

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Wednesday, 6<sup>th</sup> October 2021

The House met at 2.30 p.m.

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

### PRAYERS

### PETITION

#### RESOLUTION OF LAND DISPUTES IN LAIKIPIA

**Hon. Speaker:** Hon. Members, we will be delivering a Message a little later.

Hon. Members, under Standing Order No.225(2)(b) and further under Article 119 of the Constitution, I wish to report to the House that my office has received a Petition from Mr. Tema Saaya Karmushu acting on behalf of Laikipia residents calling for urgent resolution of the current land disputes in Laikipia occasioned by historical and emerging acts of injustice. The petitioner avers that the ongoing clashes and banditry attacks in Laikipia stem from historical land injustices that have been aggravated by the following factors:

- (i) Gross violations of human rights;
- (ii) Retrogressive colonial and post-independence policies and practices relating to land and resource governance;
- (iii) Limited access to pasture and water for livestock;
- (iv) Grabbing of public land including Agricultural Development Corporation farms;
- (v) Privatisation and closure of public roads, stock routes and holding grounds thereby creating illegal movement restrictions;
- (vi) Human wildlife conflict occasioned by competition for natural resources;
- (vii) Absentee land owners who possess huge tracks of unutilised land that would otherwise benefit local landless communities;
- (viii) A growing population *vis-a-vis* an increasing dispossessed community;
- (ix) Opaque land deals and lack of a county land registry that undermines openness and land ownership status;
- (x) Failure by the Ministry of Lands and Physical Planning and the National Land Commission to act on expired land leases;
- (xi) Privatisation of community land into conservancies;
- (xii) Arbitrary arrests and persecution of those who act in the community's interest;
- (xiii) Discriminative vetting of certain people and groups during issuance of national identity cards;
- (xiv) Selective arming of particular sections of local communities; and

(xv) Many other manifestations of maladministration and lawlessness.

The petitioner, therefore, calls for urgent resolution of recurrent land disputes in Laikipia that are occasioned by historical and emerging acts of injustice in a bid to address the aforementioned manifestations of impunity and disorder.

Hon. Members, having determined that the matters raised by the petitioner are well within the authority of this House I order that, pursuant to the provisions of Standing Order No.227(1), this Petition be committed to the Departmental Committee on Administration and National Security. The Committee is required to consider the Petition and report its findings to the House and to the petitioner in accordance with Standing Order No.227 (2).

Thank you.

Comments are limited to not more than two minutes per person. Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. Last week, I had an Adjournment Motion to discuss the same issue of insecurity in Laikipia. It is very true especially when the petitioner mentions absentee landlords. Mr. Matiang'i came to this House and in the *Hansard*, claimed that Hon. William Ruto, the Deputy President of the Republic of Kenya owns 15,000 hectares of land of which the Deputy President denied and said the land should be allocated to pastoralists.

We cannot allow people to come and lie on record of the *Hansard* and, at the same time, incite the population in Laikipia. As we try to resolve this, let Mr. Matiang'i appear and explain if absentee landlords exist and the 15,000 hectares because they can benefit many people. Marginalisation of the 80 per cent land mass of the pastoralists is also another key issue that has caused the conflict.

Hon. Speaker, I support the petitioner. Let us deal with it as a House.

**Hon. Speaker:** When you use names of people who are not Members of this House, it is also good to indicate who they are. With regard to the name you have mentioned, if we check through the records of the membership of this House, we wonder whether you are talking about the moon or Mars.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I referred to two of them, namely, the Deputy President of the Republic of Kenya...

**Hon. Speaker:** You have indicated that one. It is a well-known title. The other one is unknown. What does it represent?

**Hon. David ole Sankok** (Nominated, JP): He is called Fred Matiang'i. He is the Cabinet Secretary (CS) of the Ministry of Interior and Co-ordination of National Government and also a perennial liar.

**Hon. Speaker:** That is what I meant. It is good to use the full title because the name "Matiang'i" means nothing in the records of the House. It is unknown here. You would have to find out from so many other places because we do not know how many people are called Matiang'i. So, it is good to indicate that the person that you are referring to is a CS.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I am well-guided.

**Hon. Speaker:** Very well. Let us have Hon. Dawood.

**Hon. Rahim Dawood** (North Imenti, JP): Thank you, Hon. Speaker. I join Hon. Sankok in saying that the people of Laikipia need justice just like other people. In fact, in the last Parliament, and in this one too, I have raised a couple of issues on land between my constituency and that of my brother, Hon. Murugara. If you have noticed, there are very many land matters which come to this House and never get resolved. I hope that this one will be solved, as well as

the matter of absentee landlords. As long as somebody has a valid title, that is what should matter and not whether or not he or she is an absentee landlord.

I wish the Departmental Committee on Lands could also be involved in those things because Hon. Sankok raised a similar Question in the morning and has just mentioned it again. It would have been better if the Departmental Committee on Lands was also involved.

**Hon. Speaker:** Let us have Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker, for giving me the opportunity to make a few comments. I hope that the Chairperson is listening and taking notes.

Laikipia is almost becoming a field of war. I urge the Committee that as they look at the Petition, they should also look at other communities which have the right to stay in Laikipia in accordance with the Constitution which allows everybody to live anywhere in the country.

Many times, the Pokot community has been on the receiving end. Members of the Pokot community who live there are also Kenyans. The only sin they have committed is that they do not have representation in Laikipia. I urge the Committee that as they look at the Petition, they should do so from the global perspective of maintaining peace and that every community is allowed to live anywhere.

The members of that community who live there are not necessarily criminals. They are a community. Let us not criminalise an entire community. A criminal is a criminal. I urge the Committee to see that that community is also part of the Republic of Kenya.

**Hon. Speaker:** Let us have the Member for Kipkelion East.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker. Land issues are very emotive. I would like to state very clearly that, this time, the Ministry in charge of land issues and the one in charge of the Interior should be very serious about resolving those issues.

I must state on record that, of late, it is very worrying that we have a crop of administrators who are very immature. When it comes to issues of insecurity, you will find an administrator telling the public that the Government is unable to resolve insecurity issues because the criminals are more sophisticated than the Government. That is very serious. This House must stamp its authority. Such officers must be brought to book and censured by this House so that we are seen to be very serious about it. Otherwise, the issues raised in Laikipia can be replicated elsewhere if we are not very serious about it.

I support the Petition and it should be taken seriously.

**Hon. Speaker:** Let us have the Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. What is happening in Laikipia is a little bit disgraceful because those communities are fighting over one of the most important factors of production, which is land. Therefore, there is need to address the problem with utmost speed to ensure that it is resolved and peace is restored in Laikipia.

The Laikipia situation is not the only one. I will mention what Hon. Rahim Dawood has talked about regarding the disputes between Tharaka Nithi and Meru, especially my constituency of Tharaka, where land has been occupied by my constituents from time immemorial, as well as residents from Meru and Hon. Dawood's constituency who hold titles whose origin and manner of issue are unknown. In fact, we call them "air titles", namely, titles from the air.

It is important that the National Land Commission investigates those cases of historical injustices because that is what they are. There is absolutely no record of where those titles came from and yet, they have their owners who occupy the land. That is a historical injustice that needs to be looked into.

**Hon. Speaker:** Let us have the Member for Ugenya.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Speaker. I sit on the Select Committee on National Cohesion...

**Hon. Rahim Dawood:** (*Spoke off-record*).

**Hon. Speaker:** Hon. Members, not everything that is mentioned about your constituency is out of order. Please, do not do what Hon. Dawood is doing because it is actually an act of disorder to shout "point of order" when you are seated.

Proceed, Hon. Ochieng'.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you so much, Hon. Speaker.

The issue at hand is not just about land; it is a livelihood issue. Almost every year, people in Laikipia have to move because they cannot access pasture. It is a difficult issue. We are dealing with it in the Select Committee on National Cohesion and Equal Opportunity.

When we gave ourselves a new Constitution and set up the National Land Commission, we thought that the first order of business for that Commission would be to deal with those kinds of hotspots and not go around looking at which leases have not been renewed in Nairobi and other town centres.

It is a shame that in 2021, the CS for the Ministry of Interior and Co-ordination of National Government can go to Laikipia and issue orders that they will kill people and do other things. That is not an issue that you deal with through hard talk. I would like to inform the Chairperson of the concerned Committee that this issue is not just about administration. It is holistic and requires almost the whole Government getting involved in it.

We cannot have a situation where, every year, just like the drought, people have to die in Laikipia and yet, we have institutions that should handle those issues. They have budgets for dealing with those issues and yet, they sit in Nairobi in air-conditioned offices, go there for a day or two, issue orders and come back hoping that things will get better.

As politicians in this House, we must also tone down and look for long-term solutions to the land problems in those areas.

I support the Petition.

**Hon. Speaker:** Let us have the Member for Saku.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Speaker. The issue of Laikipia is a travesty of justice. Since Independence, over 55 years ago, we are still talking about insecurity in a place that is hardly 30 kilometres outside of Nanyuki Town where there is the police force, the military and all kinds of specialised units. When we are told in the national media that they are sophisticated bandits, which country are we living in?

I sympathise with the petitioner because he is sending the Petition to this House just to burden us. It is showing the absence of Government. Without blinking an eye, we must tell those who are in charge to wake up and do their work.

**Hon. Speaker:** Let us have the Member for Endebess.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I support the Petition by Mr. Tema on the Laikipia issue.

Article 67 creates the National Land Commission which, among other things, as stated in 67(e), resolves matters either on its own initiation or complaints by members of the public on either current or past historical injustices. Article 68 talks of this House legislating on matters of land. I think we have run short of doing that. As the Committee looks at it, they also need to look at what recommendations, even in terms of legislation, that we can make to address some of those issues. This country is full of squatters. It is full of landless people who were displaced by the colonialists and the regimes that came after colonialism. You will find families with about 40,000 acres in

Endebess and yet, their ancestral home is not in Endebess. What happens? In Trans Nzoia, we are talking of about 20,000 squatters. We are talking of about 40,000 displaced families. This is a time bomb! With time, as those people continue suffering, it might explode and that will be a tragedy to this country. So, as the Committee looks into this matter, they need to explore legislation that can help this House to resolve the issues. The NLC is supposed to recommend redress of such issues.

This House should live up to the expectations of Kenyans.

**Hon. Speaker:** Of course, the House lives and continues to live in perpetuity. I just want to bring to your attention the fact that there exists the Land Act, which was enacted by the 10<sup>th</sup> Parliament. Perhaps, people may need to look at it and see what it is that may need to be tweaked if it would in any way help in addressing some of these issues.

Member for Mavoko. Members, you have only two minutes.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. I hear your guidance but the Laikipia incident will be replicated if this House does not act accordingly. I have seen people displaced from their homes. Not a long time ago, I brought a Question to this House requesting the Ministry of Lands and Physical Planning to give a status report of all public utility land in Syokimau. There are known land grabbers in this town who just go to Mavoko because there is a lot of land there. They identify land. If it is yours or your neighbour's, they go to the Ministry of Lands and Physical Planning and come with a title deed. That is not any different from what happened in Laikipia. If you identify a plot that is not developed and then you come up with a title deed and claim that you should go to court, you actually frustrate the owner of that land. It is unfair!

Most of those lands are owned by retirees of this country. So, I agree with you that we must, as a House, relook into the Land Act and see how we can address this matter. In fact, it is about implementation because those land grabbers are working in cahoots with the police, the Ministry of Lands and Physical Planning and the NLC. A criminal is a criminal. There is no difference still when it is a herdsman taking his animals to graze in a farmer's maize farm. Most of these people live in urban areas. They rely on those plots as their retirement package. It is high time the Departmental Committee on Lands relooked at this issue, particularly with regard to Mavoko. It feels so bad when I see someone from, say, the North Eastern part of this country going to Mavoko and claiming to own 1,000 acres and that it is his grandparents who were there before. I know very well that the ancestors of Mavoko are members of the Kamba and Maasai communities. We need to be very serious. Otherwise, I can see a war. I can see clashes. So, I want to warn those people who are getting title deeds from the Ministry of Lands and Physical Planning.

**Hon. Speaker:** It is now more than two minutes. The next is the Member of Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. The matter at hand is very emotive. It is not just an issue of land; it is actually an issue of livelihoods. Of late, Laikipia has been in the headlines. Laikipia is not anywhere outside this country. This matter should be looked into seriously. It is not just an issue of the Departmental Committee on Administration and National Security because there is also an aspect of land. How I wish this matter could have been assigned to a Joint Committee of the Departmental Committee on Lands and the Departmental Committee on Administration and National Security, particularly when it comes to issues of historical injustices, which the NLC is supposed to look into and advise the Cabinet Secretary in charge of land matters. We request the Committees to expedite it because we must restore peace in Laikipia. Laikipia is part of this country. We call upon all the relevant security agencies to move with speed and restore stability in Laikipia.

**Hon. Speaker:** Member for Mandera North.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Thank you, Hon. Speaker.

At the outset, I want to agree with the petitioner. This matter is very timely and it is for the betterment of the country, not just Laikipia. The issue of land is very emotive. The earlier this matter is resolved, the better for all of us. The unfortunate part of this incident is that it targets certain livelihoods. I do not know why pastoralism is not taken as a livelihood in this country. If you look at what is happening in Laikipia, it is about people moving with their animals from place to place – people who have no permanent residences. Who has denied them the residence? It is the authorities. If those people are apportioned some acres of land and settled down, there will be peace and harmony.

