdraw it. We cannot run the country by the President pretending to legislate, yet that is not his role.

I oppose.

Hon. Chairman: Hon. Jimmy Angwenyi.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Thank you, Hon. Chairman. Actually, this proposal is not destroying brokerage firms. In fact, there is a provision in law that makes sure that they are paid their commissions. In the event an underwriter does not pay them the commission, there is a penalty for that. So, the President has looked at all those provisions in law and what he has recommended is for the good of the people of Kenya.

Hon. Chairman: Let us now go to the amendment. Let us have the Chair of Departmental Committee on Finance and Planning to move it. We want to dispense with the amendment. Let the ruling by the Speaker be clear to Members and particularly the Chair of the Departmental Committee on Finance and Planning. If you succeed, you will be negating the President's reservation. You will then need to raise two-thirds majority. When I will be putting

the Question, I will have a choice to count the number of Members present before we take the vote, or I will have the nays to have it and then you can prove that you have the numbers.

Let me repeat for clarity. When the amendment will be voted, there are two avenues I am going to explore. One is to count the numbers and, therefore, take the vote. If there will be no numbers, it will fall even before we take the vote. In the alternative, if I want to make it juicier, I am going to take the vote and rule that it is negative and the ones who are interested in voting “ayes” will have to prove the numbers. It is as simple as that. It is very good for Kenyans to know because from the previous voting, I know there has been accusation that one Speaker or another voted “ayes” when it was supposed to be “nay”. That is how it is going to be done. I hope it is clear. If you want me to repeat it the third time, I am available to do it. Let us proceed knowing that you will require two-thirds.

Hon. Isaac Ndirangu (Roysambu, JP): Hon. Chairman, I beg to move:

That, the new clause 11 as proposed in the Reservations of the President be deleted.

It is important even as we are faced with low numbers that Members understand the feelings and conclusions of the Committee. We reject the memorandum of the President in as far as this matter is concerned for reasons that the amendment as passed by the House was protecting parties involved in the insurance business, providing clauses on offences for all parties who were offending, and the proposed clause in the Bill was making it illegal for brokers to receive premiums on behalf of the insurer. Owing to the challenges of paying full amount, the Committee observed that sub-clause (1) is punitive. It is very punitive to brokers and it obligates premium holders to pay full amount failure to which no insurer shall assume a risk in respect of insurance business unless and until the premium payable is received by the insurer.

The amendment then as passed by the House was helping to have consensus between underwriters and brokers and it is very useful for the insured people. We are proposing to delete the President’s proposal.

(Question of the amendment proposed)

Hon. Chairman: I will give four Members a chance to contribute. I will start with the Leader of the Majority Party then I will give two Members to my left and an extra Member to my right.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, Hon. T.J. Kajwang’ did very well. This amendment was in the Bill and we amended it to say that the brokers can keep their money for 30 days before they give it to the insurer. The role of a broker is to get his agency fee. We must protect the people of Kenya who are paying this money. People must declare their interest. Today, I do not pay my cheque for my vehicles or my house to the broker. I pay directly to the insurer. I ask my broker to get his commission from the company. At the moment, there is over Kshs40 billion outstanding balances that brokers have not paid to insurers in the country. How do we do it? We are saying insurance brokerage will still exist. Take the cheque to the insurer because the person who gives you the premium is not the broker. The person’s premium you are using is the insurer. For me to get my premium, I must pay my money to the rightful guy who is insuring my property or car. Why should I be in the middle?

I can tell you from experience that some of the brokers, not all of them, do not pay back the money to the insurer until you get an accident. When you get an accident, maybe he does not have the money. You keep on running. We want to make life very easy. Hon. T.J. said we were in the middle ground. The middle ground has been rejected by the President. What is the President doing? Under Article 114, the President exercises that power when he feels as the CEO of the country he has to protect the citizens. So, the President is not closing business. We are telling you give me the business, take my money to the underwriter and go get your commission. Why should you keep my money for 30, 40 or 50 days? You cannot do business with my money. Hon. Vice-Chair, do not take us through... It is like taking a donkey to climb Mt. Kenya. You do not have two-thirds here.

I oppose.

Hon. Chairman: Let us go to Hon. (Dr.) Wamalwa and I will pick another Member to my left. I can see Members want to ventilate on this. I will see what to do. I will not be able to give everybody a chance, but I will give many Members.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Chairman. This is a very serious matter because in any business, there is a risk and you want to mitigate against the risk. That is how insurance becomes very critical.

The brokerage insurance plays a critical role. In a situation whereby you are small investor, the insurer has no time to listen to you. Many times the broker is the one who will be your advocate. Some time back, I had an accident and because it was not a company, I was an individual, to get the money back; I had to use the broker to go and meet the insurer to advocate for me to get that money. When I tried to reach that person, he could not give me an audience. For brokers because of the scale of business they give, they are given a hearing. But a situation whereby rogue brokers may overstay with the money, we have put that into the law. This Article 115, I know gives the President a lot of powers but it also good for him to have a human face in the sense that we should not kill the brokerage industry. It has employed many people. We also need to look into this matter of brokerage...

(Hon. Kimani Ichung'wah spoke off-record)

Hon. Chairman, I know what Ichung'wah is after. Do you want me to disclose what you told me? I will not disclose but if you continue I will disclose it. Do not pretend.

Hon. Chairman: Allow me to go to my right and give Hon. Ichung'wah and then I will give a few more Members. Relax, Members. If you can be brief, Members, I probably will give more.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I thank you for the opportunity. Indeed, in a way I agree with many of the arguments that have been advanced but will base my argument on my experience because I worked for four years in a finance department of a prominent insurance company in this country. One of the things you must know is that the capital owners in this country are insurance underwriters just like bankers are the capital owners. Therefore, interest will vary between capital owners and those of us who also

have interest as insurance agents and brokers, but the critical question we need to ask ourselves is, one: When I pay for my insurance, who assumes the risk?

Hon. Chairman: I have to be very clear, Hon. Ichung'wah. Is that a declaration of interest?

Hon. Kimani Ichung'wah (Kikuyu, JP): It is not.

Hon. Chairman: You have just said "us, the agents". So, I wanted to be sure whether you were declaring interest or making contribution. Proceed.

Hon. Kimani Ichung'wah (Kikuyu, JP): The only interest I can declare is that I have worked in the insurance industry. Therefore, I am alive to what happens in the insurance industry. When I said "us" at the time I worked in the insurance industry, I knew at least three or four Members of Parliament then in the early 2000, 2003/2004 including a Cabinet Secretary who ran insurance brokerage firms. One of the problems that we suffered as underwriters is non-remittance of insurance premiums by brokers and agents.

Therefore, even as we discuss the issue, I completely agree with the principle of the President legislating. I think the drafters of the Constitution had a problem in allowing the President to legislate and take over the work of the Members of Parliament. It is impossible to raise two-thirds of all Members of this House. Allow me to make my point, that in principle, I do not agree with the point of the President legislating.

Hon. Chairman: What is your point of order, the Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): No! This *tangatanga* man cannot do this. It is this way under the presidential system of government. The Prime Minister will not have the powers of Article 115 when we go to a parliamentary system. But in a presidential system of government, even Trump has veto power. The President is elected by millions of Kenyans. So, Article 115 has been introduced to protect him in case of a rogue Parliament. I am not saying that this Parliament is rogue. So, if this Member wants to deny the President power, he should bring a referendum question or an amendment. He must withdraw and apologise. The President has powers to protect the citizens from a rogue Parliament and Members like Kimani Ichung'wah.

Hon. Chairman: Okay, you have made your point. Hon. Ichung'wah, wind up.

Hon. Kimani Ichung'wah (Kikuyu, JP): I think the Leader of the Majority Party did not get my point. I said that in principle, I do not agree with the drafters of the Constitution in providing a window for the President to legislate. We should leave the legislation work to this Assembly and the Senate. That is beside the point.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): On a point of order, Hon. Chairman.

Hon. Chairman: Order, Members! Let me say that it is much better for us to have more Members speaking to this rather than interrupting. Hon. Jimmy Angwenyi. I know this could be a burning issue, but please, be calm. I will have to make a decision. I will reduce the number of Members speaking if I allow two more interruptions. I want to give a chance to two Members and then finish. Hon. Ichung'wah, you are taking too much time. What is it that is remaining? Finish so that I can give Members a chance to say what they want to say.

Hon. Kimani Ichung'wah (Kikuyu, JP): I was saying that on the basis of that principle, because that is where the gist of the matter is, I agree with Duale. That is veto power of the President is needed when a House seems to be going rogue. We are not saying this one has gone

rogue. We must also be alive to the fact that, as Members of Parliament and the general citizens, we have interests in insurance brokerages and agencies. However, my point was that the person who assumes the risk of insurance is never an agent. It is never an insurance broker. It is the underwriter who assumes the risk. Should we allow insurance brokers and agents to continue holding money?

Hon. Chairman: No more! That is enough. Let us hear Hon. Omboko Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Chairman for this chance. Whereas this law is supposed to look like the President is defending the public or being the advocate of the civilians, we must remember that the brokerage industry has been in this country for a very long time. It has employed the youth. When they leave schools or colleges, many of them begin and have earned a lot by serving in the brokerage industry. Actually, it is a form of employment.

I must conclude by saying that the creation of the brokerage industry in economics - and I know Economists are here - is part of the multiplier effect that is very important in a growing economy. Therefore, if we allow ourselves to remove the brokers completely, we are killing our own economy.

I would not support the position that the President has brought to this House...

Hon. Chairman: Hon. Maanzo, briefly and then we will come to the others.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Chairman. My interpretation of this amendment and the President's reservations is that brokerage firms have not been dealt with. Two, I am a practitioner of law in this area. A bus which was going to Western Kenya was involved in an accident and it had been insured through a broker. I can assure you no single person, out of the many people who died, could be paid. First of all, the owners of the bus could not be traced. When we went on a second lap to the High Court level so that we attach the insurance company, it was not possible. So, I support the President's position and say that Kenyans have been protected. The President has protected Kenyans. The brokerages have only been controlled. They have not been done away with.

I support.

Hon. Chairman: Hon. Junet, you have the Floor.

Hon. Junet Nuh (Suna East, ODM): Hon. Chairman, the work of a broker is just to do brokerage; to receive the money and send it to the owner. I know of a Member whose car was involved in an accident when he had insured it through a broker. When he went to the underwriter, he was told that they had not received his premiums. I know Hon. Ichung'wah is a broker, politically and insurance-wise. On this one, he must accept that the President is protecting the interests of the people of the republic. So, brokerage should be different. The *tangatanga* one is good enough. He should now graduate to that one rather than the one for insurance.

(Laughter)

Hon. Chairman: That is the last Member.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Chairman. There are two critical parties in insurance law, namely, the insured and the insurer. When an accident happens, any other party is a stranger. So, the most important thing, as I support the President's reservations and amendments, is that holding of insurance money by brokers has made too many insurance companies to collapse because of non-remittance. It is, therefore, very important for insurance premium money to be paid directly to insurance companies so that the companies do not collapse. We have too many unpaid claims in this country because of the collapsing of insurance companies.

Hon. Chairman: Hon. Members, I want to dispense with the amendments. I am putting the Question. All the other points of order are out of order. I want it to be very clear.