The other aspect that the Petition talks about is discrimination in terms of identity cards. This cuts across even in northern Kenya. As the Committee looks into this matter, they should also put more effort on the issue of discrimination and the unnecessary vetting of persons coming from northern Kenya.

Hon. Makau spoke about certain communities that have invaded Mavoko. It is quite absurd that he can mention a certain community. That is incitement in itself. So, I ask him to withdraw that statement on the Floor of the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Members of the Procedure and House Rules Committee, I think you can see the inadequacy of what is provided for in Standing Order No.227 and Standing Order No.226, where Members are supposed to make comments and seek clarifications. All of you know that we are coming to the end of this term. This is not debate time. It is just to make pointed comments and clarifications, perhaps, which you may want addressed by the Committee when it goes to consider the Petition. Unfortunately, many of you have assumed that this is time for accumulating *bonga* points. Therefore, you think it is debate.

Let us hear the Member for Bonchari before we conclude.

**Hon. Pavel Oimeke** (Bonchari, ODM): Hon. Speaker, I rise to support the Petition. In doing so, I wish to draw the attention of the House to the fact that we are actually sitting on a time bomb. The occurrence in Laikipia is not a new thing. The issue occurs every time there is shortage of pasture and water and pastoralists have to move to that area in search of those resources.

I also agree with fellow Members that it is a livelihood issue. It is about the haves and the have-nots in this country. It is high time the Departmental Committee on Administration and National Security and the Departmental Committee on Lands looked at this issue seriously because there are several areas where we have similar issues. I also want to state that this matter should actually be handled by a joint committee to make sure that it is adequately addressed. It is actually a case whereby we can say we do not have a Government in Laikipia. There is no law and order. There is no one who is taking care of those citizens.

Therefore, I would like to support. The joint committee, as you may direct, should look into this matter.

**Hon. Speaker:** Finally, the Chair of the Committee to which the petitioner directed his Petition. He knows why he directed his Petition to this Committee. Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I want to believe that this Petition is timely. It raises weighty matters in terms of absentee landlords and those who arm local communities to fight. I do not want to speculate that there might be some political hand or machinations behind what is happening, but it is true there is conflict. It is known by everybody in the Republic. It is in the public domain that there are skirmishes in Laikipia which need to be

addressed. I want to confirm that we are equal to the task. We shall address all the points raised by the petitioner and ensure that we interrogate all of them and bring a report to this House, even as we send a copy to the petitioner in the required 60 days.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Next Order.

### PAPERS LAID

**Hon. Speaker:** Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I beg to lay the following papers on the Table of the House:

The Crops (Coffee) (Amendment) Regulations, 2019 and the Explanatory Memorandum from the Ministry of Agriculture, Livestock, Fisheries and Co-operatives.

Report of the Auditor-General and Financial Statements in respect of the Technical University of Mombasa Enterprises Limited for the year ended 30<sup>th</sup> June 2020, and the certificate therein.

Report of the Auditor-General and Financial Statements in respect of Mount Elgon Lodge Limited for the year ended 30<sup>th</sup> June 2019, and the certificate therein.

Report of the Auditor-General and Financial Statements in respect of the Kabarnet Hotel Limited for the year ended 30<sup>th</sup> June 2019, and the certificate therein.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2019, and the certificates therein:

- (a) Dadaab;
- (b) Juja;
- (c) Maragwa;
- (d) Kilifi North;
- (e) Tigania West;
- (f) Tigania East;
- (g) Magarini;
- (h) Mbeere South; and,
- (i) Nyali.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Kigano.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of:

- (a) The public petition by Mr. Ephantus Nyaga regarding amendment to sections of the Civil Procedure Act (Cap. 21) and the Law of Succession Act (Cap. 160);
- (b) The public petition regarding settlement of an award to the family of the late Nancy Kharwali.

Thank you, Hon. Speaker.

## MESSAGE

### NOMINATION OF PERSONS FOR APPOINTMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION

**Hon. Speaker:** Hon. Members, as I indicated earlier on, I was going to deliver a Message from the President, it being No. 10 of 2021. This Message is pursuant to the provisions of Standing Order 42. The President has made nominations of persons for appointment to the Ethics and Anti-Corruption Commission (EACC). The Message was received in my office yesterday, 5<sup>th</sup> October 2021. It reads in part:

“In accordance with the provisions of section 4 and 10(2) of the EACC Act (No. 22 of 2011) as read with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, His Excellency the President, having received the Report of the Public Service Commission on recruitment of persons to replace commissioners who resigned recently, has nominated the following persons for appointment as members of the EACC:

1. Col. (Rtd.) Alfred Mutweta Mshimba; and,
2. Dr. Monica Wanjiru Muiru.

In this regard, His Excellency the President now seeks the approval of the nominees by this House. Section 10(2) and (3) of the EACC Act provides as follows:

“(2) The President shall, within fourteen days of receipt of names of successful applicants forwarded under sub-section (1) (f), select the person to fill the vacancy in the Commission and forward the name of the person to the National Assembly for approval.

(3) The National Assembly shall, within 21 days of the day it next sits after receipt of the name of an applicant under sub-section (2), vet and consider the applicant, and may approve or reject applicants for any or all vacancies in the Commission.”

Pursuant to the provisions of Standing Order 45, I hereby refer the Message together with the curriculum vitae and other testimonials of the nominees to the Departmental Committee on Justice and Legal Affairs for consideration. Conscious of the importance of EACC’s mandate in ensuring integrity in the public sector, His Excellency the President has requested the National Assembly to consider the nominees as a matter of priority. To this end, the Committee should expeditiously notify the nominees and the general public of the time and place for holding approval hearings. Upon conclusion of the hearings and adoption of its report, the Committee should submit the same to enable the House to consider the matter within the statutory timelines as indicated.

I thank you, Hon. Members.

## QUESTIONS AND STATEMENTS

**Hon. Speaker:** The first segment of Order No. 7 is Questions. The first one is Question No. 6, it being Question by Private Notice, by the Member for Starehe, Hon. Charles Njagua.

## QUESTION BY PRIVATE NOTICE

*Question QPN/006/2021*

CIRCUMSTANCES OF THE KILLING OF MR. RABIN PATEL OGETO

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**Hon. Charles Njagua** (Starehe, JP): Thank you, Hon. Speaker. I rise to ask Question 6 of 2021 by Private Notice directed to the Cabinet Secretary for Interior and Coordination of National Government:

- (i) Could the Cabinet Secretary explain the circumstances that led to the fatal shooting of Mr. Rabin Patel Ogeto, a *boda boda* rider, along Kirinyaga Road in Nairobi County on Saturday 25<sup>th</sup> September 2021 allegedly by a security officer?
- (ii) Could the Cabinet Secretary provide the status of investigations into the incident, indicating whether the suspect(s) has/have been arrested and charged?

Thank you, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Order Members. Those of you who have completed your session for this afternoon and are walking out, please, walk out in silence. Those of you who cannot sit beyond 30 minutes, please, just walk out but do so in silence. I mean, you cannot just come here for 20 minutes and walk out while making all manner of noises.

The Question will be replied to before the Departmental Committee on Administration and National Security.

### ORDINARY QUESTIONS

**Hon. Speaker:** The next Question is by the Member for Nyaribari Masaba, Hon. Ezekiel Machogu.

*Question No.379/2021*

#### STALLED CONSTRUCTION OF RIATIRIMBA TECHNICAL INSTITUTE

**Hon. Ezekiel Ombaki** (Nyaribari Masaba, NAPK): Hon. Speaker, I rise to ask the Cabinet Secretary for Education the following Question:

- (i) Could the Cabinet Secretary explain why the construction and operationalisation of the Riatirimba Technical Institute in Nyaribari Masaba Constituency has stalled since 2009 despite donations worth about Kshs1.5 billion in form of machinery and other equipment from the Government of the People's Republic of China?
- (ii) Could the Cabinet Secretary explain the measures the Ministry is putting in place to ensure that the facility is fully functional?
- (iii) Could the Cabinet Secretary state when the Ministry plans to deploy instructors and other personnel to the facility when it is operational?

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Education, Science and Research.

The next Question is by the Member for Embakasi West, Hon. George Theuri.

*Question No.403/2021*

#### MEASURES TO CUSHION PARENTS WITH SCHOOL-GOING CHILDREN FROM EFFECTS OF COVID-19

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**Hon. George Theuri** (Embakasi West, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Education the following Question:

- (i) What measures has the Government put in place to cushion parents against the effects of COVID-19 Pandemic, particularly parents with school-going children who have to pay school fees four times in a year?
- (ii) Could the Cabinet Secretary explain why parents are required to pay school fees for an extra one term during the year 2021 despite the fact that the terms have been shortened such that the total period spent by a child in school for the year will not be equivalent to an ordinary school academic year?
- (iii) What steps is the Ministry taking to ensure that learners are not sent home from school due to outstanding school fees?

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Education and Research.

The next Question is by the Member for Meru County, Hon. Bishop Kawera Mwangaza.

*Question No.404/2021*

LIST OF TVET INSTITUTIONS FUNDED BY GOVERNMENT IN MERU COUNTY

**Hon. (Ms.) Kawira Mwangaza** (Meru CWR, Independent): Hon. Speaker, I rise to ask the Cabinet Secretary for Education the following Question:

- (i) Could the Cabinet Secretary provide a list of all Government funded Technical and Vocational Education Training (TVETs) institutions in Meru County?
- (ii) What measures has the Ministry put in place to ensure that TVET institutions are well-equipped with a view to ensuring adequate access to training for youths in Meru County?
- (iii) When will funds allocated to TVET institutions in Meru County during the 2020/2021 Financial Year be disbursed to the respective institutions?

**Hon. Speaker:** That Question is to be replied to before the Departmental Committee on Education and Research.

The last Question is by the Member for Garsen, Hon. Wario. Hon. Members, when you have a Question, come with your card and press your intervention button. It is a lot easier than mumbling around.

*Question No. 406/2021*

ACQUISITION OF LAND FROM TANA-RIVER AND  
LAMU COUNTIES FOR KIPINI MILITARY LAND PROGRAMME

**Hon. Ali Guyo** (Garsen, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Defence the following Question:

- (i) Could the Cabinet Secretary confirm whether public participation was carried out prior to the Ministry's decision to acquire various parcels of land in Tana River and Lamu counties for Kipini Military Land Programme as communicated via Gazette Notice No.9857 of 2021?

- (ii) Could the Cabinet Secretary outline the benefits that will accrue to the local communities in the two counties in the arrangement?

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Defence and Foreign Relations.

Let us go to the second segment, which is the one of Requests for Statements. The only request is from Hon. John Kiarie.

## REQUEST FOR STATEMENT

### CHILD LABOUR IN DUMPSITES ACROSS THE COUNTRY

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Speaker, I rise to ask for a Statement regarding the rampant cases of child labour in garbage collection in various dumpsites across the country.

Pursuant to Standing Order No.44 (2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the rampant cases of child labour in the garbage collection business and sorting of recyclable garbage at dumpsites around the country in a business commonly referred to as ‘*taka ni pesa.*’

Article 53 of the Constitution of Kenya recognises the rights of all children to be protected from abuse, neglect, harmful cultural practices and from all forms of violence, inhumane treatment, punishment and hazardous or exploitative labour. In the recent past, there has been an increase in the cases of child labour where children from disadvantaged backgrounds are engaged in collection and sorting of garbage at dumpsites and, more so, in the urban areas.

Child labour remains a major concern due to the trade-off that children and parents have to make owing to the benefits that come from engaging in this hazardous practice. Despite the gains that have been achieved through free primary education and the Government initiative of 100 per cent transition from primary to secondary schools, child labour is still a major factor that hampers children from disadvantaged backgrounds from participating and acquiring good education.

In addition, the engagement of children in garbage collection and at dumping sites across the country exposes them to hazardous waste that may cause numerous health complications as they cannot afford proper personal protective equipment for use in the course of this line of work.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare on the following:

- (i) What steps is the Ministry of Labour taking to protect those vulnerable children, especially children from disadvantaged backgrounds, from child labour?
- (ii) Could the Ministry consider registering parents and guardians of children involved in child labour in the *Inua Jamii* Programme to enable them to provide basic needs for their families and those disadvantaged children?

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Where is the Chairman, Departmental Committee on Labour and Social Welfare? I thought I saw him around. When chairmen come in and walk away before we have got to this level of Request for Statement, you know you make it look very bad. Does he have a Vice-Chairman? Are you the Vice-Chair? He is not Chair of anything unless he is chairing some caucus. Well, the request should be channeled through the Office of the Leader of the Majority Party.

Hon. Sankok, you cannot assume that role. Are you a member of the Committee or are you suggesting that you want to give an undertaking?

**Hon. David ole Sankok** (Nominated, JP): Yes.

**Hon. Speaker:** What of if you gave and it does not work? You know chairmen are paid responsibility allowance. You are not paid that yourself.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker. I am a Chair of something because I Chair the East African Council for Persons with Disability. The Chairman of the Departmental Committee on Labour and Social Welfare left specific instructions to me that I should be on the lookout for any business that will come to our Committee so that I can give an undertaking on his behalf for which, Hon. Speaker, with due respect, I should give because they are absent. They have just stepped out.

Within two weeks, we will give a response to Hon. Kiarie, Member for Dagoretti South who has raised a very pertinent issue of child labour. All of us have children in our homes and we do not want them to be subjected to child labour

**Hon. Speaker:** You know you are giving an undertaking but now, you are engaging in another debate

**Hon. David ole Sankok** (Nominated, JP): No, I am giving an undertaking that within two weeks...

**Hon. Speaker:** Very well. Hon. Kiarie within two weeks, you must hold Hon. Sankok to account.

There is a response to a Request for a Statement for Hon Patrick Makau, and the response is from the Chairman, Departmental Committee on Environment and Natural resources. Hon. Kareke Mbiuki.

## STATEMENTS

### SEWERAGE SPILLAGE AND POOR DRAINAGE IN SYOKIMAU AREA

**Hon. Kareke Mbiuki** (Maara, JP): Hon. Speaker, I beg to give the response to a Request for Statement by Hon. Patrick K. Makau, MP, on the sewerage spillage and poor drainage in Syokimau area that is occasioned by the ongoing Expressway Project pursuant to Standing Order 44(2)(c).

The Committee engaged the Ministry of Water, Sanitation and Irrigation on the above concerns raised by Hon. Makau. I, therefore, wish to respond to the issues as follows:

It is true that the ongoing construction of the Nairobi Expressway has resulted in numerous inconveniences to residents and business communities living and operating along the road corridor. The Nairobi Expressway Project is being undertaken by the Ministry of Transport, Infrastructure, Housing and Urban Development through the Kenya National Highways Authority (KeNHA). It is a 27-kilometer road project beginning from Mlolongo in Machakos County, passing the Jomo Kenyatta International Airport (JKIA) and Nairobi CBD and ending at James Gichuru Road in Westlands, within Nairobi County.

The project includes a component of relocation of existing utility services serving Nairobi and Machakos counties, including water and sewage infrastructure. The works entail the relocation of 85 kilometre water line, 25 kilometre sewer lines and other ancillary works. The works commenced on 27<sup>th</sup> March 2020 with an implementation period of 18 months and is expected to be completed by 27<sup>th</sup> September 2021, although the contractor has sought an extension up to January 2022.

Hon. Speaker, on the measures being put in place to avert the impending environmental and health hazards occasioned by the raw sewage spillage in the said area, on 16<sup>th</sup> July 2021, the road contractor while undertaking road works along a section on Mombasa Road, dumped subgrade material along the section and, in the process, blocking four manholes. The existing road drainage at the section was also damaged. In the absence of an alternative road drainage path, both storm water and sewage are ponding at the lowest areas upstream of the affected various sections including: Pharma Building, Loan View Estate, Elan Park, Kapa Industries and Little Bees Kindergarten and Primary School.

Hon. Speaker, in order to avert possible environmental and health hazard, especially to the pupils of the schools, a decision to close down the schools and relocate the pupils was taken on Wednesday 4<sup>th</sup> August 2021. This is because all surface water and sewage spillage were ponding at the school as the drainage was not working properly then. On 6<sup>th</sup> August 2021, the contractor was instructed to urgently provide a 400-m diversion pipeline around the problem stretch to drain the waste water from the schools. Work commenced on 12<sup>th</sup> August 2021. The information which I have received was that the school was fully cleaned and fumigated by KeNHA and learning is expected to resume next week.

Further, Mavoko Water and Sewerage Company, the service provider in Syokimau area, has undertaken measures to redirect the sewage flow back to the existing manholes and is going on with cleaning of all manholes filled with excavated soil and any other debris. This has allowed the sewage that had inundated the adjoining areas to flow back into the existing sewer line. The company has also undertaken disinfection of premises affected by the sewage backflow to private premises such as Little Bees, Best Homes, Elan Park and other facilities

Hon. Speaker, a more permanent preventive measure would entail proper planning for restoration of utilities in a coordinated approach. The Ministry is therefore keen on ensuring this approach is adopted in order to forestall inconveniences that would otherwise be avoided. This is being done through frequent effective coordination meetings between the implementing agencies, service providers and contractors.

Measures are in place to provide for sewer lines and other road infrastructure that will ensure proper drainage of the raw sewer waste along the diversions and, in particular, in Syokimau area. There is provided proper management of sewage and other water infrastructure along the road corridor, including Syokimau area, during construction of the Expressway. This will be achieved through collaborative and co-ordinated actions between the project implementing agencies, the water service providers and the contractor. Previously, a lot of damage to relocated and existing water and sewage pipelines was rampant. However, due to the intervention of National Development Implementation Technical Committee (NDITC), the cases have reduced. However, more needs to be done by the contractors to ensure unnecessary damage to utilities is avoided.

Hon. Speaker, there are urgent steps that the contractor is taking to stop the spillage and ensure removal of the sewage waste from the said school ground amongst other areas so as to avert further damage. Once the diversion pipeline is completed, the sewage spillage at the school will be drained into the main sewer line. Meanwhile, a relief trench has been constructed to evacuate the flooded waste water into the nearest functional manhole.

Lastly, I wish to inform the House that the Committee, within two days after the Petition was tabled in this House on August 17<sup>th</sup> 2021, interacted with affected persons, the area Assistant County Commissioner, the area Member of Parliament, Hon. Patrick Makau, MP and officers from the Water Resources Authority (WRA) and Athi Water Works Development Agency.

At the end of the site visit, it was resolved as follows: That, within three weeks, the section of the sewer line that was destroyed should be fixed. I want to confirm that the same has been done. To ensure the scenario was not repeated in the ongoing road works at the Expressway, the road contractor who is engaged in relocation of infrastructure should henceforth work in tandem with others and should have weekly meetings to plan their operations.

Finally, Athi Water Works Development Agency and affected locals, including the proprietor of the Little Bees Kindergarten and Primary School and the owner of the school buildings will negotiate compensation mechanisms and come up with immediate actions to address the situation under the office of the area Deputy County Commissioner.

Thank you, Hon. Speaker, I submit and wish to inform the House that the same response has been given to the area Member of Parliament. Thank you.

**Hon. Speaker:** Hon. Makau.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. I thank the Committee for the little work they have done. I want to be honest in this House. There are living witnesses that what he has read is not what is happening on the ground. I agree with him that he got information from other quarters. I am sure that was the last time they visited that area and have never gone back or used the same agencies to see what is happening.

If you live in Syokimau, you will be forced to go back to Mlolongo to turn. They have not completed the diversions and they do not water them as they should be doing. There is a school called Little Bees where they had opened the sewer systems and the pupils could not access the school. That school has lost income for about two months. They have done nothing and are constructing the sewer system so slowly. He has mentioned Mavoko Water and Sewerage Company which is a profit-making company. There is no way they can give out their money, if they have not been paid by Kenya National Highways Authority (KeNHA).

I am very annoyed and disappointed by the contractor because he is so arrogant and I do not understand where he gets the arrogance from, not unless from KeNHA. They cannot divert water and also people. The traffic jam on Mombasa Road is so great. There are buses, trucks and many cars. The jam has just reduced a bit. They should go a step ahead and ensure that KeNHA talks to the contractor. The Chinese are people you can talk to and if threatened, they will put diversions with three lanes going down and up.

Hon. Kareke Mbiuki, I respect you so much because you are a ranking Member of this House. I think you should do more. Invite KeNHA and the contractor. Most Members of Parliament live in Syokimau and know what I am talking about. They stay here until 10 O'clock so that they can go home. This Report is only 20 per cent implemented. How I wish they can go back.

I thank you, Hon. Speaker for giving me this chance. I also thank the Committee for bringing an answer within acceptable timelines.

**Hon. Speaker:** Of course, you are still at liberty to raise further questions should the situation persist. You sought a Statement which has been given and that matter is now over. You can only raise a Question.

**Hon. Patrick Makau** (Mavoko, WDM-K): So, is that the end?

**Hon. Speaker:** That is not the only business before that Committee.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, I was...

**Hon. Speaker:** You know, you choose the way to prosecute a matter through a Statement. In fact, you can ask Hon. Duale. In another jurisdiction similar to this one, a Cabinet Minister merely appears with a Statement which is prepared. He or she then reads and places it on the Table

and the matter ends there. Indeed, there are no supplementary Questions. So, if you chose that way, that matter is now over. That is why I give you a chance to lament a bit so that your people can hear you are also crying like them.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, that notwithstanding, I am requesting the Committee to go ahead and help me. They should talk to KeNHA because the buck stops with them since they are the clients.

**Hon. Speaker:** Are you requesting for another Statement?

**Hon. Patrick Makau** (Mavoko, WDM-K): I am requesting the Committee to invite KeNHA again to give more clarification.

**Hon. Speaker:** Hon. Makau since the answer given is not satisfactory, you can ask a Question and then the Committee will invite all those people again. This was a request for a Statement.

*(Hon. Charles Kilonzo stood up in his place)*

Member for Yatta, you know how to rise on a point of order. I do not know why you are standing. If you needed to rise on a point of order, I am sure I would be seeing your name here. Now that I am not seeing it, it means you are operating outside the...

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, he is a user of that road and I am sure he is standing to support what I am saying.

**Hon. Speaker:** It does not matter. If he wanted to say something and lament like you, please, do that in a public rally.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, no. It is best done here.

**Hon. Speaker:** But there is no answer.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, there is an answer.

**Hon. Speaker:** According to the response given by Hon. Mbiuki, that matter has been addressed and he is okay. Hon. Makau, you may rise as you have done and claim that the Committee has not given you 100 per cent response. According to what they did that time, that was the response available. Unless the Committee wants to go on a wild goose chase to enjoy themselves, there is no other request before them.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, I stand guided but I must confirm to this House that after the Committee's visit... You will remember the previous night residents had slept on road. At least...

**Hon. Speaker:** No, I do not remember because I do not sleep there.

**Hon. Patrick Makau** (Mavoko, WDM-K): It was all over.

**Hon. Speaker:** No, if it was all over, it was not here in the Chamber. Hon. Makau, you are the one who should have brought it to the House.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, I did it but anyway I stand guided. Thank you, so much.

**Hon. Charles Kilonzo** (Yatta, Independent): On a point of order, Hon. Speaker.

**Hon. Speaker:** No, it is not about the road users. Now you have learnt how to use the intervention button.

**Hon. Charles Kilonzo** (Yatta, Independent): On a point of order, Hon. Speaker. The matter I want to raise requires your direction and, perhaps, ruling. Given the traditions of Parliament worldwide and, more so, the Commonwealth, Ministers in the House cannot ask Questions. The Questions are left for backbenchers. Under the old Constitution, likewise in Kenya, Ministers

could not ask Questions. Under the new Constitution, Chairs of Committees represent the Executive in the House.

Hon. Speaker, what I am trying to get from you is that, it looks totally out of order for Chairs to request for Statements and Questions in the House and expect them to be answered by the same Government they are fronting in the House. At this rate, even the Leader of the Majority Party, Hon. Amos Kimunya will file a Question and request for a Statement. The kind of ruling I am seeking is that Chairs of Committees who have been elected to represent the Executive should and cannot ask Questions here. The case of Hon. Makau falls in the same category because he is the Chair of the Departmental Committee on Sports, Culture and Tourism and he has no business asking Questions here. The man says he is a minister out there but when he comes to the House, he is asking Questions.

Hon. Speaker, I am seeking directions on whether Chairs of Committee and people holding leadership in the House, representing the Government should ask Questions here. This has been the practice within the Commonwealth and that is why I seek your direction.

**Hon. Speaker:** Fortunately, we were involved in trying to help the House resolve this problem. As you will recall, Hon. Charles Kilonzo at the tail end of the 10<sup>th</sup> Parliament, the Standing Orders were revised. At that time, the provision was that a Member will stand and ask Questions to a chairman of a committee or the people you call chairpersons. We found that it was an extremely difficult situation that you would rise in your place there, ask Hon. Kareke Mbiuki a Question maybe about sewage, and expect him to give you an answer. He may have absolutely no idea where that sewer line is. Or another Member rises in their place and asks about some banditry attacks in such places like Kapedo, and the chairman of the committee, Hon. Mwathi, who is from Limuru has to, first of all, look at *Google maps* to know where Kapedo is. Obviously, we found ourselves in a very awkward situation.

Sometimes also, just like when these Statements are brought, the chairperson is not really the owner of the Statement. In fact, I think we should congratulate Hon. Kareke Mbiuki because, at least, he summoned people so as to understand and not just receive the information from the Ministry. This was just a way of trying to create some balance. That is why we came up with a provision, but some of you did not agree with it. We created a Committee on General Oversight. Hon. Duale is aware of that and I think several of you are too. It was expected that if that Committee was operationalised, then Questions would be answered by Cabinet Secretaries coming to the hallowed Floor of the House, but sitting in committee and not as a House in plenary. The expectation was that Cabinet Secretaries who had Questions to respond to would be here so that we help one another. In fact, even the country would know what those Cabinet Secretaries are doing. However, some people did not quite agree with us. They were called constitutional advisors. So, that thing was not operationalised because they argued about separation of powers.