Hon. Simba Arati (Dagoretti North, ODM): *(Off-record)*

Hon. Chairman: Order, Hon. Arati. If you have suffered, you will prove by voting one way or the other. This is how we will go. As I said earlier, I have two options. I have chosen one. The first option is to count Members before voting to ensure that we have the two-thirds. That will take a long time. The easier option is for me to rule one other way and the rest of the Members who have an issue against that will look for the numbers, clarify that they have the numbers and then we will vote. So, you can be sure about how I am going to rule.

*(Question, that the words to be left out
be left out, put and negated)*

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): *(Off-record)*

Hon. Chairman: Hon. Member, are you talking about the two-thirds gender rule? I have made it very easy for me. What I wanted to prove to Kenyans is that there is a way you can get the voice of another group higher even if it is lower. Unfortunately, or fortunately, on this one, the "Noes" have had it. Therefore, the proposal by the Departmental Committee on Finance and National Planning falls on its face. So, we will vote on the Presidential proposal.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 11 as amended agreed to)

(Hon. T.J. Kajwang' spoke off-record)

Hon. Chairman: Who is out of order? Order! Hon. T.J., you have to listen to me when I am seated here. Never mind the fact that we were classmates at university. I am here and you are there. Now, Hon. T.J. Kajwang', that matter has already been dispensed with. So, I do not know what your point of order will serve at this point in time. Well, I will hear you.

Hon. T.J. Kajwang' (Ruaraka, ODM): Thank you, Hon. Chairman. This is where the Leader of the Majority Party cannot get some of these small favours that come with going to school with you. Of course, he has gone to school. I know he is a serious Masters holder, but it is not in law. It is in something else. I want to find out something. The Leader of the Majority Party called Hon. Ichung'wah "*tangatanga* man" That is what I am following. Is he in order? Can he explain what the *tangatanga* man thing is all about?

Hon. Chairman: Fortunately, Hon. Kajwang', I did not hear that at all. So, I am not going to entertain what I did not hear. We are becoming frivolous with these points of orders. So, we will proceed.

Hon. Members, I call upon the Mover to move reporting.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, Hon. Ichung'wah is a serious leader in the *tangatanga* team. For those who do not know, I am also a member. It is a formation that is coming to something as we move forward. I also subscribe to the other small one - "*kieleweke*". I am a member of both.

Hon. Chairperson, I beg to move that the Committee do report to the House its consideration of the Presidential Memorandum on the Insurance (Amendment) Bill (National Assembly Bill No.21 of 2018) and its approval thereof without amendments.

Hon. Chairman: Very well.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Christopher Omulele) in the Chair]*

The Temporary Deputy Speaker (Hon. Omulele): Order! Members. Hon. Nyikal, this is the National Assembly and it is in session. Chairperson.

REPORT

CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE INSURANCE (AMENDMENT) BILL

Hon. Moses Cheboi (Kuresoi North, JP): Thank you, Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Presidential Memorandum on the Insurance (Amendment) Bill (National Assembly Bill No.21 of 2018) and its approval without amendments.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

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In Article 115 of the Constitution, the drafters, in letter and spirit, knew that a President that is elected by millions of Kenyans - in this case President Uhuru Kenyatta who was elected twice with over eight million votes - will be under obligation to protect his citizens as the Chief Executive Officer (CEO) from a perceived rogue Parliament. That is why in the event there are partisan interests in law-making, the President will exercise his veto powers. We have seen that in the USA where President Trump exercised it. If you have a problem with that, you have two choices. You either raise the two-thirds majority or you become the President and exercise the veto power. If you cannot be the President, you amend the Constitution and introduce a parliamentary system. If we had a parliamentary system with a Prime Minister, he would not have veto power because he will be seating in the House. But in a situation where certain interests of Members of Parliament play out, the President will... That is why last time when some Members said that the Kenya Ports Authority (KPA) belongs to them, the President looked at the national interest. What is the national interest in reviving the Kenya National Shipping Line?

There is another memorandum coming from the President.

(Hon. Junet spoke off-record)

What is out of order?

I beg to move and ask Hon. Ichung'wah to second.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. There is nothing out of order, Hon. Junet. Hon. Ichung'wah, you have the Floor.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. As I second, I want to join the Leader of the Majority Party. Probably, a number of Members did not get exactly what I said. If you look at the proposals by the President, the first one was that no intermediary will be able to receive money on behalf of an insurance. I said that the first provision was that no insurer shall assume a risk in Kenya. That is why I was talking about the issue of who assumes the risk. No insurer will assume a risk unless premiums have been received by that insurer.

Therefore, we were going to set a bad precedent where, if insurers have not received your premiums, you are, therefore, not covered. That will not be a mistake out of your own making. It will be the mistake of a broker or an agent who has gone rogue and has refused to remit insurance premiums to the insurer. You will, therefore, stand not covered. So, His Excellency the President was in order. That is why I said that, as much as in principle, I do not agree with the provisions of Article 115, on this particular one, I want to support the President.

I said that at the time I was working in an insurance company, I knew a former Cabinet Secretary, who I do not want to name and, at least, three Members of Parliament who were insurance brokers. In that company, one of the Members of Parliament owed it premiums of about Kshs369 million in a particular year. Insurers have suffered in the hands of insurance brokers. That is unfortunate because they are well represented. If you can remember, the last time we had an issue to do with brokers in this House, they were all lined up in the Public

Gallery waiting for somebody to do business for them here. Therefore, I want to support and agree with the President on this one that we must protect the interests of the insured.

By protecting the interests of the insured, we must make sure that premiums are received by the person who is assuming the risk. The President was not blind to the fact that they may also be rogue capital owners who are insurers, who may refuse to pay insurance brokers for the work they have done. I want to give comfort to brokers or those who represent brokers that the President has taken care of their interests under Clause 5. He said that an insurer shall pay an intermediary insurance commission due within 30 days upon receipt of premiums. Therefore, this memorandum, as Hon. Maanzo said, has covered the interest of the insurance brokers, but more fundamentally, it has covered the person who assumes the risk, who is the underwriter or the insurer. It has also protected you as a person who is covered.

With that, I beg to second and support.

(Question proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): I will allow one or two comments. Let us hear Hon. Odhiambo Akoth, the Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I am not too sure whether I want to support the Committee because it is a difficult situation. As much as the insurance wishes to get their premiums in good time, we also have a situation where an insurance agency may also not remit money to brokers. The only recourse they have is to go to court which is very costly. So, my worry is that we might have many people losing their businesses.

What is of interest to me is from what Hon. Ichung'wah was saying, and I was actually asking him earlier when he became born again. He is speaking the language I have spoken for many years before. Given that he is born again now, I just want to say that if you read Article 115(4) of the Constitution, you will realise that it says:

“Parliament, after considering the President’s reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President’s reservations, by a vote supported -

a) by two-thirds of Members of the National Assembly”.

If we are using the plain English interpretation, it means that if we are ignoring the President’s reservations, we need two-thirds. It also means that if we are passing the President’s version, we also need two-thirds. I know for political expediency, we want to close our eyes to this, but the reality is that we need a two-thirds majority to pass what the President has given as a version.

The purpose of this Article is to protect the country from rogue parliamentarians, but also to protect the country from a rogue President. We may not have a rogue President now, but one day, we might have a rogue President and Parliament would pass and reverse everything that President does. For purpose of political expediency now, we may misinterpret, but the reality is that for us to pass the version of the President, we also need a two-thirds majority. That is from the plain English meaning of that Article.

Thank you, Hon. Temporary Deputy Chairman, I reserve my support or otherwise...

The Temporary Deputy Chairman (Hon. Christopher Omulele): Very well spoken, Hon. Millie Odhiambo. It is good that you have noted that Hon. Ichung'wah, the Member for Kikuyu, has changed his mind. I am sure he is a wise man. As they say, it is the wise who change their minds quite often. It is only fools who do not change their minds. So, Hon. Ichung'wah is a wise man. He knows when to change his mind and he has wisely done so at this particular time.

Hon. Nyikal, what do you have to say about this?

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Chairman. I do not support the Committee on this. The whole essence of this is the existence or the non-existence of brokers. The Bill says that an intermediary shall not receive any premium on behalf of an insurer. What then will you do with a broker? The big insurance companies are just going to form a cartel and kill the companies. That is what happened in the oil industry. We cannot have these proposals which have a double meaning. It is also saying that they shall not receive and on (iv), it is assuming that the insurers are such good people that they will pay while they are saying the brokers shall not pay. The Bill also says that if you have said they will not receive, the issue of no insurance shall receive a risk in Kenya in respect of business until the premium received becomes inconsequential. So, the whole thing is not consistent. The main thing is that I do not see insurance brokers surviving. You do not kill a whole industry to correct wrongs. Put punitive measures to let the industry work.

I am also concerned about how we conduct the process of two-thirds. Every time we have heard two-thirds majority on the gender issue, the first thing we do is to count to know whether we have two-thirds in the House. Why are we changing today? We are saying that we will then pass it and prove the two-thirds majority. The process and the principle are not right.

I do not support.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Mbadi, the Leader of the Minority Party, you have the Floor.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I have been very consistent on this matter of brokers. The brokers are supposed to be intermediaries between the insurer and the insured. They have no business holding or receiving money. Let the money go to the right people; the insurers.

I am also happy that Hon. Ichung'wah has shifted and he is now speaking the language that we have been speaking. I also feel strongly that even though it may be comfortable today, the President should not have the kind of powers that he has under Article 115 of the Constitution. I will not agree with what Hon. Millie was trying to say that even when we are agreeing with the President, we require a two-thirds majority. Far from it. When we are agreeing with the President, you require a simple majority of the Members. Hon. Millie is a lawyer, but I was a very good student of English. That is still being seen and is evident today. If she spoke about the plain meaning, let me just read Article 115 and then stop there.

Article 115 of the Constitution says:

- “(1) Within fourteen days after the receipt of a Bill, the President shall –
(a) assent to the Bill; or

(b) refer the Bill back to Parliament for consideration by Parliament, noting any reservations that the President has concerning the Bill.

(2) If the President refers the Bill back for consideration, Parliament may, following the appropriate procedures under this part -

(a) amend the Bill in light of the President's reservations; or

(b) pass the Bill a second time without amendment.

(3) If Parliament amends the Bill fully accommodating the Presidents' reservations, the appropriate Speaker, shall re-submit it to the President for assent.

(4) Parliament, after considering the Presidents' reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the Presidents reservations, by a vote supported -

(a) by two-thirds of the Members of the National Assembly; and

(b) two-thirds of the Senate.

Where this is causing Hon. Millie confusion is when it says "without amendment or with amendment", but without amendment referred to here is where Parliament is taking back the Bill as it was before the President's reservation. When you accommodate the President's reservations, you have amended the Bill, but in line with what the President had recommended. In which case, you just require a simple majority of Members present at the time. It is not in doubt that when the President has veto power, it is such superior and excess power because getting two-thirds majority in a multiparty system is next to impossible.

I think going forward, the people of Kenya either need to lower this threshold because it will hurt and it has started hurting. The other time, we were in the opposite side with you, Hon. Temporary Deputy Chairman, on the Finance Bill and I could see the frustration in the eyes of Members where they were even trying to push and force that they had the two-thirds even though they knew they did not have it.

I have been in this Parliament long enough and I only remember we garnered two-thirds majority on the constitutional amendment to anchor in what we used to call the National Accord. In fact, it was because the country was burning and you could easily rally the Members. Otherwise, it is difficult to get the two-thirds. There was even a time former President Mwai Kibaki, and the former Prime Minister, Raila Odinga, had to sit in this House to get us pass the Bill that was supposed to help us with the issue of The Hague and yet we could not get it. So, with regard to this veto power of the President, Kenyans need to think through it and lower it.