We still had to look for another middle ground, which is why we came up with the system where Questions are asked and they are read out here in plenary so that, at least, your constituents know that you are not asleep. They can hear you reading the Question, but we refer it to the Committee. Unfortunately, we do not have sufficient television and radio coverage when Cabinet Secretaries appear before the respective committees to answer Questions but, at least, every Thursday afternoon, the Leader of the Majority Party will read out and indicate which Cabinet Secretaries are going to appear before which committees to respond to which Questions. So, at least, there is a kind of a follow-up mechanism on Questions.

However, with regard to Statements when they are requested, they are presented as given, unless you get a chair of a committee as active as Hon. Mwathi, Hon. Kareke Mbiuki, the Chair



of the Departmental Committee on Lands, Hon. Racheal Nyamai, Hon. Pkosing and a few others, who will then summon Cabinet Secretaries and inform the Member seeking the Statement to be present to hear what kind of response is being given so that whatever interrogation that may be required is done at that point.

Hon. Charles Kilonzo, you are aware that you adopted the presidential system without any serious understanding of it. It is not you, Hon. Charles Kilonzo, but Kenyans. One must ask themselves why the Americans adopted a presidential system. Historically, they wanted to make a break with the king. They totally and completely wanted to do away with the monarch. They did not want anything about a parliamentary system where the Government would also be sitting in the House. So, Americans wanted to do a total break. In our case, Kenyans got excited and wanted to also break away from the Executive while we still require Members of Parliament to rise and ask Questions, but ministers are not here. We have that kind of difficulty.

Hon. Charles Kilonzo, Hon. Makau and other chairpersons also represent constituencies and they do not sit in the Cabinet. If they were ministers sitting in the Cabinet, then you can say that they cannot come to ask Questions on the Floor of the House because they can resolve their matters at Cabinet meetings with their Cabinet colleagues. However, the chairpersons, including the Leader of the Majority Party, represent constituencies. He does not sit in the Cabinet. So, if there is an issue touching on water or schools in his constituency, he has a right, in his representative role, to ask it here because here is where he sits. Surely, let us not block the chairmen from asking Questions while representing their constituents. I am not aware that Hon. Makau introduces himself as a minister while in the village. That is something I think he can deal with out there, but, of course, he looks like he could be a minister. Hon. Makau, you want to say you do not do that?

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. In fact, that was a prolonged explanation that you gave to Hon. Kilonzo. I do not know whether you are referring to old dogs learn hard.

Hon. Speaker, you know Hon. Kilonzo was in the 10<sup>th</sup> Parliament. The President would be seated there as the Member for Othaya and President of Kenya. So, Hon. Speaker, you have explained it so well. As a Committee Chairman, I still represent the people of Mavoko. I do not remember calling myself a minister. I am a Chairman of a Committee who reports to the ministry under my purview. So, if Hon. Kilonzo has any Question on sports, culture and tourism, obviously, you will refer it to us and we will do due diligence so that we can bring the reply here.

Hon. Speaker, ignore what Hon. Kilonzo has said. I know he wants to run for governor. It is wishful thinking because he already knows I am the governor of Machakos in 2022. Maybe, he is looking for a way to bring me down, but it is true that I am going to be the Governor of Machakos County, God willing.

**Hon. Speaker:** Very well, but do not answer to the Cabinet Secretary. Oversee him or her. The next response is from the Chairman of the Departmental Committee on Administration and National Security to a request by Hon. (Dr.) Ojiambo Oundo.

#### STATUS REPORT ON DRUG ABUSE, TREATMENT AND REHABILITATION IN THE COUNTRY

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, the Member for Funyula Constituency, Hon. (Dr.) Ojiambo Oundo, sought a Statement from the Cabinet Secretary for Interior and Coordination of National Government on the status of drug abuse, treatment and rehabilitation in the country. In particular, the Member sought to be informed on the following issues:

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1. Provision of information on the progress made by the National Authority for the Campaign against Alcohol and Drug Abuse (NACADA) with regard to alcohol and drug abuse in the country.
2. The amount of funds that have been allocated to NACADA for the last 20 years of its existence, and how it has been utilised particularly on treatment and rehabilitation of alcohol and drug abuse victims.
3. How many people affected by alcohol and drug abuse NACADA has helped to access treatment and rehabilitation centres.
4. Clarification on whether NACADA has the power to establish a treatment and rehabilitation centre to be run by a multidisciplinary expert team.

Hon. Speaker, NACADA is established under the National Authority for the Campaign against Alcohol and Drug Abuse Act No.14 of 2012. However, even before this, the Authority had been in existence under the legal framework as follows:

Between the years 2002 to 2007, NACADA operated as a department within the Office of the President. During this period, its operation and budgetary mandate were under the direction of the Permanent Secretary in the Ministry.

In 2007, NACADA was incorporated as a State Corporation under the State Corporations Act vide Legal Notice No.140 of 2007. Under this legal instrument, the Authority's mandate in regard to treatment and rehabilitation was mainly advisory.

In 2010, the Alcohol and Drinks Control Act No.4 of 2010 was enacted, establishing an overarching legal framework that provided for a multi-agency arrangement for the control of alcoholic drinks in the country. Various regulatory, administrative as well enforcement roles were assigned to several State agencies. The NACADA was designated thereby as the relevant agency. Its mandate with regard to treatment and rehabilitation still remained largely providing advice to the Cabinet Secretary in matters of treatment and rehabilitation.

In 2012, the NACADA Act was enacted that reconfigured the mandate and legal competence of NACADA. It is under the NACADA Act 2012 that the Authority gained an express mandate to undertake various programmatic functions towards the campaign against alcohol and drug abuse. Under the law, with respect to treatment and rehabilitation, the Authority has the following mandate:

- i. Under Section 5(e), provide and facilitate the development and operation of rehabilitation facilities, programmes and standards for persons suffering from substance use disorder.
- ii. Under Section 5(f), subject to any other written law, license and regulate the operations of rehabilitation facilities for persons suffering from substance use disorders.
- iii. NACADA has the obligation under the provisions of Section 5(j) of the NACADA Act 2012, in collaboration with other lead agencies to prepare, publish and submit an alcohol and drug abuse control status report bi-annually to both Houses of Parliament through the Cabinet Secretary. In the discharge of this obligation, the Authority has over the years submitted various reports to this House to date. Annexure A, contains a compendium of bi-annual reports from 2012 to date, which I have here, and which is part of the annexure that I will table.

The Authority acquired an express functional mandate on treatment and rehabilitation in the year 2012. Since then, NACADA has spent resources on various facilities and programmes targeted at treatment, rehabilitation and substance use disorders as outlined below.

- a. Budgetary allocation to treatment and rehabilitation of substance use disorders: Under this, NACADA has allocated and spent about Kshs190,573,761 in treatment and rehabilitation over the years. Below and attached here is a table presenting the budgetary allocation that NACADA has committed to treatment and rehabilitation of substance use disorders over the years.
- i. The following are funds which have been disbursed to NGOs and civil societies through Ernest and Young to fight alcohol and drug abuse and which are in three tranches. Under the first tranche on 20<sup>th</sup> April 2013, a sum of Kshs24,750,000 was disbursed. The second tranche was disbursed on 28<sup>th</sup> June, 2013, which was Kshs48,032,041. The third and final tranche of Kshs22,129,520.50 was disbursed on 9<sup>th</sup> April 2014. This totals to Kshs94,911,561.50.
  - ii. The funds that were spent directly on treatment and rehabilitation of individual persons was Kshs5,662,200.
- b. County based treatment and rehabilitation facilities: The Authority has since 2015 been allocated and spent a sum in excess of Kshs90 million in the development and support to county governments in the development and operationalisation of treatment and rehabilitation facilities. The counties which these facilities have been developed include:
1. Kisumu County – Kodiaga Prison.
  2. Kisii County- Kiamwasi Treatment and Rehabilitation Centre.
  3. Elgeyo Marakwet County.
  4. Iten County Treatment and Rehabilitation Centre.
  5. Taita Taveta County – Wesu Treatment and Rehabilitation Centre.
  6. Kwale County – Kombani Treatment and Rehabilitation Centre.
  7. Mombasa County – Coast General Hospital.
  8. Bomet County – Koiwa Treatment and Rehabilitation Centre.
  9. Nakuru County – Presbyterian Care Centre.
  10. Uasin Gishu County – Moi Teaching and Referral Hospital.
  11. Kakamega County – Kakamega County Treatment and Rehabilitation Centre.
  12. Lamu County – Red Cross Treatment and Rehabilitation Centre.
  13. Nyeri County- Ihururu Treatment and Rehabilitation Centre.
- c. There is a national facility called Miritini Treatment and Rehabilitation Centre based in Mombasa which has been under the establishment for the last two years. The project provides a holistic approach to treatment and rehabilitation of alcohol and drug abuse. Services include prevention, namely, advocacy, treatment, psychiatric and medical services, HIV testing services, Hepatitis B testing services and cancer treatment.

**Hon. Speaker:** It is taking inordinately too long. Can you finish in three minutes?

**Hon. Peter Mwathi** (Limuru, JP): Yes, I could, but he had asked for a detailed account.

**Hon. Speaker:** He has the Statement? You can just highlight the salient features.

**Hon. Peter Mwathi** (Limuru, JP): Very well. Thank you, Hon. Speaker. In summary, the Miritini Treatment and Rehabilitation Centre is a national facility that has been under the establishment in the last two years and the project provides a holistic approach to treatment and rehabilitation of alcohol and drugs abuse.

The project is implemented by a multi-sectoral technical committee coordinated by NACADA. Members to the committee include State Department of Interior and Co-ordination of National Government, the county government of Mombasa, the Ministry of Health, the Ministry

of ICT, Innovation and Youth Affairs, the Pharmacy and Poisons Board, the Youth Enterprise Fund and the Kenya Red Cross. The NACADA has various programmes through which it discharges its mandate. These programmes are both stand alone and combined either within NACADA alone, as well as in conjunction with public agencies and private players. The said programmes include the following, each with the indicative number of persons assessed: Helpline call since its inception has an estimated call of 50 to 100 per day. There is direct treatment, NHIF support for persons, direct treatment support, positive parenting campaigns, training and capacity building of Alcohol and Drug Abuse (ADA) professionals, the National Youth Service (NYS) direct counselling and brief interventions, outreaches and direct brief interventions, life skills programmes in schools, training of prison wardens, assessment and brief interventions to prisoners, and inspection and accreditation of inpatient treatment and rehabilitation facilities. There are more than 230 people who are engaged in the regions.

As I conclude, Section 5(a) of the NACADA Act 2012 gives NACADA the power to, in conjunction with other lead agencies, provide and facilitate the development and operation of rehabilitation facilities, programmes and standards for persons with substance use disorders (SUDs). Section 5(k) of the Act empowers the Authority to carry out such other roles necessary for the implementation of the objects and purpose of the Act and perform such other functions as, maybe from time to time, assigned by the Cabinet Secretary.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Oundo, had you looked at the response?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Yes, I looked at the response and I must commend the Committee for a fairly comprehensive response. Indeed, it has laid bare the achievements and the shortcomings of NACADA. Many of us believed that NACADA would play a central role in rehabilitation of persons addicted to drugs and alcohol.

Since the commencement of COVID-19, the cases have exacerbated and it is important for NACADA to do as much as it can to rehabilitate as many people as possible. It is fairly telling that since they started the programme at around 2015, they have only rehabilitated 193 persons, yet we have about close to four million Kenyans under drug abuse and alcohol addiction. Probably, in the near future - and I hope the Chairman is listening, unfortunately he is distracted by the Member for Kikuyu. I would want him to listen. I suggest probably as a recommendation for the Committee to pick up and as clearly stated in the mandate of NACADA, is it possible to partner with various private rehabilitation facilities in the country so that they support them either financially or technically, so that they can get as many people as possible in rehabilitation centres? The few that are supported by county governments and the main one in Miritini is just a drop in the ocean given the number of people who are affected. Many Members of Parliament here can tell horrifying stories of the many people in their constituencies who have been rendered zombies because of excess drinking and drug abuse, especially *bhang*, which is found where I come from and where one of the speakers comes from, plus heroine and other narcotic drugs in the Coast region. It is a problem we cannot sweep under the carpet and wish it away. We believe and trust that this is the time for the intervention that is likely and required, especially among the youths and among the men of certain age and category. All of us know the harmful impact of drugs and excessive alcohol consumption. Many years back, classrooms in Murang'a County were empty. There were no children, but I am now told that the numbers have started to increase after they imported people from all over the place. We do not want the same kind of thing to be replicated in other places.

Thank you, Hon. Speaker.

**Hon. Speaker:** It is good to import, as long as we also learn to live within our borders. Next Order.

## REPORTS OF THE COMMITTEE OF THE WHOLE HOUSE

### PRESIDENT'S RESERVATIONS TO THE REFUGEES BILL

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded by the Committee of the Whole House. What remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)*

### THE TAX APPEALS TRIBUNAL (AMENDMENT) BILL

*(Question put and agreed to)*

**Hon. Speaker:** Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move that the Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No.19 of 2021) be now read a Third Time.

I specifically thank the Departmental Committee on Finance and National Planning for the work they did in carrying out the necessary public participation, processing the Bill and the various amendments they brought yesterday as part of enriching the Bill. I also thank all Members of the House who stayed with us yesterday and who have been through the process of the development of the Bill. I know it marks a turning point in the way tribunals work. This is the first time we are migrating tribunals from the National Treasury to the Judiciary. I am sure we will see the workings of that Committee. It is a test case until all the other tribunals that are currently domiciled elsewhere find their rightful place in line with the Constitution.

I do not want to say much.

I beg to move. I request Hon. Kaluma to second.

**Hon. Speaker:** Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

Next Order.

## BILL

### *First Reading*

### THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL,

*(Order for the First Reading read – read the First Time and ordered)*

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*to be referred to the relevant Departmental Committee)*

**Hon. Speaker:** Next.

*Second Reading*

THE LANDLORD AND TENANT BILL

*(Hon. Amos Kimunya on 29.9.2021- Afternoon Sitting)*

*(Resumption of Debate interrupted on 5.10.2021)*

Sorry, Hon. Otiende Amolo, you wanted to say something.

**Hon. (Dr.) Otiende Amolo** (Rarieda, ODM): Yes, Hon. Speaker. I wanted to get your guidance given your prior rulings that on any Bill or Motion, if there is a matter of constitutionality it can be raised at any stage. I have a matter of constitutionality on the Proceeds of Crime and Anti-Money Laundering Bill. I wonder if I could raise it at this stage or we await for the Second Reading.

**Hon. Speaker:** Since the Bill is procedurally Read the First Time, without Question put, let it go to the Committee and before commencement of the Second Reading, you can raise the constitutional issues.

**Hon. (Dr.) Otiende Amolo** (Rarieda, ODM): I stand guided, Hon. Speaker.

**Hon. Speaker:** On the Landlord and Tenant Bill (National Assembly Bill No.3 of 2021), Hon. Shadrack Mose was contributing at the time the House rose yesterday. He has a balance of seven minutes. Let us have Hon. Shadrack Mose, if he is in the House.

*(An Hon. Member spoke off-record)*

The Member is absent and not desiring to be present, he loses his right to the seven minutes. Any other Member is at liberty to contribute. I am assuming that all the Members that have indicated here want to contribute to the Bill. However, let me also indicate the Members who have spoken to the Motion on Ratification of the Agreement Amending the Air Transport Agreement between Kenya and the United States of America. The Report of the Committee was moved by the Leader of the Majority Party and seconded by the Chairperson of the Committee, Hon. Pkosing.

*(Loud consultations)*

Sorry. This is the debate on the Landlord and Tenant Bill. The following Members have contributed: Hon. Tonui Kiprotich, Hon. Makali Mulu, Hon. Ngugi Nduati, Hon. Maanzo, Hon. Millie Odhiambo, Hon. Oscar Nabulindo, Hon. Mwangi Mburu, Hon. Athanas Wamunyinyi and Hon. Mose. My assumption is that the ones that I have indicated...

What is your point of order, Hon. (Dr.) Oundo?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Speaker, I am probably not worthy of informing you, but yesterday in the afternoon, quite a number of us had already spoken to the matter and Hon. Mose finished his contribution. I remember the last Member to contribute was Hon. Kiaraho. It is good to note that so that we do not have a confusion and having been in the House yesterday, I am duty bound to basically point out what happened. Thank you.

**Hon. Speaker:** You are actually right, Hon. Oundo. Hon. Mose contributed, followed by yourself and then Hon. Kiaraho Njuguna. He also finished because he is shown to have begun contributing from 6.51 p.m. Part of the record here is not correct. There are other Members who want to contribute to this. There is no need for me to go through the list and on top of the list is Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker, for giving me this opportunity. The Landlord and Tenant Bill (National Assembly Bill No.3 of 2021) is a very important and timely Bill to be in this House. We have to protect our tenants as well as the landlords, who are our investors. The wheel of our economy can be moved if there is a good relationship between landlords and tenants because in some electoral cycles, we have seen leaders raising temperatures and emotions of their constituents so that they can be elected by telling them that they can stay on other people's investments without paying. In 2007, we witnessed massive boycott of payment of rents by tenants who had been promptly paying rents, courtesy of some political statements.

This Bill has come at the right time, so that we can warn politicians that they can do their politics, but they should not do politics on citizens' properties. Let us respect tenants and the investors in equal measures. Our system is an open market where demand and supply curves determine prices.

I support this Bill so that we can protect our tenants as well as our landlords. This will make sure that our country grows. The more we protect, especially the landlords, the more we attract investors. Any investment comes with employment and tax payment, which moves the wheels of our economy.

I support, Hon. Speaker.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this. I rise to support the Bill. The objective of the Bill is to provide a framework to balance the interests of landlords and tenants in a free market economy. This is an area where, to a large extent, tenants have suffered. Whereas it is the right of the landlords to invest and get returns for their investments, it is equally the right of tenants to enjoy peaceful habitation. However, that has not been so. There has been an overall tendency that as much as landlords have been complaining of lack of payments, tenants have also been suffering a great deal.

This Bill comes at a correct time and it brings together all the three Acts that were scattered and, therefore, made it difficult for landlords and tenants to live together within the law. Therefore, I support this Bill because that is exactly what we need to protect either side. We are aware that renting premises is the biggest part of real estate, and that is how investors get their money back. Therefore, it is important that that is also protected.

I support the Bill because it establishes a tribunal for both landlords and tenants, and it provides the structure. Having looked at the structure, I have noted that it is extremely competent and comprehensive, and it will take care of that. It provides for how we will manage all the aspects such as rent, and evictions, if there is any termination of tenancy. All these are taken care of. It even provides and enforces tenants to keep fairly good details of records that they need.

It also provides the processes to be followed. For example, if somebody is to be evicted, it gives clear guidelines on how and after what processes somebody is evicted. If there is an appeal, it gives clearly where and how appeals are made. Those come out very clearly.

What I really like again about this Bill is the clarity of the definitions. When it comes to tenancy, it clearly says whether it is a composite tenancy or service charged tenancy. All those are

taken care of. When it comes to rent, it is quite clear. It defines the type of rent we are talking about, for instance, fair rent. It takes into consideration the environment in which the premises are, whether it is domestic premise or a business premise. All those come out very clearly.

It also brings a clear distinction, which probably will have to look into the house and the land on which it stays. For a long time, I have believed that once there is a development on land, it is basically the same, but it gives a clear distinction on how the land can be used even when the house is rented. The tribunal is very well constituted. If you look at the membership in line with all the other things that we are discussing or the processes that we are on now, it is under the Judiciary and the membership is picked through the Judiciary. Therefore, I think it is legally sound.

Under Clause 15, for example, the tribunal is allowed to take up matters even without complaints. One does not have to complain. If the tribunal has information that certain things are going on, they can take up those matters. It has the power to summon someone or the parties. This Bill is going to take us a long way. It is going to protect tenants and it is going to make sure that landlords receive returns from their investments as they intended.

With that, I support this Bill.

**Hon. Speaker:** Member for Bomachoge Borabu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Speaker, for giving me opportunity to contribute to this Bill. I want to start by saying that if there is an industry that has been messy, it is the industry of housing, especially in urban areas. A country that prospers cares for its people. We are talking of a framework with clear policy guidelines and also engagement between the landlord and the tenants. I support this Bill on the grounds that where there is order, we expect more prosperity. We expect more respect, harmony between the tenant and the landlord.

The other thing that gives me pleasure in this Bill is the fact that the roles of cartels that normally engage tenants on behalf of landlords have been mapped out. The way landlords and tenants have to engage has clearly been spelled out within the framework. This makes it encouraging for people to own houses because their rights are protected. We can now see more people constructing rental premises. This will not only grow the economy, but will also reduce the level of disorderly settlements in the countryside. In this Bill, tenant have their rights well spelled out. The landlord have their rights spelled out. More importantly, if the landlord is going to deal with agents, the role of agents has also been spelled out. It has to be well written and accessible to tenants. Under normal circumstances, we have been operating as a country full of cartels. That has been very frustrating.

I, therefore, support this Bill and look forward to seeing the relationship between a tenant and a landlord improved in this country. Thank you very much.

**Hon. Speaker:** Member of Rarieda.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I rise to support this Bill. I have carefully looked at it and it resolves very grey areas in law. First of all, it seeks to consolidate three different prior pieces of legislation, each which sought to have a parallel regime. It rationalises them into one Act of Parliament. This Bill carefully balances the rights and obligations of both the tenant and the landlord.

We have had situations where landlords would mistreat tenants, and there would be no proper protection. But similarly, situations would arise where tenants would mistreat landlords using the provisions of the law. This Bill now seeks to balance those two areas very carefully. One particular area in which it does so is where it proposes, in Section 69, that even where a landlord wants to demolish or repair premises, they must give notice. Previously, one of the ways landlords



would deal with tenants if they wanted to evict them was that instead of trying to evict them, they would just remove doors, windows or roofs under the guise of doing repairs.

Before, there was some sort of confusion in terms of tribunals dealing with residential premises and those dealing with business premises, each of which had a different jurisdiction and different standards. This Bill now seeks to rationalise into a tribunal that is appointed through the Judicial Service Commission and it clearly states out the qualifications. It speaks to the fairness in terms of rent. If there is a dispute as to whether the rent that is being sought by the landlord is fair or not, it sets the perimeters of determining the market rent. I also find that it does something very fundamental. Previously, the Business Rent Tribunal and the Rent Restriction Tribunal did not have the full jurisdiction that most courts would have. In that respect, they would sometimes not have the right to give injunctions. They would not even reinstate a tenant who was wrongfully evicted. But this Bill now gives them that power. If a landlord wrongfully evicts a tenant, they can be reinstated, or even if there is necessity to grant an injunction, they can do so like any other court of law.

I fully support the Bill. Thank you very much.

**Hon. Speaker:** Member for Cherangany. Is there any other person desirous of contributing to this? Hon. Rasso?

**Hon. Ali Rasso (Saku, JP):** Thank you very much, Hon. Speaker. I rise to support this Bill. I want to appreciate that this Bill is about the progressive nature of our law - that the laws of this country, if it keeps with the time, then we all appreciate it. For those who are property owners, if you have a house and tenants are living in it, you will find that this Bill is very important. Also, for those who are tenants in people's houses, when they read this Bill, they will find that there are red lines for both the landlord and the tenant. Why am I saying this? The landlord will put up properties after borrowing money from banks or from wherever, so that they invest. When they have tenants, they would expect that the tenants are going to pay so that banks are paid or the guarantees of the loans are paid in time. However, what has happened over time is that people have used the law very mischievously. The tenant would go to court and say that they have not paid rent maybe for six months, but they can pay three months at that time. This, to an extent, really disadvantages the landlord. At the same time or in the same breath, when the landlord finds that the tenant may have been bereaved and they are not able to pay their bills in time, they take austerity measures which the Member of Parliament for Rarieda just talked about, that people use the law in a very mischievous way to undermine the rights of the landlord or the tenant.

This Bill is timely. It has come at the right time. I think we will learn a lot about it so that, going forward, property owners or those who hire properties are not disadvantaged because the law protects them.

With those few remarks, I beg to support.

**Hon. Speaker:** Hon. Kipruto Moi.

**Hon. Kipruto Moi (Rongai, KANU):** Thank you, Hon. Speaker, for this opportunity to contribute to this Bill. It is a very important one. It was brought to the National Assembly so that the three laws that govern issues to do with landlords and tenants can be combined into one single law. The laws currently in operation are the Rent Restrictions Act, the Distress for Rent Act, and the Landlord and Tenant Act. The new law is intended to protect both the landlord and the tenant.

Some of the highlights of this Bill have to do with rent payable, which shall be determined by mutual agreement between the landlord and the tenant. If there is no agreement by both parties, there is a tribunal to determine what the rent should be. Clause 18 of the Bill provides the procedure that could be used to increase or decrease the amount of rent. A landlord must issue a written notice

three months prior to an increase. Failure to issue a written notice will render the increase invalid. Landlords may increase rent only once in a year for residential premises and once every two years for business premises. Both parties are free to adopt any form of tenancy agreement. They are also free to alter the terms and conditions of that agreement. In terms of termination of tenancy, a landlord must give a notice of 24 months in case of a business premise, and 12 months for residential premises. The tenant is entitled to terminate the tenancy agreement by issuing a one-month notice for residential tenancy and two months for business tenancy.

This Bill also establishes a tribunal which is to be set up by the Chief Justice, and its members appointed by the Judicial Service Commission. The tribunal will have more powers than the current tribunal, which was set up by the Cabinet Secretary. This tribunal can issue injunctions, enforce its own orders and even punish for contempt of its proceedings and orders. There is a leeway for one to appeal to the High Court. In the previous tribunal, one could only appeal to the Environment and Land Court. Once a dispute is lodged with the tribunal, it must wind up the case within three months. That is meant to deal with issues of backlog of cases and ensure prompt delivery of justice.