Thank you. I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the issue of the interpretation of Article 115 with regard to the President's veto powers, as you are referring to it, has been dealt with and a proper deliberation has been delivered by the Speaker in this House. So, I think we are beating a horse that has fled by going about it any further than the Speaker has already determined. So, let us just make comments. Let us have Hon. Junet and Hon. (Dr.) Oundo. I see they have interests. I will give you an opportunity, but let us start with Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Speaker, the amendment by the President is not saying that we get rid of brokers. It states that the money collected on

behalf of insurances should go directly to the insurance companies. There is no need of brokers holding people's money. People have lost money in the hands of many brokers with regard to insurance. They collect premiums all over the country. They are holding over Kshs40 billion which has never gone to the underwriters. They do other businesses with the money and yet such business is not part of the insurance business. Insurance companies sometimes fail to compensate people because they have not received money from brokers.

So, brokers can continue doing their business by providing the service and getting their commission from the underwriter. Maybe we need to amend the law to put in place measures that will force underwriters also to pay brokers the commission on time.

(Loud consultations)

The former Minister for Finance is saying that he put that in place when he was in office before the Grand Regency saga came up. You know he was one of the best Finance Ministers. He had many laws in place and I must thank *Daktari* Amos Kimunya.

Hon. Temporary Deputy Speaker, we cannot allow brokers to run this country. You know them. The main interest of a broker is to get his commission. A broker does not care whether you are getting the right services or not. So, this law is timely. Many years to come, Kenyans will be very grateful to this House for passing this amendment.

A Member has just said that a bus going to western Kenya killed 52 Kenyans and because the insurance was done through a broker, the bus was not insured. None of the Kenyans has been paid! I am talking about 52 Kenyans. We must support the amendment by the President. The President has veto power, but he should use it exceptionally like now. We support him on this one because he is taking care of the interests of the people. He wants to ensure that every insurance gets the premium that any Kenyan has paid for purposes of insuring his car or life.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): very well. Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker for allowing me weigh on this matter. My comments will be brief and restricted to three issues.

First, as much as the framers of the Constitution had good intention, there is a very high possibility that any other bad President would definitely misuse Article 115. However, it is in our Constitution and we must live with it. I join my colleagues to echo the sentiments that the President should use it judiciously and in the best interest of the people of Kenya.

Secondly, it brings into question the process of law making and whether it involves adequate amount of public participation. Probably, the sentiments of the Committee that handled this matter received adequate representation from the public. They may have alluded to the fact that the amendment as proposed by the President could as well hurt the general business and so in that event, we must again look at how we can remedy the situation.

Thirdly, I totally agree with the reservations by the President. I say so from two obvious points. One, the agent's relationship involves the principal and the client. It is the principal who is liable and responsible for the risks or the contract he or she is assuming. The agent merely acts

as an agent of either parties and, therefore, cannot purport to hold any property or any rights in respect or on behalf of either the insured or the insurer. So, in this event, I do not think the amendments proposed by the President will kill the agency relationship and the brokerage business unless we are assuming that the brokers have been receiving income other than the commission that is due to them. In any particular respect, take the example of an estate agency. One receives payment for sale, but in the name of the seller and not the agent.

So, I sincerely believe there are adequate safeguards such that if the insurer does not pay the agreed commission to the broker, then there is a penalty. The only challenge is that the process of recovering the money seems to be tedious. One has to go through the policy holder's fund which may take long.

In conclusion, I want the Executive to rethink this issue. If in the event we pass the Finance Bill that imposes insurance on motor cycles, then the insurance industry must find ways and means of ensuring that premium reaches them from far flung areas probably in a cost-effective manner than forcing them to travel to their head offices to pay or payments done in a system that is difficult to reflect. However, we do not want to undermine and demean the work of insurance brokers. They play a critical role on reaching the insured and following up in the event of a claim after a peril. In this respect, I support the President's reservation.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Let us have Hon. Ganya Chachu. Hon. Simba Arati, we stopped raising hands in this House. I will give you an opportunity.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hold on Hon. Ganya. I will give you an opportunity. I just want to speak to Hon. Arati. He is the last one on my list here. So, just relax. You may have an opportunity later. Proceed, Hon. Ganya.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker for this opportunity to support this Memorandum. My colleagues who are experts in this industry have spoken so well and I have every reason to support their position. However, I have a fundamental problem with the issue of the President's Memorandum. It is, of course, honed under Article 115 of our Constitution.

Hon. Temporary Deputy Speaker, there is a tendency where technocrats at State House usurp the powers of the lawmakers and so, they are the ones making laws for this country. The world over lawmakers veto presidential memoranda if they can rise to the occasion and raise the two-thirds requirement. As a ranking Member of this House, I can tell you for sure that even to raise the quorum needed, let alone to veto that Memorandum with the required majority, is next to impossible. That is what we have observed over the years.

In light of this, few technocrats such as legal advisors in State House have usurped the powers of Parliament, whether the Senate or the National Assembly, and are the ones in effect making laws for this country. This is unacceptable. This is a faulty Article in our Constitution. We should reconsider that Article so that we can have the necessary powers and play our constitutional mandate in terms of the roles we have under the Constitution. To raise 233 Members or even a quorum in this House, is next to impossible, let alone getting the required

numbers or the majority required to veto this Memorandum. In effect, there is no point of sending a Memorandum here because it has always passed and will always pass.

So, going forward, in the interest of this House as law makers and for posterity of Parliament, this Article should be reconsidered. Parliament must be given its powers to do its constitutional mandate.

With that said, I support the Memorandum.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Bunyasi.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I would like to comment on this Memorandum debate from two or three angles. I think in the last Parliament, we discussed at length the issues of the implications of the powers of the presidency in the veto process.

There was a feeling from the majority of the people, but I do not know if that is how we concluded, that the way powers are exercised go far beyond our rejecting and seeking reconsideration. They go to a point where there is redrafting of legislation. I think this is not something we should gloss over simply depending on either our political affiliations, the nuances in our political affiliations or the floods we seem to fall into politically from time to time.

So, we should think of this not as the President, but as the presidency. Maybe, this will make it a bit softer because it will be less personal than it is. I think fundamentally there is a very big issue here. As my colleagues said then and are as saying now, effectively, legislation is then being made by the mandarins who are seated in State House. We run a risk because we do not even know whether they have vested interest because they do not declare their interest.

There is a fundamental issue here and probably the Departmental Committee on Justice and Legal Affairs should debate this and get people who understand it a little bit to go in some depth on the issue of veto. Furthermore, on the issue of brokerage and the underwriters, I think this amendment is being intrusive. The relationship between the broker and the underwriter is a voluntary one. Why does the underwriter continue to work with the broker who will not remit funds to them?

If we begin legislating relationship between parties, we will one day get into the bedroom. Let us get out of this and let the industry work it out in negotiated arrangement. Somebody has mentioned the difficulties we may begin to confront when we get to, for example, the *boda boda* industry. These kinds of arrangements are the interests which are all over in every corner of this republic. We are going to create great difficulties by putting obstacles along the way. Let the underwriters themselves - they have an association among themselves - negotiate this with the brokerage industry.

Lastly, nobody should accept money from anybody without taking responsibility. If that is the case, we should also apportion responsibility that once funds are taken by the brokerage firms, they have to bear some responsibility. I do not think we should go into debt collection, revenue consolidation for underwriters through the back door. This to me sounds like it could be legislation that is being passed with vested interest. I think it is a bit risky.

Thank you, Hon. Temporary Deputy Speaker. I oppose.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I think we have ventilated sufficiently on this. I will allow just Hon. Arati and then we can let this rest, so we can make progress.

Hon. Arati proceed.

Hon. Simba Arati (Dagoretti North, ODM): Thank you, Hon. Temporary Deputy Speaker. I was here early enough, but the machines were not working. That notwithstanding, I have been a victim of brokerage. There is fear that brokers are going to lose their jobs, but they will not lose them given that they happen to be the marketers of products by underwriters. The only thing we want to stop them from doing is handling money.

I got an accident in my Range Rover along the Mai Mahiu Road and when I went to make a claim, I found out that the broker had not remitted my money one year down the line. Save the fact that I am a Member of Parliament, many people are crying out there. When I threatened to ask a Question in Parliament, the underwriter paid though much less.

I am happy this legislation has come from the President today when our spirits are up because of the handshake and the situation is calm other than the *tangatanga* team. We may get a rogue President who does not want to reason and will mess the country. Therefore, I want to support the President's Memorandum with reservations that, indeed, we need some discipline in this industry. There is no way brokers will start collecting money and not remitting it. At the end of the day, the person who suffers is the common mwananchi. Therefore, I urge my colleagues that we are the representatives of the common *mwananchi*, and we should support the President's Memorandum for the sake of the country.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I can see we have interest from probably 10 Members and if we allow them, we will not make progress. I, therefore, direct that we have sufficiently ventilated on this. The next step with regards to this particular business will be undertaken when the matter is set down for consideration again. I now direct that we move to the next Order.

(Putting of the Question deferred)

BILL

Second Reading

THE NUCLEAR REGULATORY BILL

(Hon. Aden Duale on 20.6.2019)

(Resumption of Debate interrupted on 20.6.2019)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, I hear you speaking to the Kenya Accreditation Service Bill that the Speaker directed that it will be considered another time. So, it is not being considered now, but we are considering the Nuclear

Regulatory Bill (National Assembly Bill No.27 of 2018). Eleven Members had spoken to this and the last Member on the Floor when it was adjourned was Hon. Mwangi Mburu. If he is present, he still has four minutes.

Hon. Benjamin Washiali (Mumias East, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Washiali, what is out of order?

Hon. Benjamin Washiali (Mumias East, JP): On a point of order, Hon. Temporary Deputy Speaker. I may not want to sound like I am overruling your comment about setting aside the Kenya Accreditation Service Bill, but I think for business already appearing on the Order Paper, there should be procedure in terms of informing the House what should be debated. Quite a number of stakeholders knew about this debate through television and I think we should have been given reasons why it has been set aside.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Washiali, I do not know whether you were in the House when the Speaker was delivering himself on this and he gave good reasons why he was stepping it down. They are on record.

Hon. Mburu not being in the House, I will, therefore, open this up to Members who are interested in speaking to this. Hon. Wanyonyi, are you ready to speak to this? Hon. Maanzo, we shall start with you.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute on the Nuclear Regulatory Bill 2018.

Nuclear energy is being used almost everywhere in the world. Recently, in Germany, a county was celebrating 32 years of there never being a single blackout at any given time and any other alternative source of energy, whether generator or solar, being used, because nuclear energy works efficiently. There is no possibility from their whole system of there being a blackout. That tells the efficiency under which nuclear energy works. However, it has challenges. If mishandled, nuclear energy is very devastating.

Secondly, it also needs a lot of water. It is used in areas with a lot of water because of the cooling system. In the event of an earthquake, like it happened in Japan, it becomes very disastrous because the infrastructure can be affected by earthquakes and the effects can go very far.