In conclusion, the COVID-19 pandemic highlighted the distress that tenants went through in the hands of landlords. Thousands of Kenyans lost their jobs. Tenants were unable to pay, and landlords were running out of patience and money. There is a rent crisis in Kenya. About 70 per cent of people in this country are unable to pay their rent. The year 2020 will not be forgotten by tenants who faced the wrath of landlords. So, this Bill is timely because it will provide a legal framework to protect the interests of tenants and landlords. You can remember even when the President appealed to landlords to lower their rents, they still did not do it. It is in response to all that that this Bill has been brought here. We hope and pray that it will sort out problems that tenants normally go through.

With those few remarks, Hon. Speaker, I thank you. I support.

**Hon. Speaker:** Member for Karachuonyo.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Speaker, for giving me the opportunity. For any country to develop, you need the two sides of people signing a tenancy agreement. The investor who gives his property for rental is a very essential part of the agreement. Indeed, it is important that he gets his returns in order to develop himself and the country. If he were to be interfered with in terms of his income, for sure he will suffer and the country will suffer. Equally, the tenant must enjoy his right in renting the property. Because of the importance of these people, the Bill is extremely important and we must support it. I support it, because we need these two people.

One thing that sometimes happens is that if a tenant complains and goes to court to stop the landlord from evicting him from the property, the landlord suffers. What I appeal is a system where the dispute can be solved very fast, so that neither side suffers. I say this with a lot of emphasis.

I beg to support the Bill.

**Hon. Speaker:** Hon. Kilonzo.

**Hon. Charles Kilonzo** (Yatta, Independent): Hon. Speaker, I rise under Standing Order 95. Having listened to Members on this Bill for the last few days, it has been debated and exhausted and Members are repeating themselves. So, I would move that the Mover be called upon to reply.

**Hon. Speaker:** Hon. Members, you know that it is you to make the determination.

*(Question, that the Mover be now called)*

*upon to reply, put and agreed to)*

Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. From the outset, I want to thank Members for the vibrant contributions to the Bill. I agree with Members that management of tenancy affects every Kenyan on either side of the divide, either as a tenant or as a landlord. The intention of this Bill is to balance the interests of the two parties and accord the law with the current trends. It has received quite a lot of support from the membership of this House.

I also want to thank the Committee for the detailed Report and for conducting of public participation. I look forward to Members who expressed any reservations. They will have adequate time to bring any amendments, so that we can process them and ensure that we enrich this law so that it becomes the progressive law that we want to have for purposes of ensuring tenants and landlords enjoy their rights and privileges and proper protection under the law.

I do not want to repeat what the Members have said. I believe there has been total concurrence on all the matters. I have been listening to the debate and there is very little in terms of dissent that has been exhibited.

With those few remarks, I beg to reply.

**Hon. Speaker:** Hon. Members, as you can see, perhaps we may have to be ordering all the time for the convenience of the House, that we begin with Questions that require to be put because it is almost becoming a tradition that at the tail-end of debate in Second Reading, Third Reading or at least Committee of the whole House, putting of the Question has to be deferred to some other time when the House next sits. Be that as it may, the Question may not be put. That would be done tomorrow afternoon. I am just giving notice of intention that even tomorrow afternoon, if I see that, because I know this House was nearly full at some point this afternoon...

There are several of us who have no capacity to continuously sit here for more than 15 minutes, and others for two minutes. Therefore, we may have to start with putting of Questions, so that they can participate. Even after sitting here for only two minutes, they can say they have also done something in the House. They would never know, even if you wait for them, and they are very many... From where I sit, I can tell you who understands what is happening in the House, because there are so many of us who come in and go out. There are those who like going through that corner and others through the other corner, but they always come through here. Many of them come and shake hands and walk that way or the other way. That is the way parliaments the world over operate. However, we should have some exceptions, especially if you are to make certain determinations.

Hon. Sankok, there is nothing out of order.

**Hon. David ole Sankok** (Nominated, JP): On a point of order. Hon. Speaker, I am following up on what you are saying. We should learn from our leader. I have witnessed you sit there for up to eight hours, while some of us move in and out, sometimes going for short calls, and so on. How you control yourself is amazing.

*(Laughter)*

You are our head and you sit there attentively. You do not even touch your phone at all and you are aware of every contribution. You can respond to points on every contribution. I implore upon my colleagues to learn from you.

Hon. Speaker, I am aware that you will also be contesting for the presidency on a Democratic Party ticket, which has yellow colours. I have also noticed that Parliament's fence is being painted yellow. Is it symbolic or something like that? We will all support your presidential bid. Thank you, Hon. Speaker.

**Hon. Speaker:** Certainly, I have no control over what colours are applied in the precincts of Parliament. As you can see, even the gown I am wearing has got some yellow on it, but is not indicative of anything.

Next Order.

*(Putting of the Question deferred)*

## MOTIONS

### ADOPTION OF REPORT ON AIR TRANSPORT AGREEMENT BETWEEN KENYA AND UNITED STATES OF AMERICA

**Hon. David Pkosing** (Pokot South, JP): Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration for Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America, laid on the Table of the House on Wednesday, 18<sup>th</sup> August 2021, and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America.

Hon. Speaker, this is a very important amendment. The amendment proposes to amend three sections of that protocol, namely, paragraphs one, two and three. The Agreement seeks to amend Paragraph 1(c) by deleting and replacing it with the following new paragraph –

(c) “the right to perform international air transportation between points on the following routes:

(i) for airlines of the United States, from points behind the United States via the United States and intermediate points to any point or points in Kenya and beyond; and for all cargo service between Kenya and any point or points;

(ii) for airlines of Kenya, from points behind Kenya via Kenya and intermediate points to any point or points in the United States and beyond; and for all cargo service between the United States and any point or points.”

That is the proposed amendment to Paragraph 1.

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

*[The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu) took the Chair]*

Hon. Temporary Deputy Speaker, the Agreement also seeks to amend Paragraph 2 by deleting the final clause and replacing it with the following –

“Without directional, geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that with the

exception of all cargo services, the transportation is part of a service that serves a point in the homeland of the airline.”

That is the text as it is in Paragraph 2.

Further, the Agreement seeks to delete Paragraph 3 and replace it with the following new paragraph –

“On any segment or segments of the routes above, any airlines of a Party may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated provided that with the exception of all cargo services, in the outbound direction, the transportation beyond such point is continuation of the transportation to the homeland of the airline and in the inbound direction, the transportation to the homeland of the airline is a continuation of the transportation from beyond such point.”

Hon. Temporary Deputy Speaker, that is the text as it is and that is the legal international way of drafting protocols and agreements. However, what does it mean, in short and in clear terms? FedEx which is an airline in America is seeking to set a base in Kenya. For those who may not know FedEx, it is a cargo airline. It is a parcel carrying airline. It is an American airline carrying parcels and cargo. They have agreed with the national Government and the Executive to set up a base here in Nairobi so that they can carry parcels between here and the United States of America and also within the region.

In other words, they are intending to set a base or a focal point here in Nairobi. That is what they are seeking in brief and in short in those three paragraphs which are more technical. I would say jargons within the transport world which we may understand but other people may not understand. Kenyans may be wondering because we already have Kenya Airways flying to the United States of America. This is on cargo and the agreement we have between the Americans on Kenya Airways is not about setting a headquarters or a base because we already have Nairobi being a hub of Kenya Airways in terms of civilian and public transport.

However, we do not have any on cargo. That is why they are seeking that we allow FedEx to set up a base or headquarters here in our country so that they can fly between our country and the USA and within the region. This is a very important request for a country. We know that our country requires to recover from loss of revenue coming through what we saw, and particularly the airspace and air transport suffered a lot due to COVID-19. This is a very important request that the Government particularly the Cabinet Secretary for Transport, Public Works and Housing is seeking Parliament to do. Once we approve it, those other agencies can come and set up base.

This means there will be creation of jobs in this country. Also, we do not have any cargo headquarters here in Nairobi. So, that sets up new business opportunities in our country. It is also adding value to our country internationally. Assuming that we have FedEx here in Nairobi, it will add value to us as a people and as a country. Therefore, this is a good thing. It is a very small amendment with only three paragraphs as I have explained to the Members and the House. So, my responsibility is to inform the House whether this followed the requirements of the Treaty Making and Ratification Act, 2012 on the following: Should we approve and when will this Agreement come into effect or when are we expecting FedEx to come and set the headquarters here in Nairobi?

This Agreement will enter into force on the date the letter was written or the countries will inform each other of the internal procedures. For example, after it has been approved, our country will then notify the USA and therefore ask that the Agreement comes into effect.

Secondly, I would like to inform the House that the Cabinet during its second meeting held on 19<sup>th</sup> March 2020, approved the memorandum of consultations on the Agreement amending the Air Transport Agreement between the Republic of Kenya and the USA entered into during the International Civil Aviation Organisation (ICAO) air services and negotiation events held in Jordan. So, this was negotiated and agreed between governments that it should be done. Therefore, it then led to a requirement that the House should look at it and ratify it. In terms of constitutional implications, I would like to inform the House that the Agreement between Kenya and the USA is consistent with the Constitution and promotes constitutional values and objectives. The Agreement is not proposing any amendments to our Constitution.

Further, on national interest as mentioned earlier, may I repeat and say that this is very important for our own national interests. It raises our values as a country, promotion of jobs and opening airspaces. In fact, when you look at it, we want to make Nairobi a business hub in the entire Africa. Therefore, with FedEx having headquarters in Nairobi, the JKIA will be the actual hub in the entire region. This is good for our own values and interest as a people. Having said that in terms of what this small amendment is requiring, let me not belabour the point but just conclude. Our details on this Agreement are in our report.

Hon. Temporary Deputy Speaker, allow me to conclude by saying that the Committee recommends to the House that it approves the ratification of this agreement signed on 5<sup>th</sup> February 2020, amending the Air Transport Agreement entered into between Kenya and the United States of America, which was signed in Washington DC on 8<sup>th</sup> June 2008, as the approval is in our nation's interests.

With those few remarks as I move, I would like to allow my able colleague, Hon. Shadrack Mose to second the Motion.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Who is seconding? Very well, Hon. Shadrack Mose?

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to second. At the outset, this is very important Agreement.

Without hesitation, this is an Agreement that I would urge this Hon. House to move with speed and approve because it is an increased avenue of communication, first and foremost, between Kenya and the USA, particularly when we are talking about the issue of FedEx Airlines having an anchor in Kenya. When we are dealing with cargo, you will realise that in this particular time and era of COVID-19, we have a lot of challenges in ensuring that we have or receive delivery of these drugs from countries such as the USA. So, when we have this Agreement approved, it means that that communication or transit of goods from the USA to our country and vice versa, would extremely be first tracked.

What are the implications as a country? What is the net effect when we are going to anchor FedEx which is an international airline dealing with cargo setting pace in our country? Firstly, there would be increased business between these two countries.

Secondly, as has been argued, there will be creation of employment opportunities because we will have many of our young people working in this industry. Therefore, as we set the pace, it means many other things will happen like creation of business in terms of leasing and storage of facilities for cargo. These are some of the benefits that will accrue to this country as a result of ratifying this agreement.

When the airline operates from here, we will also have an opportunity of enhanced status since our country will be hosting the USA which is one of the super powers. This means we will

be dealing with issues of enhanced security and Kenya will benefit a lot from this. We also have creation of a bigger market in our country *vis-à-vis* what we have now. I have no doubt in my mind that what we are doing is consistent with our Constitution. In fact, year in, year out, this is something we have been doing to ensure our businesses are in line with our Constitution, 2010. Therefore, in actual sense we are expanding our horizon in terms of business transactions.

This is my position and I want to urge this honourable House to move with speed and ensure they approve ratification of this agreement, so that we can also benefit as a country.

Therefore, with those remarks, I beg to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Kilonzo!  
(*Question proposed*)

I give the Floor to the Member for Rarieda, Hon. (Dr.) Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I fully support this Motion. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, I rise to support this Motion on the ratification of business between Kenya and the USA. As you know there are many Kenyans in the USA and even the former President's origin was Kenya. Therefore, if this ratification is passed by this House, we will have many business opportunities coming up. This is an opportunity we should grab, as the Member who was seconding this Motion has said. We should ratify this as fast as we can, so that we can benefit from this agreement.

Kenyans are very aggressive when given an opportunity and this will create more jobs of cargo handling between Kenya and USA, even those in transit from Europe through here. It will offer job opportunities because we have youths and professionals out there looking for jobs. This is a very good Agreement which has come at the right time, when our youths are desperately looking for jobs and opportunities. I think we should have passed this like yesterday.

As my colleague has said, we should support this, so let us move with speed and pass it as fast as we can. Last and not least, connections with the USA means we have an opportunity to learn more and be exposed to developed countries because we are in the Third World and they are in the First World. I am sure this gain will have added opportunities and lessons in handling goods directly from the USA or those on transit from European companies. So, we should even vote for it right away, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Seme, Hon. Nyikal Wambura.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. This is a great opportunity for us to get into agreement with the USA so that their cargo airline FedEx sets up base here. This does not mean there will only be increased transport between here and the USA, but also a lot of transport from Kenya to other parts of Africa. A lot of cargo from USA into the rest of Africa is likely to pass through here. In all ways, this is an opportunity that Kenya should seize.