A new board is going to be set up to deal with this independently. Accidents of that magnitude may not even be foreseen or properly forestalled by this regulatory body, which will make sure that nuclear energy works in the country. So, as much as we are going to pass this law, we also have alternative energy in the country. We have rivers, dams and enough solar in the country, which we have not properly utilised. Although nuclear energy is very useful and can be efficient, we have to make sure that we have trained personnel to deal with this and we have to make sure that when we develop this mode of energy, it is cost-effective. We have just invested in the railway line and we are heavily in debt because of it, which is benefiting other countries more than us. We are bringing in more than we ship out.

If we have to develop nuclear plants, then, what will be the cost? It could be very high for the country. Although we are going to put this law in place and have the necessary authority and

engineers already working, do we have sufficient engineers on this field? Is nuclear energy being taught in university? If so, what is the practicality? We do not have these plants already operating in the country although they are in many parts of the world especially the first world. They have been very effective in those countries.

The cost of it may require us as a country, we prepare for quite some years. This is something that we need to think through properly. We should be advised well by the Treasury, so that when we begin the plants, tenderpreneurs will not take advantage by having an international company come and do the business here, take away all our earnings, broker at that level and make money for bringing the installations.

It is a very good idea. This is a very good Bill and it may not be applied immediately. We may have to pass this Bill and probably suspend the date when it will come into operational or functional. Probably, that is something to consider bearing in mind that Parliament should not be debating or passing laws in futility. We have to be prepared in terms of cost and location. Where are we going to locate this? Is it in a heavily populated part of Kenya? If it is in a sparsely populated part of Kenya, do we have sufficient water there? Do we have a river going by this particular plant which will cool it sufficiently? If that were the case, looking at the face of Kenya, how are we going to be able to put the infrastructure so that we can serve all Kenyans with this particular energy? Will it be cheaper than the normal electricity that we are producing now?

I am aware when we have drought, like now we have experienced drought, probably in a few months, we will be using generators and the cost of power will go up. However, when we put up this particular energy, will it be more expensive than what we are already using and what other methods can we use? There are many other sources of energy in Kenya although coal has been described as not clean energy. It is old and it has more devastating effects than what we could have now. Most importantly, how are we going to train our experts? How many years will they take to go through a nuclear course and the practicality of it? How long will they undergo enough practicals to employ Kenyans locally to run this particular project? Are we going to hire many foreigners to run the nuclear plants in the country?

So, it is a very good Bill. It has regulations. It has quite a number of parts. It complies with the relevant sections of the Constitution, but we need to look more at the danger likely to be posed in the event of an accident of this nature. How are we going to deal with it or contain it? Recently, we are doing quite a number of dams in the country. How many of the dams can generate power? The Thwake Dam is being constructed in Makueni Constituency along the Thwake River and it is going to produce energy, which will definitely go to the national grid. How are we going to put this to the national grid? Have we put up an alternative energy-generating State corporation already? It seems we will have two energy-generating corporations. So, at some point, we need to think of how to marry the two to make sure all of them are energy-generating and they can go to the grid. What will be the role of the existing one, which is KenGen, when all power in the country is generated by nuclear plant and it is sufficient for all Kenyans? Will we need KenGen?

So, it means that at some point, some necessary amendments will have to be made so that the two bodies can be merged and both of them are generating power or there is a system of one

generating and another distributing. Then, what will be role of Kenya Power, which also acts under an Act of Parliament? It means that the three bodies will have to be married at some point. The main idea is efficiency and proper power supply to the country.

I really support this Bill, but insists that as Kenyans, we must set our minds to thinking about the effects. A proper study should be done by the Departmental Committee on Energy in this House. It must visit one or two other countries which have had successful generation of nuclear energy and the countries which have had disasters in this particular sort of energy, the effects of the disasters and how they were managed. Once something goes wrong with the plant and the nuclear stuff pollutes the compound, there is a likelihood that it will affect generations. I beg to support, but insist that there are many issues which, most probably, we will bring at the Committee of the whole House to make sure we have a sufficient law to regulate this sort of energy.

Thank you, Hon. Temporary Deputy Speaker. I beg to support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Manje, the Member for Kajiado North, you have the Floor.

Hon. Joseph Manje (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to the Nuclear Regulatory Bill, which comes at a time when we are focusing on Vision 2030. This Bill will regulate the generation of power through the use of nuclear energy. That is the current trend in the world. Other countries are going in that direction. In Africa, South Africa depends on nuclear energy in the generation of electricity. There are countries which are currently preparing to produce electricity using nuclear energy. Nigeria has taken some steps in that direction. Generation of electricity using nuclear energy is highly regulated in the world and has very few players because it is a very sensitive area. Nigeria has taken some steps in identifying where to produce nuclear energy. In countries like Uganda and Ghana, preparation for generation of nuclear energy is in the pipeline. It is a preparation that takes time and it might take 15 or 20 years.

There is a difference between energy produced using nuclear power and the atomic bomb that we normally hear about. Anytime you mention nuclear energy, people tend to think about the atomic bomb. The idea is peaceful use of nuclear energy in the production of electricity. To produce electricity, you just need to turn turbines. You can use water to produce hydroelectric power. You can use geothermal or thermal energy to rotate the turbines or you can use gas. Having said that, you will find that these do not compare with nuclear energy.

In the production of nuclear energy, you use uranium, through fusion, to produce a lot of power that will turn turbines. If you get a very good disposal method, you can produce a lot of power that can last the country for many days. This can make us a middle-income country as we have envisioned in our Vision 2030. We need enablers, and electricity is an enabler for the Vision 2030.

Nuclear energy is very reliable. In countries that use nuclear power, once you ignite the reactants, it can take up to 18 continuous months before you change the fuel. That means for 18 continuous months, there will be no power outage like we normally have in the country time and again. Nuclear energy is more reliable compared to others energy sources. It is also clean. Modes of energy production that involve burning of petroleum fuel or coal are dirty compared to

production of nuclear energy. With nuclear energy, you do not have emissions. It is a clean production method of generating power. It is cheaper because once installed, it runs continuously. It is not like oil where you have to keep on changing. Once you put the reactants in the fuel, the fuel system fires itself for about 18 months continuously. It becomes a bit cheaper.

It has so many advantages compared to other forms of energy production. If you compare nuclear energy to solar energy, which people say is good, it can only be tapped during the day. At night, you cannot store that energy. When it comes to wind production, wind energy will be produced when there is wind. When there is no wind, the turbines will not be turned and production will be zero. When you compare it to other forms of energy like geothermal power, the same thing happens. In terms of geothermal energy, you have to drill a hole, which is also expensive. You will find that within a short time, because of the instability on the ground, you will suffer from exhaustion.

This is the way to go. We should not fear technology. People will say that if you introduce nuclear energy, then there will be explosions and atomic bombs. If you fear energy, you will be left behind. If somebody was to introduce aeroplanes at the moment and tell you that the plane will go up, you will imagine that if something goes wrong, you will come crashing down. This is the right way to go. The body concerned should educate Kenyans on this. There should be a lot of citizen participation to make sure that people appreciate this aspect. Anytime you mention it, people are not likely to appreciate it unless they are educated on it.

There is also the issue of the location of the plants. There are those requirements of where to locate a nuclear plant such as it has to be in an ocean setup where there is a lot of water to cool down the plant. There are those sites that need to be constructed and the citizens of those areas should be educated on the positive aspects as opposed to the negative. We cannot be left behind by other countries. We should go where it is required. One nuclear plant is enough for the energy requirements of the country, but if we get two, we will have sufficient energy.

I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Mwalyo Mbithi, the Member for Masinga.

Hon. Joshua Mwalyo (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this time to air my views on this Bill.

The Nuclear Regulatory Bill is for the future. Our country is progressive and we are moving in the right direction as far as development is concerned. It will reach a time when the power that we are using today will not be enough for our industries and homesteads in the country. Every day, we build new houses and pursue other developments that include installation of manufacturing plants. That is why you find that we have an energy shortage and sometimes power has to be rationed. Currently, Kenya imports electricity from Uganda. We need to become self-sufficient. The way to go is not to be left behind or fear new developments like nuclear power. Therefore, I support this Bill because Kenya is aiming high. We have a lot of division of power and we need reliable power for the future.

Nuclear energy uses many cooling systems. We will create jobs for refrigeration firms, which will run the cooling systems and create employment. Many other things will come with the Nuclear Regulatory Bill. Investors who fear the cost of electricity in this country will come

and tap into cheaper, reliable power that is not cut off all the time. When you are running an expensive factory and power comes and goes, you have to run generators, which eat into your profits. We need this Bill so that we are set. In future, when we will be ready to put up such plants, the Bill will be there to protect investors and employees who will be working there.

Therefore, I support the Bill.

You have heard that once you start a nuclear plant, it takes about 18 months before you even stop it for maintenance or anything else, even to change a consumption item. Therefore, it is a very reliable source of power. Kenya needs to go that direction.

With those few remarks, Hon. Temporary Deputy Speaker, I rest my case. I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kimunya, the Member for Kipipiri, you have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): I thank you, Hon. Temporary Deputy Speaker.

(A Member spoke off-record)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Owino, thinking is free, but the reality is that it is Hon. Kimunya's turn to contribute.

Hon. Amos Kimunya (Kipipiri, JP): I thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill that is timely for the development of our country. I have heard Members saying that this Bill is futuristic. Indeed, it is overdue because we may be looking at nuclear protection purely by thinking of nuclear energy generation. Nuclear generation and exposure is already with us.

Part VII of this Bill classifies the types of facilities. Some could be for energy generation, others for research and other facilities. Members may have seen big adverts by one of the hospitals in town saying that it does Positron Emission Tomography (PET) scans. Hon. (Dr.) Nyikal is around and I am sure he will add his voice to this, if he has not contributed. When you see those adverts, we are basically saying that we have a cyclotron in Nairobi. We will be doing PET scans for cancer screening in Nairobi and you do not have to go to India for cancer screening. What are we basically saying? We are using nuclear energy to do the PET scans. We already have nuclear energy facilities that are exposing Kenyans to risks that are not regulated because of the absence of this Bill. This Bill is urgent and needs to be fast-tracked. We should not think of it as futuristic. It is urgent and we need to pass it.

I want the Committee to re-look at the provisions of the Bill. Part VII of the Bill talks about safety of nuclear facilities and decommissioning. We know what a few grams of nuclear material in the hands of the wrong person can do to this country. We suffered a tragedy in 1997. I can imagine just having a little nuclear material in the wrong hands. We are not even talking of security here, but safety. The person who is transporting nuclear materials must ensure this safety. The person who is setting up the facility must ensure that there is adequate safety.

However, I want the Committee to look at it and hopefully all of us can come up with some amendments at the Committee of the whole House. We must look at our national security at two levels. Who are the people we are going to allow to operate these facilities? How do we

control foreigners who will come to this country to operate nuclear generation facilities and nuclear operation facilities? How do we ensure that a person who says that he is setting up a facility to generate PET and Fluorodeoxyglucose (FDGs) for cancer screening uses the nuclear material he receives for that and not for passing it on for people who want to do some terrorists activities within our country? We must be very careful in terms of who gets approved to receive nuclear material. If a person is a foreigner, then we need also to be very careful that no foreign company can run these facilities, unless the Government is represented within that company or Kenyans are heavily represented in the companies, so that we can protect our national security from people taking licences for research and medical production of materials that use nuclear materials and then they are diverted to other courses.