It is also clear this has been approved by the Cabinet and it is in line with the Constitution. It is also an acknowledgement that our systems including security systems are good enough. We know how the Americans are fastidious and if they feel safe to operate from here, I think it is a pat on our backs because we have improved our security systems. If you look at the state of air travel between Africa and the USA, it is tedious because many times people have to go to Europe and

then go to the USA. I am sure even cargo moves that way. If we have direct movement into Africa, this will make a big difference for us and even improve the movement from Africa to Asia, the Middle East and even India.

It is our hope that this is happening with cargo and next will be passenger transport. You know they have huge airlines and if they start operating here, this will be a great thing that will improve our businesses. We know financial repatriation from the USA into Kenya is one of our biggest incomes. For the people who are there, I am sure if there is easy movement of goods, there will be a lot of business between us. We are in the African Growth and Opportunity Act (AGOA) agreement and this will make it possible for us to have better use of that Act. This will create jobs and even some level of manufacturing here. You know what happens. Once it is easy to move goods and we have labour that is not very expensive, you may find that actually some manufacturing can occur here that can be moved within. So, this is a great opening. We should take it quickly and we can say that we should move fast to see how we move to the next stage of human transport.

With those remarks, I support and urge that we pass it quickly and move to the next stage.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Next is the Member for Mukurweini, Hon. Kiai Githiaka.

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support this Motion. When an opportunity presents itself, we should seize it as a country. This is a great opportunity.

FedEx is one of the biggest courier companies in the world and setting a base in Kenya is a great opportunity to create employment and also learn from them. It is also a way of exchanging technology and ideas between a First World country like the USA and Kenya. With AGOA in place, it means the goods that are manufactured in Kenya – you know Kenya is part of the AGOA arrangement – can easily be transported to America. That means creation of more jobs for us as a country. Also, the fact that passenger business between Kenya and America has always been affected by frequent travel advisories, there is an opportunity to also firm up and tell them: “If we can do cargo from Kenya, then we can also do passenger.” I also need to point out that the greatest diaspora in terms of Kenyans lives in America is also a business opportunity to transport goods from America to Kenya and vice versa, using this reliable internationally recognised courier.

Finally, you also know that as a country that was ravaged by COVID-19, this is a huge opportunity to rise up from the ashes of COVID-19 and bring our economy back on track. We have been given an opportunity to make an African hub through FedEx whereby they will be transporting cargo and offering courier services to other African countries from Nairobi. This is an opportunity that we should not miss. We should embrace it wholeheartedly and move as fast as possible. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Leader of the Majority Party and the Member for Kipipiri, Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America. Basically, just to mention that these bilateral air service agreements, or as they are called BASA in local lingo within the transport industry have been around for almost as long as flying has been taking place. As flying became more popular over time and airlines expanded their service, it became necessary to have some rules, regulations and agreements to avoid some unfair competition because you would find that the big airlines would stifle the growth of small airlines in the absence of those bilateral agreements. Basically they are



written to protect the various flag carriers from the two nations or the reciprocating nations and generally will involve lots of consultation.

If you look at the Report of the Committee, you will see the various bodies that were involved in the negotiation, even for the three amendments. All the various stakeholders in the airline industry were involved. The main agreement itself takes bigger groups and nations. There is the whole issue of diplomacy to actually get there. If you notice from the time that the Bilateral Air Service Agreement was signed in 2008, it took another so many years to get the first airline in terms of having a direct flight from Kenya to the USA because of all the things that needed to be done. At least, we now know we have direct connections.

Again, going back to history, sometime in 1944, the Convention on Civil Aviation was signed in Chicago and became the Chicago Convention. That is what created the organisation that oversees all matters to do with civil aviation from a multilateral perspective. This organisation is now the ICAO. I had the opportunity to attend several of its meetings.

When I was Minister for Transport, Kenya was highly regarded both within the ICAO and also within the International Maritime Organisation, which does regulation of the sea traffic. So, all these bilateral air service agreements are now created within this framework of the Chicago Convention and coming closer home within Africa, there is something that was called the Yamoussoukro Decision for countries within Africa that also created how air spaces would be sorted out, how bilateral issues will be sorted out and the reciprocity issues within Africa.

However, the long and short of it is the bilateral air service agreement between Kenya and the other countries that enables our flag carrier, which is mainly Kenya Airways, to provide scheduled air services and to expand the existing route network, which is critical especially now with the shrinking of the routes globally because of restriction of travel due to COVID-19. On the other hand, it also works on the reciprocity of what happens to other airlines. I really do not want to belabour the point. The Chair has done great work. Thanks to the Committee for looking through this. Thanks to all the stakeholders. The fact that even when there was an advertisement for public participation, it was endorsed...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, you had five minutes.

**An Hon. Member:** Give him more time.

**Hon. Amos Kimunya** (Kipipiri, JP): I just want to emphasise that Parliament actually did advertise for public participation but the fact that people did not even find it necessary to come and give views was the endorsement that you really needed. This is because people usually come when they have objections. Nevertheless, the good thing is that there was huge stakeholder consultation with all the stakeholders and they are all listed. Hence, perhaps, they did not even need to come.

I am happy that we reached there and I ask the House that we endorse the ratification and get to move on so that we can give our signal to our partners in the USA that Kenya is ready to do business with them. Thank you, Hon. Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Leader of the Majority Party, you had five minutes. Hon. Members, just to remind you that any Member contributing to the Committee Report will have five minutes as passed by the House on the limitation of debate.

Next is the Member for Saku, Hon. Rasso Ali.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support the Report on Ratification of the Agreement amending the Air Transport Agreement

between Kenya and the United States of America. I think the Committee Chair attempted to explain how this protocol serves the interest of Kenyans.

Secondly, the Chair explained how ratification of this protocol will bring about opportunities, businesses, jobs, and also creation of a wider remit in the Kenyan aviation industry. These are the things we must look at when we are signing bilateral or multilateral agreement on behalf of this country and ratifying it through the House. There is a good saying that goes: What is good for the goose is good for the gander.

In this particular case, the USA wants to do business with us by opening FedEx here. It is actually one of the largest cargo transportation in the world. For them to want to operate in Kenya, it means that they have confidence in our airports and airspace particularly when it comes to safety. This is a big plus. More importantly, when such a big company is going to invest in Kenya, we shall be getting FedEx that we have always been looking for out there.

The other thing which Kenya must do in return is, it will force us to modernise our airports and cargo handling in a major way. Therefore, we must invest. I think they will also help us to invest in that direction.

The other issue is that of benchmarking, standardisation and modernisation that can come along with this agreement.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Butula.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support the Report on Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America. We are aware that for a long time, trade between Kenya and the USA has been on the lower side. Most of the finances that have flown from the USA to Kenya have either been through income from the Kenyans who live and work in the USA or grants and loans from there. With the opening of this air transport, it is obvious that trade between our country Kenya and the USA is going to expand. The trade will expand not only on the passenger traffic, but also on transportation of goods. That means that the trade between Kenya and the USA is also going to expand. Kenyan manufacturers will be able to transport their goods directly to the USA and the USA manufacturers will also be able to transport their goods directly. It will be cost-effective for the businesspeople. This Agreement serves us well, as we are going to gain more. Even our people travelling from the USA will now avoid connection that has been in the European countries. The Agreement serves us well and I am sure it will improve a lot of business between this country and the USA.

As we get more flights from USA directly to Kenya, we must also realise that there will be improved security because as we know, the Americans will be very careful about the security in this country, and therefore, we will have to double the standard of our security to make sure that we do not have any hiccups that can interfere with the trade between Kenya and the USA.

So, I support this Agreement and ask this House to speed up the approval. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Laisamis, Hon. Arbelle Malimu.

**Hon. Marselino Arbelle** (Laisamis, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support the Report on Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America. It is actually an opportunity that Kenyans need to grab and run with. America and Kenya are extending a hand towards each other in form of the handshake that we have witnessed between Hon. Raila Amollo Odinga and our President, Hon. Uhuru Muigai Kenyatta. The company which is registering to

work with Kenya, I am told is an airport transport services company called FedEx. FedEx is an international cargo transport company operating in America. Therefore, if such a company comes to Kenya, we should actually open up our gates to welcome them in to this country.

Secondly, I have come to learn that many Kenyans have been going to China to import goods into this country. Unfortunately, the kind of goods which come to this country are all substandard beyond Kenya Bureau of Standard's measures. Therefore, with the coming of such an agreement, Kenyans will have an opportunity to import goods directly to this country. This means that we will have to go for more quality. We will be able to import quality goods be it furniture, wares and even machinery. I have seen some machines which are manufactured in China and which Kenyans import into this country. As much as those companies have bilateral understanding with EU countries, the EU countries will say that particular machinery is not advisable to be used in their country. So, Africa becomes a dumping site for the Chinese products. We should also encourage Kenyans to buy quality because cheap is expensive. You buy an item today and within few days, that item is broken. So, you end up buying and buying.

The other day, I saw an agreement between Kenya and America where Kenya was trying to appeal to America to start passenger aircraft. You will realise that for somebody to go to America when you are using other airlines, you will have to go through Dubai, transit through other countries and by the time you reach America, you are totally exhausted. With the introduction of this ratification, our Kenyan people will get employment opportunities.

The fact that there is also competition within East Africa, for instance, we have countries like Rwanda, Tanzania and Uganda which would like to use such an opportunity to win or woo such countries to invest in their countries. But now that Kenya has this opportunity, let us grab and run with it.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Mogotio, Hon. Kamuren.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Temporary Deputy Speaker. I too rise to support the Report on Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America. Truly, speaking, it is a great opportunity we cannot afford to miss. The Kenya Airways flies to New York, the only stop it makes to the USA. Ethiopian Airlines, its competitor, flies to more than four cities in the USA. Since we have many of our brothers and sisters working in the USA, an opportunity to have Kenya Airways to fly to Dallas, one of the hubs in the USA and fly to Chicago, another hub in the North West is a great opportunity for those who want to increase commerce between the two countries. It will attract more tourists because it will reduce the connectivity where one needs to fly through Europe or some other states. So, this is an opportunity for us to attract and add more dollars to our economy and more jobs to our people.

It will also increase interaction between people. We know that most of our universities have many links with various universities in the USA and by actually reducing the connectivity, it will be a great opportunity for those people to visit Kenya. It will also lower the cost of cargo, as we have heard about the FedEx wanting to set up a hub here in Kenya so that it can be a centre to fly most of the mail outside the country.

In short, this is a great opportunity. I agree and urge the House to ratify the amendment as soon as possible.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Cherangany, Hon. Joshua Kutuny.

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Speaker, thank you very much. I do want to belabour what the Members have said. I concur with all their sentiments. I stand to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Pokot South, Hon. Pkosing. He is the Mover. You want to speak to the other one. I see you have also requested.

Nominated Member, Hon. ole Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much Hon. Temporary Deputy Speaker. Let me start by thanking FedEx for thinking about Kenya, for trusting us and giving us the opportunity, which I am sure other countries are yearning for. Having come out of COVID-19 menace, drought and terrorism, it is an economic jump-starter which we must as a country especially this House run away with.

The largest single population of Kenyans outside our borders live in America. So the direct connection of goods and services from Kenya to America and vice versa is a very good move that will earn us foreign exchange and will ease business. FedEx is one of the biggest courier services, air transport in the world. Having it in our country will give the world a lot of confidence and many investors will have confidence that our country is not just any country, but the hub of Africa.

This bilateral Agreement should be ratified in this House and implemented as soon as possible because it will create job opportunities. When they set their hub in our country, I am sure there will be a lot of job opportunities for our skilled labour and unskilled labour.

It will also serve as a direct market to our finished products especially from hide and skin. Currently, we produce more than three million hides and skins in this country and 80 per cent goes to waste yet we import 25 million pairs of shoes while our hides and skins go to waste. Ones we have direct flight, investors will see an opportunity of having tanneries and shoe manufacturing industries within our borders because they can easily transport to a larger market like the United States of America. We will also have foreign exchange because it will earn us a lot of dollars. The American dollar is not a mate to any other world currency. It is superior currency.

Sea transport between the two countries will even be more beneficial. Lastly, I hope it will not be a conduit for Kenya's taxes to offshore accounts. If an international private company can have confidence in us to invest billions of shillings within our borders, it will be very shameful for any of our leaders not to have confidence to invest within our borders and instead have confidence in offshore accounts in Singapore and other places.

With those remarks, I support 100 per cent the ratification of this Agreement. I thank Hon. Pkosing, the Chairman of the Departmental Committee on Transport, Public Works and Housing. He must be proud of this legacy. It is a very great legacy. I know he has another legacy of being an international petitioner at the International Criminal Court (ICC). I was with him there, but this one will be a very big legacy for him as the Chair of the Departmental Committee on Transport, Public Works and Housing and of course to the Ministry of Transport and Infrastructure.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Madam Commissioner, Hon. Shaban Nancy, Member for Taveta.

**Hon. (Dr.) Naomi Shaban** (Taveta, JP): Asante sana Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii pia niunge mkono na haswa kusifu kazi nzuri ambayo imefanyika. Mkataba

huu hakika ni wa kuendeleza usafiri haswa kwa vyakula vyetu, maua na haswa kuboresha hali ya uchumi wa ukulima hapa nchini.