The other thing I would like us to think of is the regulator. We are talking of a commission, which will vet and issue licences. In addition to the normal processes and the regulation that the commission will come up with, which we do not know yet, there has to be specific security vetting of not just the people, but also the facilities. This is so that our security apparatus which are the National Intelligence Service (NIS), the military intelligence and all the people who take care of us, discuss even at the National Security Council (NSC). They should be comfortable that we are not placing dangerous material in the hands of an irresponsible person who then blows up the country. You saw what happened in Japan. If somebody purports to put up a warehouse somewhere and there is some leakage, we can live with the negative implications of that for generations to come. We do not want that to happen when we are sitting in this Parliament looking at nuclear regulations. Do not think of them and be happy that they will help us to generate nuclear energy. Let us look at the risks that anyone setting up a facility in this country will go through.

I want to propose that either the Committee looks at that or a few of us will look at how we will propose some further amendments to this Bill to incorporate that security aspect which is the only missing thing. Otherwise everything else is done very well to ensure that foreigners are restricted in terms of what they can do with nuclear material in this country, and that before any facility is given the license to operate, we will have proper security screening of not only the people but also the facilities. On a continuous basis, we will vet and know that a certain company applied for this license to do this research, this was done with the material and there is no continuous threat or risks being posed to Kenyans.

I am very happy because we have made this step of coming up with a Bill. I believe it was proposed in the last Parliament, but it did not see the light of the day for some reason. However, we have it now. Let us fast-track it and not think of it as futuristic. It is with us now. The risks are with us now. Let us pass it and make sure that as we do it, we protect our country and ensure the safety of Kenyans and the region as a whole.

With those remarks, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very profound contribution, Hon. Kimunya. We will now have contribution from Hon. Bunyasi, the Member for Nambale, who is ahead of Hon. Owino who thought he is the one on top. However, there were many others before him, but he will have an opportunity to contribute soon.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. It is a leap in the future even though this is something that has been all around us in bits and pieces, particularly in the medical field and other areas. In terms of going the traditional way to supplant our greed, this is a real leap into the future. We should encourage it. It will help to spur even training in our universities and colleges in high areas both in nuclear science and production and its management, and particularly risk management. It will also spur ancillary services, study and training in ancillary services. It is a very important proposal.

I come from Nambale and I have no option, but to support this kind of initiative. Electricity is available two or three times a week and there is power outage for four or five days. The challenge of a dilapidated infrastructure cannot be solved even with an increased supply of electricity. It is not as a result of failure of generation and loading of power to the grid, rather it is because of dilapidated lines, poor management and poor responsiveness by the staff involved. For example, with regard to Kenya Power, you have to call the big bosses in Nairobi when you are in the village in Busia in order to get an operator to look at something. We just have a bad attitude. I hope the bad attitude will not be transferred to the nuclear industry. Even in the safety areas, people have a laid-back attitude. It would be very disastrous if that were to happen.

It is great to have nuclear energy. Kenya has the vigour through its technology orientation. We have the vigour and the willingness. Many universities should bloom in terms of thinking about this area and contributing towards it. I hope by the time we have the industry moving, we will have a stable critical mass of Kenyan expertise involved. As Hon. Kimunya said, I hope we will seriously work to nurture talents and skills so that our own people run the industry. We should not end up with the kind of things we have caught ourselves in, for example, in some of the collaborative projects with the Chinese even though they are not as high tech as this one would be. Indeed, this is the direction to go.

Kenya has to think carefully about safety aspects. It should not be a pool under the carpet. They may be real in the generic sense and many countries are dealing with it, but we have to begin to assess how we can deal with issues of this nature. What would it take to be safe with nuclear energy? It is not just about the manual the United Nations Atomic Agency has got. What kind of culture have we developed in dealing with such things? We have people who let things run down and then we are expected to replace them. We cannot do that with nuclear energy. We have to think extremely seriously about it.

The use of fossil fuels is now almost getting out of vogue when we have not even fully exploited its potential. As you know, we are still excited about it. I see this as a conjunctive source of energy to what we have. We have fossil fuels in Turkana and perhaps in other places offshore. We have geothermal and hydro power. This multi-sourcing is good. It improves the reliability of power supply and, hopefully, if everything is done well, we will reduce the marginal cost as well as the average cost of energy which will help our objectives of industrialisation and in turn help in medical research. We should be getting to a point where we do not copy and clone research done elsewhere and try to repeat it. We need to think afresh. For example, if we put our people ahead of the game in areas like malaria research in ways that are uniquely ours, we should think of addressing issues that we face in the medical field not along the lines that India or America have approached such issues. Let us think about it. We have brain

power. All we need is the opportunity to do so. I hope in this advancement we will get the highest levels of commitment towards the public policy process that will help to bring it on board and to nurture it to become a safe source of energy for us. Even advanced countries worry a lot about safety issues. In fact, there is a whole industry around issues of safety. I hope our people will get into that industry progressively.

In totality, as a Member of Parliament for Nambale I will be extremely excited that perhaps, once we solve our transmission problems, the issue of quantum of energy and its supply will buttress this system so that we can go for a week or ten days without power failure. In some countries, if there is any sort of failure, they transfer to an alternative instantaneously. But here, you can be in the middle of something important and then, there is a black out. I wonder how hospitals manage. They lose power, not even for one hour, but o a whole day. In such instances, if we say people died because of power failure, they think we are trying to sabotage the Government or the economy. We do not think about these issues in an open.

As we get into areas of this nature, I hope we will open our minds and have people who truly understand the industry starting from the cabinet secretaries. I also hope some of the discussions I heard today on television about a Cabinet Secretary being called “our man” or “from our region” will not arise. I hope, in future, we will not have cabinet secretaries of that nature. There should be no Cabinet Secretary from the energy-rich region and in any case, there is no nuclear energy region as it were. I hope we get out of that and begin to appreciate people for what they contribute to this economy and appreciate the services they add to the welfare of the people of Kenya. Poverty levels are quite high. Even though we have moved into the middle-income status, we have parents having it difficult to pay Kshs9,000 that is supposed to be paid for school fees.

As we do all these things, we must have leadership that thinks about the ordinary person who we call Wanjiku, but I loathe Wanjiku revolution. Those are just side-tracks. We must think fundamentally about how these initiatives are going to lead to a lifestyle that will benefit the person at the bottom. If we do that, we in Nambale in Busia and our country at large, which is not in the million-shilling or million-dollar income bracket, will feel the difference.

I am excited about this and worried about it too, but I am hopeful. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you, Hon. Bunyasi. It is always a pleasure to listen to you. May the people of Busia continue to give you blessings to be with us in this House.

Hon. Gichimu Githinji, the Member for Gichugu, you have the Floor.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this very important Bill. I thank the Departmental Committee on Energy, led by Hon. Gikaria and his Vice, Hon. Pukose, for the work well done. From the Report, I was able to know that they visited 12 counties, which is a very rare scenario. It shows that they were deeply concerned and ready to take public contributions on this particular Bill.

Nuclear energy, apart from many uses, I believe in the Kenyan style, we are looking at the way it will ease issues of energy mainly on reliability, sustainability and convenience. There

are areas in the Bill that we need to re-look at during the Committee of the whole House stage, especially on the Kenya Nuclear Regulatory Commission, which is very bloated. A commission with 18 members is really big at a time when we are trying to reduce the wage burden on Kenyans. The size of the Commission also goes against the principles of the *Mwongozo*, which places the number of commissioners at about nine. So, the reasoning by the Commission, as I heard it being debated in this House was not convincing; that those people may require being at work at different times. That is an area that we need to look into to reduce the burden for Wanjiku.

The other area is on safety. I am very happy about the number the word “safety” has been mentioned in this Bill. Every aspect from authorisation, setting up nuclear farms, transportation, to storage, safety has been given prominence to the effect that any action that will be made or any other regulation that the Commission will do will have to take into account the safety of persons, property and environment. That is a very important aspect, and I believe the Committee was able to come out clearly and confirm through their Report that they were much concerned about the safety of Kenyans, their property and the environment.

This Bill looks voluminous. Actually, it is one of the rare Bills that we have had in this Chamber because it is taking care of every aspect, while knowing the tremendous adverse effects that nuclear materials can have on human beings, property and the environment.

Another area that we need to look at is where the nuclear stations or nuclear plants can be placed. There should be a minimum distance from human habitation where nuclear plants should be placed. That is an area that we also need to include in the Bill so that, at least, we can make sure that though safety has already been taken care of in the Bill it is actualised.

On Part VII which also talks about safety of nuclear facilities, noting the adverse effects that nuclear materials can have on human beings, the penalty that has been proposed under Part VII, Clause 43(7) is inadequate. When someone contravenes this law and only faces two years imprisonment or a fine of Kshs1 million, that is very minimal in my observation. Someone who is likely to maim people for life or cause death and contravenes safety issues in the Bill and is only likely to face two years imprisonment is something we need amended. We can have someone either facing life imprisonment or someone paying a hefty fine that makes it impossible to settle, thus forcing that person to live in jail. This is because the person is likely to cause death to many lives or cause long-term effects like maiming people. Going forward to the Committee Stage, I will consult the Chairman and the Committee to see whether we can have an amendment on that area.

The passage of this Bill will also pave way for domestication of international treaties and conventions that guide issues of nuclear energy and nuclear issues. This is the right time. It comes at the right time when we also need to move with the world so that we are not left behind when other people are running and we are walking. We should run with them and be able to utilise whatever is available in this planet to make our lives and economy prosper.

As I wind up, I would like to note that the issues of transportation and packaging of radioactive materials have been widely covered under Part X of the Bill. As we go to the Committee Stage, that needs a bit of tightening because we have had problems of even disposing of, of other minor wastes which are not even nuclear in this country. This is an area that we need

to have watertight regulations and penalties so that anyone who contravenes them should face serious consequences. Otherwise, this is a very good Bill. We should not be scared, but we should approach the issue of nuclear with a lot of caution.

With those few remarks, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Martin Owino, the Member for Ndhiwa.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to this. I thank the Committee. This is a good Bill. I have some reservations. Nuclear power energy is very controversial globally because of some effects that have been seen in the past.

As we pass this Bill, it is good to remember that the Chernobyl incident happened in Ukraine where 30,000 people died instantly and 2.5 million are still languishing in problems. Nuclear energy is cheap but sometimes cheap can be very expensive in line with what I have just said. I would buy it because of power instability that I have in my constituency. Most of the important institutions are not connected. That kind of emotion of needing more energy can make us support this Bill, but I would like some precaution to be taken.

In this country, we are even struggling to collect our domestic garbage, heaps of it. So, as much as the safety part is put in place, how about the cultural issues of management of our systems in this country? Will we be able to handle the disposal of toxic waste which is likely to go into our waters, together with the liquid, solid or gas which will emanate from this? The point I am making is that if you move across the country and look at how domestic waste is managed, you will find that it is very serious. It is toxic to both marine and human life. Are we going to make sure it is done based on our management of waste? How about the leaks? All these have happened in other countries. That is why it is very controversial. There are many pros and cons. Sometimes, the reactors fail. Those are chunks and chunks of huge tanks put in wide lands. When they fail, you cannot remove them because they are unstable. If that happens, I have not seen clearly what we will do as a country as safety precautions. They are very toxic.

We should also check how the cooling system with the cold and hot water is. How is that water system? That is what will allow pollution of our rivers or the surroundings. I am not a nuclear scientist but from the health point of view, we may run for it. However, the consequences might cost us even more. Uranium is mined. It is not renewable energy. Uranium mining and its upkeep calls for tight security. It is not easy. These are things that criminal groups like *Al-Shabaab* would like to use to make IEDs.

All of us can remember Hiroshima. Even if we say it should be tight, how tight can it be, based on our culture as Kenyans in handling issues? So, all this should be put into place. I think an amendment can be done later. It is controversial globally, not just in Kenya. Other people have opted out of renewable energy. They are never there to touch the nuclear part of it because of the disadvantages we have highlighted; that is, pollution, terrorism and the difficult in handling the waste, especially handling of nuclear reactors when they fail. They do fail. Transporting them to another country will not be easy – no other country will accept any disposal of nuclear materials.

I support the Bill. It is a good initiative. We all need development but it is sometimes good to walk slowly. It is good to be sure than to be sorry. I urge the Committee to also look into alternative energy sources, especially wind and solar energy, which are good. They are not very bad sources of energy. We talk about the sun disappearing, but this is the land of the sun. We could be safer on that ground. I raise these concerns from that point of view. If we get nuclear leakages, we will spend more money rehabilitating people. In such scenario, it would be better for us to do without electricity.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us now hear Hon. Musimba, the Member for Kibwezi West.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this extremely momentous Bill.

At the outset, I want to paint a picture of hope for Kenya; a picture of the aspirations of this nation. Currently, food production in this country is under threat because a lot of the inputs are expensive due to their industry-driven nature. A lot of inputs are expensive because they are imported. Inefficiencies from various sectors have also contributed to the cost of inputs. The clothing that we wear is at the rudimentary level for basic needs for Kenyans. We are looking at a Kenya where there will be learning on a 24-hour basis in every homestead so that we can catalyse the human capital element for this nation, to ensure our competitiveness not just in this region but globally.

The airlifts of the 1960s have to continue being powered by ensuring every village in Kenya has power – power that is affordable and sustainable for each household. We have to look at a time where movement of goods and services across the breadth of the 582,000 square kilometres of this great country is efficient. If you want to move produce from Nyandarua, be it potatoes, all the way to Lokichogio, it is something that is positively enabled by provision of a rail system that is driven by electric power. Development of a subway system to cover the greater metropolitan areas of Nairobi, Uasin Gishu and Kiambu, among others, relies on a sustainable energy source. Such development will enable us to develop our cities and sustain the public service of this nation.

We want to see a nation whose connectivity is without a shred of doubt. When we talk about availability of 4G or 5G networks across the country, it is not an issue because the best stations can be run by reliable power that is pure and ensures communication not only for our security services, but also for our citizenry. Somebody in a village in Nambale, as it was alluded to earlier, and someone in my village of Sekeleni, should be able to communicate via video calls once we have reliable and sustaining power.

The berths we are developing along our coastal line, all the way from Lunga-Lunga to Lamu, are sustainable because they are operated by power. Ships docking into those berths do not have to do so on the basis of a timetable because of visibility. We want ships that are not inhibited so that we can have an offloading capacity that will spur creation of hundreds of thousands and even millions of jobs for our youths graduating from tertiary institutions of learning for them to be employed and contribute to the development of this great nation. That

way, we will be able to increase our investments through the savings that we are making for each and every individual so that we can grow our per capita income.

We want to draw a picture of a future where no single household in Kenya will have a deficit of power. All Kenyans will be able to provide for their families in terms of meals. We want power that is seamless so that we do not say villagers should go to sleep by 6.30 p.m. or 7.00 p.m. because they can no longer see each other or because there are security issues. That is how the monumental nature of this Nuclear Energy Regulation Bill comes in. Nuclear power is at 2 US cents in terms of production. That is against our traditional renewable energy sources which are currently oscillating between 8 US cents and 12 US cents. Even if we are fighting for a 4 US cents margin, there is the total capacity of this country to generate more than 30,000 megawatts.

The total of wind power, solar power and hydro power can never get to that magnitude. If we are projecting, it should be for another 20 years, when our population will be close to 90 million Kenyans. Our population in the 1960s and 1970s was about 7 million. Today, we are 45 million people. How do we address those challenges in future? How do we ensure that we do not have endemic blackouts that reduce the efficiency of doing business or ensuring that the competitiveness of Kenya continues to be on an upward trajectory? We have to turn to nuclear energy.

As alluded to by previous speakers, there are all sorts of conditions to be complied with before a country can embark on nuclear energy production. They have talked about safety concerns. Safety concerns are all about how we educate ourselves. I must congratulate Sen. Ochilo Ayacko on the HANSARD for having been the first Executive Chairman of the Energy Regulatory Board (ERB) and, more so, for the effort he has made, in conjunction with the University of Nairobi (UoN), towards local capacity building through launching of nuclear science degree programmes that have since graduated to Masters level.

I am confident that we will have PhD programmes directed to nuclear energy studies so that we do not depend on external expertise any more. We will develop the nuclear science area of study on our own. There is no skill set that exists in the world in which Kenyans have not excelled. We are champions in every single area. We look to a future where, as we look at the greater COMESA and Africa region, because we are talking about having a one-stop area of doing trade, Kenya will be a beacon even if it is Egypt we want to compete with.

Egypt has already gone into nuclear energy. South Africa already has nuclear power. We, in the middle region of Africa, need to get there. As we develop the LAPPSET corridor, which is the land bridge we are creating between the Indian Ocean and the Atlantic Ocean, Kenya has to be monumental. This has to be driven by affordable and reliable electric power. Nuclear is the only source.

We are calling for an appropriate location with adequate security mechanisms to be put in place. This House has to be commended because it already saw the future when we were enacting the Coast Guard Bill. One of the elements that we were seeing was how to secure the danger of having proliferation of dirty material which will be coming in. With the Coast Guard Service Bill which is now in place as an Act of Parliament, we have enough mechanism to safeguard. We have enough mechanisms to ensure our populace is educated through our

education institutions. We have enough mechanism of having a very robust Parliament which I have the privilege and honour to serve in, and which will be able to continuously enact amendments to be able to look at the changing phases.

We have the Departmental Committee on Energy which has visited twelve counties in Kenya to have an effective public participation and to take into concern every single comment by Kenyans to know what nuclear energy is. By reading the HANSARD, I remember the day we were trying to evacuate hydro power from Jinja to Kenya and there was hue and cry all over the place because people were saying: "This is unacceptable! It is too expensive! It is going to commit generations upon generations of Kenyans to debt that is not going to be serviced." Today, many of our industries and backup power is because of having plugged into and brought transmission lines from Uganda into Kenya. Now, we want to return the favour to our neighbors; a favour that they themselves have challenges in. They know they have challenges in terms of power production but Kenya, having the most solid balance sheet in the entire region, is the only country which can be able to turn back and look at its neighbors, be it Zaire or Ethiopia and say to them: It is time for us to actually continue being the backbone that people rely upon. That the dream that is of East African region, COMESA or PTA region will be shouldered by a great country called Kenya.

I thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Musimba. That is a very hopeful contribution that as we legislate and look into the future of Kenya, we must do so not out of fear but with confidence. I enjoyed your contribution. We shall have contribution from Hon. Pukose, the Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker for allowing me to make my contribution. As I make my contribution, I am the Vice-Chair of the Departmental Committee on Energy, and I have been involved in this process right from the beginning. First and foremost, I want to thank the Members of my Committee for the good work they have done. I appreciate the many Kenyans that we visited in the 12 counties that we visited in this country. They were very knowledgeable not just about the Bill, but even on matters nuclear.

The Nuclear Regulatory Bill 2019 seeks to repeal the Radiation Protection Act Cap.243 that provides for a comprehensive regulatory framework for radiation and nuclear safety, nuclear security and safeguards to control radiation sources, nuclear materials and associated wastes. The Bill aims to protect the people, property and environment from harmful effects of exposure to radiation, proliferation of nuclear materials in accordance with national and international obligations.

You cannot have a nuclear plant in your country unless it is approved by the International Atomic Energy Agency which Kenya is a signatory to in this region. One nuclear plant is able to generate up to 4,000 megawatts of energy. Currently, in our country, you will find that our energy generation from hydro, geothermal, wind, solar energy and other sources amounts to 2,200 megawatts. So, if we had one nuclear plant which can be able to generate 4,000 megawatts, you can imagine the amount of power we will be having.

Other countries like South Africa generate about 79,000 megawatts of energy and yet you recently heard South Africa being energy deficient. Their deficiency amounts to 10,000 megawatts. They are now planning to see how they can get other avenues of generating energy, since they have nuclear power.

Hon. Temporary Deputy Speaker, I want to dispel the notion out there, and to my colleague the Hon. Member for Ndhiwa who has expressed his fears that nuclear is a dangerous thing. The nuclear concentration in a power plant for energy generation is about 4 percent, while the nuclear energy that is used in war is close to 95 per cent. We are talking about 4 per cent. So, you can see that this is safe energy production. The law that we are putting in place is for us to ensure that nuclear energy that we are going to have is for safe use.

Over the weekend, I travelled with Maina Kiai of the Human Rights. He told me that we are now talking about nuclear and this is more dangerous because of corruption and other issues within our country. Nuclear energy in safe hands is good for this country. We must put in place, laws that will be able to protect the people, the environment and their properties. In a situation where we have nuclear power plant for generation of energy, it will be a guarded facility. It is like a military barracks. It must be well protected and must have good security so that nobody can access it.

The nuclear fuels will have to be manufactured by a specified company. It is not just anybody else who is going to manufacture and deliver it. It must also have a protocol for it to be brought in and be used for the generation of power. Nuclear in unsafe hands is dangerous. We have seen what happened in the case of Chernobyl and the accidents that have happened. They have assisted the scientist to improve on the safety of nuclear power. Out of the experience of Fukushima and Chernobyl, the scientists have modified the plants such that currently, the nuclear that is there even with an airplane crushing into it, cannot be able to damage the dome. So, you can imagine how safe that is.

Nuclear accidents are serious matters because they affect a wider population. It has consequences that are wide, far-reaching and long lasting. Therefore, the law that we are putting in place must ensure that there is safety for the people.

People have expressed their fears that nuclear power plant will be put where we have a lot of water in terms of water circulation, cooling, steam heating and turning turbines. This is a closed system. The water that is within the nuclear reactor is not allowed to mix with the water that is within that area. This is so that you have water that is going to be heated after the fusion of nuclear energy to provide energy for the water to heat and drive the turbines which will now run and generate electricity.

Hon. Temporary Deputy Speaker, the water that will be used within the nuclear plant is in a closed system. It is well monitored and cannot contaminate the rest of the water there. If you visit nuclear power plants in South Africa, Europe, Asia, UK and other places where they are installed, you will find that the ecosystems within that area are well preserved. There are even fishermen and communities living within. They have children going to school within the nuclear power plant itself.

Hon. Wilson Sossion (Nominated, ODM): *(Inaudible)*.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sossion, you are completely out of order. You have to respect the House and do what you have to do, Hon. Sossion.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Speaker. You will note that there are school children and even fishermen fishing there and the water is very safe. So, wherever it is going to be built, whether it is in Lake Victoria or within the Indian Ocean where we have large water bodies, it will generate employment for people within that area.

One nuclear power plant will employ about 1,000 people and it can have multiplier effects. The water will be safe. Fishermen can continue with their day to day activities and livelihoods. It will not be affected with the nuclear power plant except that the area where you have nuclear power plant is a security area and it will not be accessible. The Committee has also domiciled the authority in the Ministry in charge of Internal Security.

With those few remarks, I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you, Hon. (Dr.) Pukose for the reassurance and very good contribution.

Let us have Hon. Okuome, the Member for Karachuonyo.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker. I have to support this Motion wholeheartedly. Kenya is yearning for development, but this will remain a dream without sufficient energy supply. Nuclear energy to me is the only proper way of solving our energy problem. We need a reliable source of energy, one that can give us enough power for development. We know for a fact Kenya is not a popular destination for investors due to high costs of production. This can be attributed to the fact that we are using regular electricity supply. Having nuclear energy will solve this problem and we will do much better.

I am in agreement with a number of Hon. Members who have registered security concerns over this matter. I am glad the Departmental Committee on Energy has crafted an intervention. The same shall be included in the Bill to ensure that no Kenyan is a casualty.

We have regulations and laws in Kenya but people do not obey them mostly due to corruption. Let me assume that we will not have corrupt Kenyans running or managing nuclear energy supply. If the contrary happens, then all those good laws and regulations will be meaningless.

Our friend Hon. Sossion has been talking about the Curriculum Based Competency (CBC), education system which is new. I would like the educationists to include that the CBC system covers the competency needed in running nuclear energy that we are very hopeful of having. This can be included in our learning institutions, schools, tertiary institutions and universities. They should review the curriculum to include the kind of energy we are going to have and, in fact, give us services in that important energy supply. If this is done, it will be wonderful because the competency we are talking about should include security. If the technical ability of running that system is included in our learning institutions like I said before and safety is guaranteed, Kenya will be better than what it is today.

I know that the Big Four Agenda will be enhanced with nuclear energy production. It will also enhance efficiency in industrial production and reduce unemployment rates not just in the energy production units, but in various areas. This is because the production of good cheap nuclear energy will have a spill-over effect and many people will benefit.

Thank you, Hon. Temporary Deputy Speaker for giving me time.

I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. We shall now have Hon. Hulufu Oda, the Member for Isiolo.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to speak to this Bill.

I support the Nuclear Regulatory Bill which, among other things, seeks to repeal and replace the Radiation Act, Chapter 243 of our laws. This is long overdue. The law being replaced does not have provision for dealing with the challenges of use of nuclear energy. It is only limited to regulating radioactive materials for medical use and, even so, the provisions are not comprehensive enough. Therefore, having gone through the Bill, I am particularly impressed with the various provisions relating to proper regulations of radioactive materials especially for medical uses.

We are cognisant of the fact that we are using radioactive materials in medical diagnosis and treatments. However, there is poor regulation in terms of following procedures that look at the benefit of using the same *vis-a-vis* the risk it poses to patients. So, there is lack of clarity, for example, if you look at provisions relating to the use of radioactive materials for medical use. We need to prove that the benefits of using the same outweigh the risk they pose. Therefore, such are some of the provisions that are lacking in the old law. At the same time, we also know we have many medical diagnosis devices which use nuclear materials. We also know that, at the moment, there are no laws on disposal of obsolete equipment. These are some of the important issues which this Bill will help us address.

Looking at the nuclear energy part, I am a bit hesitant. Of course, we require reliable sources of energy to spur economic development in our country. We know because of climatic change a source like hydropower which generates electricity using waterfalls or dams is no longer reliable. But we have other renewable and safe sources like wind, sea waves and solar. Personally, I am uncomfortable with the proposal to build nuclear plants to generate electricity.

Of course, we have to be frank with ourselves. For example, at the moment, despite having environmental laws, we are unable to manage industrial effluence and discharges from industries which pollute our rivers. What does this tell us? That, we cannot run away from the issue of corruption. Personally, I will be very hesitant to support the clauses relating to licensing, commissioning and regulation of nuclear plants. Having looked at that part, it is as if this Bill will allow independent power producers to set up power plants. This to me is very risky unless somebody convinces me it is normal.

We need to come up with the necessary amendments to have power plants put up by the Government and not individuals or private entities because it is very risky. On the other hand, on the use of nuclear materials, we know we are exposed to the risk of terrorism. If those materials land in the wrong hands, I am sure this will pose a great danger to all of us. That is why the part

of the Bill relating to proper regulation of use, disposal and control of radioactive materials for medical purposes is okay. But the part on using nuclear technology to generate power, I am a bit hesitant to support.

Generally, the rest of the things are okay, including the transition clause in terms of when this becomes law and how the Nuclear Regulatory Authority will take over from the Commission which, at the moment, exists under the Radiation Act. My only concern is this bit because of where we are at the moment. I am impressed particularly on radioactive materials because the Bill has clear provisions on how transportation can be done if anybody wants to transport them. How a person should apply, the conditions to be fulfilled and how the same can be monitored, up to and including consumer products to ensure they are safe...

I think we can remember sometimes back at the height of one of the worst droughts in this country. We imported powder milk from one of the eastern European countries. Fortunately, it was discovered it had traces of radioactive materials. Although the discovery led to the rejection of that product, I am sure that, at that time, we did not have clear laws in terms of charging those responsible for bringing in such a product. But with this Bill, I am sure such risks are going to be avoided.

At the same time, it also has clear provisions on how to reduce risks to consumers. Also, in instances where we put up a facility near a border with a neighbouring country, if leakage or pollution occurs, then it provides clear ways to use as a country to communicate with international agencies and alert them. So, that way, our neighbours can be protected from pollution which can emanate from our plants.

With those few remarks, I support. Maybe, at the Committee stage, we can see how best the nuclear energy part can remain by bringing amendments to ensure it is strictly done by a reliable Government agency.

Thank you, very much.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwirigi Paul, the Member for Igembe South, you have the Floor.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice to this important Bill. First, I would like to thank the Departmental Committee on Energy for coming up with this Bill. That is because it will curb lack of adequate power. This will be an efficient way of generating power in this country.

Nuclear energy is efficient and very cheap compared to hydropower and other sources of power. A nuclear plant can occupy a very small piece of land. So, I support this Bill. I am aware that the UoN provides courses on nuclear energy suitable for those who will be employed in nuclear plants. They are well trained and acquire knowledge which they will exercise once employed to work in the nuclear plants.

At the same time, I want to urge the Nuclear Regulatory Board to handle radioactive materials with care. We all know that nuclear materials and reactors used to generate power emit radiation which is harmful to human beings and cause cancer. Therefore, once the nuclear plants are built, they should employ skilled people. The disposal of radioactive waste products should

be safe to ensure human beings are not harmed because emission continues even after disposal. Setting up of nuclear plants in this country will be beneficial to many people...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwirigi, just hold on. The Member for Murang'a, Hon. Sabina Chege, what is out of order?

(Hon. (Ms.) Sabina Chege spoke off record)

You did not intend to raise a point of order.

Hon. Mwirigi, proceed.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I also want to thank the Committee because the Bill indicates precautions and safe waste disposal ways. At the same time, this will help to keep the environment clean, meaning that even air pollution will be minimal. It will help the country to have sufficient power that will help to fuel the economy. Most of the places which are not connected to electricity will be in a position to get power. As we project for Vision 2030, many people will have already benefited from energy if it will be done early enough.

With that, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): We shall have Hon. Gakuya Wanjiku, Member for Kasarani.

Hon. (Ms.) Mercy Wanjiku (Kasarani, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Nuclear Regulatory Bill, 2018. That kind of energy is affordable and cheap, but my reservations are on safety. As a country, we know that the capital city has not been able to manage the garbage it generates. I wonder how we will be able to manage the disposal of the radioactive material. It is good to have regulations and we hope those who will undertake this task will do their job well. However, with the ethical values we have seen in our country, plus the culture and our work ethics, it is wanting. You do not go for something because it is affordable or cheap. You cannot say that you will be taking processed food because it is available and affordable. Sometimes, it is good to go the hard way and do the traditional things.

The commission or the people who will be setting this plant or who will be giving the authority to set up this plant should have caution because if a mistake is done... In the event of a disastrous accident, what will happen? I have seen many cases where when fire erupts or maybe there is an accident somewhere, it takes two or three days for that area to be cleared. Here, we are talking of radioactive materials. Whether we like it or not, if we do not approach it with a lot of care, we may enjoy having cheap, affordable and available power but at what expense? We should be careful because safety is everything. Also, the regulation should be done in a way that it should not take the whole percentage. We should continue with other renewable energy. As we know, this energy is not renewable. So, we should not abandon all the other things because of affordability. We should be focussed to set up a particular percentage of the energy we get from the nuclear energy.

In terms of production and the plants which will be producing this energy, we need to regulate them. A good example is the importation of the consumables. We are not able to regulate because of our culture as a country. I do not want to mention corruption and all that. We

could set up, say, 10 or 20 plants but others could merge. The fine that has been proposed is not that much. It is like Kshs1 million upon not doing what you are supposed to do as far as nuclear energy is concerned. This is a serious matter. I look forward to when the country will be ready to generate nuclear energy. We should know that we have a future to protect and until we do what it takes, I can see the commission or the people who will be regulating this having a lot of tasks.

When you talk about the hydro power, we do not have very major dangers with it as such. However, with the nuclear power, we need to be very cautious. Why do I repeat it? This is because the effects will affect generations and generations. We better do away with these advancements but remain safe because cheap may be affordable but it may in turn be expensive. People say cheap is expensive. So, let us be very careful about that.

As I wind up, let me say that I welcome the idea. If the Committee which looked into this matter had not done it, probably, some ideas and innovations would have come in through other ways or doors which are not allowed. It is good that we have the Bill in place and we should embrace the advancement as a country. Even as we move into the modern world, we should always be very careful on how we go about it. Let us actually set up a particular percentage with regard to how much we should get from the nuclear energy.

I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mwangaza, Member for Meru.

Hon. (Ms.) Kawira Mwangaza (Meru CWR, Independent): Thank you, Hon. Temporary Deputy Speaker. I support the Nuclear Regulatory Bill because of its many advantages, including creating career opportunities. It is renewable energy and it is cheaper.

However, I have concern about the management and regulation of energy resources in the country. In my opinion, it is a bit challenging for a country that is not well prepared. I have a concern about the technical issues associated with storage, transportation and also disposal of waste materials. We can also see that in our counties, especially Meru where I come from, we channel billions and billions towards disposal of waste materials among other tasks. However, when you visit many of our counties, you will realise that they are not clean. Waste materials are not disposed. My worry is about the toxic waste that is going to be produced by the nuclear plants. Are we able, as a country, to clean or dispose the waste materials that are going to be produced by the plants? That is my concern. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nyoro Ndindi, Member for Kiharu.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the chance to contribute. This is a noble idea given the fact that in the world, we have so many nuclear plants. We have around 435 nuclear plants generating power in the world. Even the very developed countries have so many of such plants. The United States of America (USA) is leading with around 99. In France, 75 per cent of their energy generation is through nuclear power. On that front, it is a good idea that we come up with a law to govern and regulate that sector.

There are several other advantages of having nuclear energy, especially in producing electricity. First of all, as has been said by my colleagues, there is low cost because

comparatively, nuclear energy is much cheaper than other forms of energy, especially in the generation of electricity. Also, it is base load energy because several other forms are erratic. Hydroelectric power is heavily reliant on whether there is a lot of water. Therefore, that is why electricity generated through nuclear energy is much more stable than other forms.

In terms of pollution, comparatively by the incidences, it has low pollution especially given the fact that it is not a must that you can only generate nuclear energy through uranium. Thorium can also be used in generation of nuclear power. Therefore, it is not exclusively through that which is feared most, namely, uranium.

The reason why I do not support the Bill at this point in time knowing our country and how we take important matters is when you consider the disadvantages of having nuclear plants. Ukraine has gone through a lot of havoc especially in 1986 when they had a disaster because of nuclear emission. Over 15,000 to 30,000 people are feared to have died through those emissions and pollution. Over 2.5 million people in Ukraine lived with the negative effects of the same accident.

I find it a bit laughable how we are forming this commission especially in terms of the economy. We are calling it a commission and not an authority because it is supposed to be independent. I see the intention of the Committee was to come up with a commission comparative to an authority so that there is a leeway of people who can work without being domiciled in ministries that will direct the manner in which they conduct their business. It is supposed to be independent. Looking at the formation of this Commission, first of all, why on earth would we have a commission with 17 commissioners? Will these commissioners be sitting in a board room or a classroom? I do not think we need any authority or commission especially with a ballooning number of people in the name of commissioners. Our current Constitution has so many commissions. If, as a House, we audit the import of these commissions in terms of giving utility to the Kenyan taxpayers, most of them are dismal.

We call this a commission because of its independence but the non-executive chair is coming from the Executive because they are appointed by the President. The commissioners up to (j) are made up of people from the ministries. We have the Principal Secretaries (PSs) of the Ministries of Interior and Coordination of National Government, the National Treasury, Energy and Health. There is also the Attorney-General who is also a member of the Cabinet. Over eight of them represent different ministries. This is one unified Government. If there are only two representatives from the Executive, it will save this country a lot in terms of the monies expended in maintaining those commissioners.

Part II of the Bill in terms of the formation of the Commission highlights that the Commission shall appoint its own secretary. The norm and the history of this country is that the Director-General, Managing Director or the CEO in authorities and commissions also doubles up as the secretary because those are the people who are there on a permanent basis. The Committee did not do well in terms of having a secretary who is independent from the office of the managing director or the CEO.

As I wind up, the work of this Commission is regulatory. Who are they regulating? They are supposed to regulate private entities who will be engaged in production of nuclear power. Looking around this country, simple things such as disposing refuse or waste by county

government agencies is a problem. We have Dandora in Nairobi. Disposing waste is a challenge across all counties in the country. Therefore, I do not think leaving it to private hands to generate nuclear power will be a very good trend for this country. I see that as a very slippery path given the fact that the work of a private entity is to maximise profits. If you have to go the route of generating nuclear power, this cannot be left in the hands of individuals or private entities. We can only guarantee this by having the Government of Kenya itself being the sole generator of nuclear power given the fact that they play a bigger role when it comes to the population of Kenya especially in safeguarding the security of Kenyans other than putting profit first.

With those many remarks, I oppose the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Ndindi. You are afraid that some of these materials might find their way to Dandora. Your concerns are noted in terms of public interest. It must always be safeguarded.

Let us have the final contribution from Hon. Kimani Kuria. I see Hon. Wanjiru also wants to contribute. Very well! You will contribute after Hon. Kimani Kuria.

Hon. Kuria Kimani (Molo, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to contribute to this Nuclear Regulatory Bill.

From the outset, it is important that we recognise that this will add to our energy mix in Kenya because so far we only rely on geothermal, solar and coal energy. Therefore, for the first time, our country is about to add a fourth energy source and that is nuclear energy. Nuclear energy is not just a clean form of energy, but it will go a long way to power the development of this country especially as far as the Big Four Agenda is concerned. I am also excited that for the first time as a country, we are looking at regulation before this nuclear energy is used. We are used to doing things in reverse. We get things going and later we realise that we needed a regulation or an Act of Parliament to regulate a particular sector.

The existing Nuclear Power and Energy Agency has already given scholarships through the Government of Kenya to 15 students at the University of Nairobi to pursue a Master's degree in Nuclear Energy. I am excited because one of the beneficiaries of this master's programme is a student from my constituency from an area called Sachang'wan. I am happy because after nuclear energy is operationalised, at least, the young people of this Republic will get jobs to do.

Hon. Temporary Deputy Speaker, I am also concerned on whether the addition of this extra source of energy will lead to a reduction of the cost of power for the people of Kenya. If you listen to the people in the industries, they say that Kenya has the most expensive sources of energy. Industries, especially in the manufacturing sector, pay electricity bills worth millions of shillings. Why is that so? As we speak, we have a geothermal company that generates power. We have another company called KenGen which generates power. We have a third company called Kenya Electricity Transmission Company Limited (KETRACO), which transmits that power to the consumer. Lastly, we have another company called Kenya Power and Lighting Company (KPLC) that does the utilities of that power. We also have the Rural Electrification Authority (REA) that deals with electricity. We are coming up with another body that will dig more into the taxpayers' money to deal with energy. We are talking about a time when as a country, we are debating whether we need to collapse our universities and satellite campuses because the cost of running them has become too high for the people of Kenya. We are starting another commission

to deal with energy. It is high time we came up with a regulator that collapses all the companies that deal with energy and have one body that takes care of energy in this country. Even when we have them, we have proven that they do not reduce the cost of power for consumers. That should be the interest of this National Assembly and the leaders. How do I make sure that farmers or persons who operate small businesses or factories in Elburgon, Molo or Turi have access to power? Most importantly is that when that power is accessible to him, it is reliable and affordable. Otherwise, we will go on creating very many authorities and saying that we have made inventions. We must make sure that they translate into reduction of the cost of power and not just accessibility and reliability of it.

A few years ago, we were very excited when we realised that we have oil in Turkana. Has that brought down the cost of fuel in our country? Has that generated revenue for our people? Even though we are excited about this new clean nuclear energy, we need to go back to the drawing board and make sure that it increases accessibility to power and most importantly, it reduces the cost of power. These extra bodies that we are creating should not end up like KETRACO and REA that increase the burden and therefore, the cost of power to our consumers.

With those remarks, I end my contribution on this Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Chege, Member for Murang'a.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I want to support the Bill on nuclear energy. It is very timely and important for the Republic of Kenya. I do not support the recommendation of the Member for Molo. I went through to see how other countries handle regulation of nuclear energy. When I looked at Argentina, they have a Nuclear Regulatory Authority which reports directly to the President. It is empowered to regulate and control nuclear activities with regard to radiology and nuclear safety, physical protection and nuclear energy issues.

As a country, we need to take the use of nuclear material very seriously. We are already exposed to the use of nuclear energy, especially when we are on treatment and health matters. We already know that we have one facility that has a Positron Emission Tomography (PET) scan machine. So, we expect more machines to come into the Republic of Kenya. The big question is: How safe are Kenyans on the harmful effects of exposure to radiation and handling of the nuclear materials because they might fall into the hands of criminals? We know terrorists can use nuclear energy. The Committee needs to cushion Kenyans. The Commission needs to be given more powers. When I looked at the Committee's Report and the stakeholders who responded, I saw the East African Association for Radiation Protection which was represented by Mr. Vincent Mutai and the association of radiologists and radiographers, but I did not see the Ministry of Defence.

There is the issue of security in nuclear energy use. I am interested to know whether they were interested in giving their views. It is important to listen to the views of the Ministry of Defence and Ministry of Interior and Coordination of National Government. They are not among the stakeholders because they are not named here. When they miss in such an important Bill, then how serious are we? If this regulatory authority reports directly to the president in some countries, it shows the magnitude and weight of nuclear power. As a Member has said, as a

nation, we know we have our few challenges. So, as we handle this matter, we need to make sure that the processes are well vetted.

As we allow foreigners to come and practise in Kenya, we know that there are some who have come to do businesses to the extent of even selling maize. If foreigners come in, are we in control? If they come in to invest in health, are we in control of what they bring in and are we able to monitor them? As a nation, it is important that we take this matter seriously. It is not only a matter of health but also security. I hope the amendments that the Committee will propose during the Committee of the whole House stage will consider the security aspects because it is very important and it was not addressed in this Bill.

Hon. Temporary Deputy Speaker, I support this Bill. I wish the Committee goes out of its way and consults more on this Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very good notes, Hon. Chege. I hope you will take time to make contributions during the Committee of the whole House, when some of the concerns you have raised and have also been raised by other Members on the composition of the Commission will be discussed. Some have suggested that the National Security Council (NSC) should be represented. We have heard contributions from all the Members now. We will now call upon Hon. Washiali Jomo to reply.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I rise, on behalf of the Leader of the Majority Party, who was the Mover of this Bill, to first of all thank the Members who have contributed to this Bill. You will agree with me that it attracted quite a number of Members from all corners, thereby making it a true national concern that nuclear power is a project that we need to embrace as a nation.

I sat here throughout the contribution on both Thursday and today. I have taken note of the concerns of Members. Some of them spoke about the disadvantages and advantages of nuclear energy. I would like to encourage them to look at the Bill and contribute more during the stage of the real law-making process, which is during the Committee of the whole House. I have heard concerns on the risk aspects associated with nuclear energy, management of waste material and examples of countries that are already disengaging from nuclear power. We have also heard of a Member who talked about the composition of the Commission, claiming that 17 commissioners will be a huge number. I consulted the Vice-Chair of the Departmental Committee on Energy who told me that they have already drafted an amendment and have reduced it to nine like other commissions. That is a proposal that will be looked into at the Committee of the whole House.

We have also heard about the advantages of nuclear power and, top of the line is that, it is cheap and will spur development, create employment and investor confidence. I have also heard that nuclear energy will take care of the perennial blackouts which will mean that we will have a stable power source which will encourage industrialisation. There is also increased connectivity. The country has tried to implement the Last Mile Connectivity but because of low supply of power, the Government is not able to connect all citizens. But with this cheap power, connectivity will be increased and that means better livelihoods in the countryside.

But that, notwithstanding, we have said and want to repeat that the Committees that are involved in public participation should be contributing more. I wish most of the committee

members especially those of Departmental Committee on Energy could have been part of this. I am happy the Vice-Chair is here and is taking notes. If you had the opportunity to look at the newspapers over the weekend, we had some Members listed as being inactive in Parliament. They should take advantage of such Bills and make contributions so that they are not listed as not having spoken. Hon. Temporary Deputy Speaker, you have been very fair and given a chance to all those who requested to speak.

I encourage those who have amendments to draft them so that when we come to the Committee of the whole House, we can come up with a better law that will help this country. Thank you.

I beg to reply.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well spoken, Hon. Washiali. Hon. Pukose has become the Shikuku of this Parliament. He is a stickler for order and rules.

On the question about Members who may not have spoken in the House, most of the Members I saw on that list have actually spoken. So, it is proper that people who write such articles should follow the record. Some of the Members they listed have been speaking in the House quite regularly. It is not proper to send out a message that they have not contributed in the House. Having said that, it is also good for Members to take time and come to the House and speak because this is the role the people of Kenya have given them.

I, therefore, direct that the next steps that need to be taken with regard to the Bill we have just completed will be taken when the matter will be set down for consideration.

(Putting of the Question deferred)

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

Hon. Members, the time is now five minutes to 7.00 p.m. I have looked at the Order Paper and the next business to be considered requires the Mover to use 60 minutes. I do not think we will be doing justice to that Order if she starts it now. I, therefore, direct that the business be commenced upon when the matter will be set down for consideration, again.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, the time being 6.56 p.m., this House stands adjourned until tomorrow, Wednesday, 26th June 2019 at 9.30 a.m.

The House rose at 6.56 p.m.