Kutoka hapa kuelekea Marekani ni mbali na kwa sababu ni mbali, mimea au vyakula vinavyopatikana ama maua yanayovunwa hapa Kenya na yanayojulikana ulimwengu mzima usafiri kuelekea Marekani ni shida. Inakuwa vigumu kwa wakulima ambao wanashugulika na kilimo biashara kupata haki ya jasho lao na haswa kwa sababu sekta hiyo inaajiri wafanyakazi wengi hapa nchini.

Ukweli ni kwamba Mkataba huu pia unatia imani ulimwengu mzima kuwa Kenya imefikia kiwango cha kuwezesha ndege kutoka Marekani kuja huku nchini bila tatizo lolote.

Safari ndefu huanza na hatua chache na safari hii hakika ni ya kuungwa mkono. Tunaunga mkono Mkataba huu. Tunatarajia uhusiano wetu wa Kenya na Serikali ya Marekani kuendelea kuwa na nguvu zaidi.

Naunga mkono.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Seme, do you want to speak to this? You spoke to it. I see you want to speak to the other. We cannot deny Member a chance to speak. Hon. Yussuf Halima.

**Hon. (Ms.) Halima Mucheke** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I also take this opportunity to support this Motion from the outset.

This is a great opportunity for our country because it will help open up markets across the world. As one Member has said, there are flower farmers who have found it very hard to transport flowers to USA, but right now, since we will have direct flights to the USA, it will be a great opportunity because our farmers will benefit directly. We also appreciate it because it will open up job opportunities, especially for our youths.

Therefore, because I do not want to belabour much, I also support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Mwingi West, Hon. Nguna Ngusya.

**Hon. Charles Nguna** (Mwingi West, WDM - K): Thank you, Hon. Temporary Deputy Speaker for the opportunity. I would like to support the Report on Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America. This will have a great multiplier impact on our economy.

One of the key things that we need to note is that Kenya and the USA have come a long way in helping each other in many aspects. There are so many Kenyans living in the USA and also Americans living in Kenya who really strain when they travel between the two countries. Most of the time, they have to waste almost two days when travelling from here to a destination in California. I have no doubt that this ratification will improve the transport system and save Kenyans and Americans a lot of time when it comes to accessing the two countries.

Another key issue we need to note is that it will boost the Gross Domestic Products (GDPs) of the two countries. I expect a symbiotic kind of relationship when we approve this ratification.

There are so many other things that I can speak to in terms of tourism. Our tourism needs to be boosted at the moment. It contributes 12 per cent to our GDP. If we ratify this Agreement, we will experience many benefits. Majority of our tourists do not prefer coming to Kenya because they have to go through Europe or other destinations to reach the country. If we ratify this, I will be excited to see American Airlines and other airlines in America flying directly to Kenya from the USA instead of going through other countries.

Lastly, because I do not want to belabour the point since a lot has been said, this will enhance education and cultural exchanges. I am a beneficiary of the American system of education.

Most of our students wish to do their higher education studies in the USA, but cannot due to financial constraints. However, through this, they will not strain a lot accessing the airlines and other things.

With those few remarks, I thank the Committee. Hon. Pkosing, this is a legacy you are leaving for the Departmental Committee on Transport, Public Works and Housing during this term. You have done a marvellous job. I will be excited to see this ratification signed immediately after we pass it on the Floor of the House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. You are excited. Let us have the Member representing the people of Tharaka Nithi, Hon. Nyaga Nkatha.

**Hon. (Ms.) Beatrice Nyaga** (Tharaka – Nithi CWR, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity. I stand to support the Report on Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America.

If we have this Agreement between the two countries, our businesses will not be the same again. They will be enhanced to create opportunities for our youths who have no jobs at the moment. Even our status as a country will change.

If we have this Agreement in place, even our bilateral relationship will be stronger than before. We cannot take it for granted. It will increase our cargo transportation and also take care of businesses. This is not an Agreement that we can ignore. We need to approve it today so that we can be seen as a country that cares for her people. With this Agreement, everything will be taken care of businesswise in terms of employment.

Much has been said, so, I support the Agreement.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Kaiti, Hon. Kimilu Joshua.

**Hon. Joshua Kivinda** (Kaiti, WDM - K): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to support this important Report on Ratification of the Agreement amending the Air Transport Agreement between Kenya and the United States of America. I support it because I know it will come with many benefits for our country.

In Kenya, we mostly depend on agriculture. Most of our farmers grow their crops but lack market. This is one way of improving agriculture in the country because markets will be available. This will also ease the relationship between the two countries. With such a relationship, our farmers will be in a position to benefit and, as they do so, it will also improve the living standards of Kenyans.

The Agreement will also bring about a good relationship because most of our youth want to further their education abroad. There are many barriers because getting a chance takes a lot of time and paperwork. However, such an Agreement will ease travel from Kenya to the USA. This will also help them as they do their transactions. There will also be a better relationship between the USA and Kenya because there will be many transactions between the two countries.

I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, there being no other Member willing to speak to this, I now call upon the Mover to reply.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Temporary Deputy Speaker, once again, for giving me this opportunity to reply. As I do so, I thank the Hon. Members who have contributed. Some Hon. Members said that this will be my legacy. I say that this is your legacy. Giving permission to the FedEx Corporation to set up a base in Nairobi will be your legacy. Hon. Temporary Deputy Speaker, you are in the Chair as Parliament approves this. This will make history.

Secondly, I assure Kenyans who are in America watching us and following that they now have an opportunity to send their cargo and parcels directly to their families in the country. Parliament has agreed with them. That means business.

As I reply, I wish to clarify a few issues on flower farming. Our flowers sell in Europe because we have direct cargo flights to Europe. Now we have the FedEx Corporation coming to Nairobi. That means that the flower farming business, coffee farming and other Kenyan products will boom as we transport them to the USA straight away. We are transacting serious business this afternoon.

I also thank the Members of my Committee. We did a lot of public participation to ensure that the laws and procedures in accordance with the Treaty Making and Ratification Act are followed, so that the House can be properly informed.

With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I am not in a position to put the Question to the Motion on Order No. 12 on the Ratification of the Agreement amending the Air Transport Agreement between Kenya and the USA.

I order that the Question of the same be put during the next sitting as it will be slotted in the Order Paper.

*(Putting of the Question deferred)*

Next Order is by the Chairperson of the Departmental Committee on Defence and Foreign Relations.

RATIFICATION OF PROTOCOLS ON RIGHTS OF  
OLDER PERSONS/PERSONS WITH DISABILITIES

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. On behalf of my Chair and the Committee, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Ratification of Protocols to the African Charter on Human and People's Rights on the Rights of Older Persons and the Rights of Persons with Disabilities, laid on the Table of the House on Wednesday, 22<sup>nd</sup> September 2021, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves –

- (i) the Ratification of the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons in Africa; and,
- (ii) the Ratification of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa.

Hon. Temporary Deputy Speaker, the Protocol on the rights of older persons in Africa was adopted on 30<sup>th</sup> January 2016. It seeks to promote, protect and ensure the full and equal enjoyment of all human and person's rights of older persons and to ensure respect to the inherent dignity taking into consideration African traditions, values, customs and practices.

The Protocol on the rights of persons with disabilities in Africa was adopted on 29<sup>th</sup> January 2018. It seeks to promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities and to ensure respect to their inherent dignity. The protocol recognises the rights and freedoms of persons with disabilities in society as well as duties

of persons with disabilities and seeks to address issues that have the most disproportionate impact such as poverty, systematic discrimination and harmful practices. In terms of duties, the Protocol recognises that persons with disabilities have duties, on an equal basis, with other persons as elaborated in the African Charter. To date, nine countries have signed the Protocol while no country has ratified yet. If we ratify, we will be the first country and that will be a great move.

Hon. Temporary Deputy Speaker, pursuant to provisions of Article 118 (1) (b) of the Constitution on public participation and Section 8 (3) of the Treaty Making and Ratification Act, 2012, the Committee placed advertisement in both local dailies of nationwide circulation on 5<sup>th</sup> July 2021 requesting for submissions of memorandum on the subject. The Committee received a memorandum in support of the Protocol on the rights of persons with disabilities. Further, the Committee has deliberated with the Departmental Committee on Labour and Social Welfare and other national agencies involved with persons living with disabilities in recognition of the crosscutting nature of the Protocols.

There are many obligations imposed by the Charters, but I will touch on three. Upon ratification, Kenya will be required to recognise the rights and freedoms of older persons as enshrined in the Protocol, subject to periodic reports on the implementation of the Protocol and develop and review existing legislation to ensure older persons receive equal treatment and protection of the law, access to health services, education accessibility needs, among others.

Hon. Temporary Deputy Speaker, on the Protocol on the rights of persons with disabilities, Kenya will be required to ensure that people with disabilities are not discriminated against and that they enjoy equality, equal protection and equal benefit of the law. When I came here in 2003, I did not know where you were, but you know where you were because I know you were there, the writings at the entrance of this House were, in capital letters, “FOR THE JUST GOVERNMENT OF MEN”. This House did not have a single person who was physically challenged, blind or with a disability. There were barely 20 women. It is true that the new Constitution tried to bring some sense in the House. We cannot say we are representing people while the representation does not reflect the face of the country. What these two Protocols are trying to do is to look at these two minorities, the older persons and people living with disabilities, to ensure they enjoy what other people are enjoying. So, on the rights of persons living with disabilities, it is basically to ensure they enjoy the same rights.

On financial implications, the implementing agencies submitted that the two Protocols will have no further budgetary implication. Implementation will be catered for along the already existing budget lines. So, we do not need more funding. It does not mean there will be more money required from the exchequer. The Committee’s observations were, very briefly, as follows:

The Committee noted provisions of the two Protocols are already reflected in the laws of Kenya through the Constitution, in particular Article 10 (1) (b). Secondly, the Persons with Disabilities Act No.14 of 2003 provides for the rights and rehabilitation of persons living with disability. The Protocol on the rights of persons with disabilities, therefore, buttresses the country’s local legislation. In Kenya we are already ahead of Africa because we have already provided that in the current Constitution. The two Protocols specifically impose upon member states the duty to submit periodic reports on measures taken for the full realisation of the rights of the two categories.

Hon. Temporary Deputy Speaker, we noted as a Committee that the Protocols are consistent with constitutional provisions which provide explicit rights, protections, entitlements and privileges for older persons and persons with disabilities. The Committee again observed that, in relation to financial implications, there will be no further budgetary provisions required because it will be catered for under the normal budget lines. Further, the ministry when engaging us did



inform us that they engaged stakeholders and none was left out. The Protocols permit reservations although we have not found any that we need to have.

In conclusion, I would want to ask that we support these two Protocols because we all struggle to take care of the old people in the villages. We hardly consider people who are physically challenged. I want to encourage Members to remember to appoint the physically challenged to their various committees. You need to consider the older generation because they also have grievances and they need people to talk on their behalf.

Having considered the ratification of the Protocols of the African Charter on Human and People's Rights on the Rights of Older Persons and the Rights of Persons with Disabilities, the Committee recommends that pursuant to Section 8 of the Treaty Making and Ratification Act, the House approves the ratification of the Protocols.

I wish to request Hon. Dido Rasso, who is a ranking Committee Member, to second the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon Rasso.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I want to thank the Mover, Hon. Kilonzo. He has spoken exhaustively about the two Protocols, which are very important. It is written in our Constitution that any international law that Kenya ratifies forms part of our domestic laws. In this case, older persons and people living with disability (PWD) are two important categories of people found in Kenya in large numbers. These Protocols are about enjoyment of human and people's rights. They are also about dignity of older persons and PWDs.

Once these Protocols become part of the laws of the land, they will seek to secure non-discrimination, right to equality, right to life, right to liberty and security of persons. What is expected of our country is implementation. While discussing these Protocols, we found out that Kenya is not a welfare state. So, by progression of our laws, where we give PWDs and older persons a monthly stipend, Kenya is beginning to become aware that there are vulnerable members of the society who need help. We are Africans, and somebody said Africa is our business, but we are no longer the traditional society that our forefathers lived in. We are generally cosmopolitan and urban. We are what you call people who live in different parts of the world. So, these two categories of people appear not catered for like it used to happen traditionally. That is why it is necessary for us to begin to look at these Protocols in a very different perspective and enact them into law.

*(Hon. Joshua Kutuny consulted loudly)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kutuny, you are out of order. Please, you may consult from outside the Chamber or do so in a lower tone.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I think he is just excited about something. The 91<sup>st</sup> United Nations principle of independence and dignity has already been included in the UN statute and recognises these two categories of people. In Kenya, Article 10(1)(b) of the Constitution and the Disability Act (No.14 of 2003) recognise the rights of these two categories of people.

With those remarks, I beg to second and ask Members to support the ratification of these two Protocols.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The first chance goes to Hon. Millie Odhiambo, Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Of course, I wish to support the Committee on the Motion to adopt these two Protocols relating to the African Charter on Human and People's Rights. The Protocols are basically to support PWDs and older persons. Article 2(5) and (6) of the Constitution provides that any treaty that is ratified by Kenya becomes part of the laws of Kenya. So this is the first process towards ensuring that these two Protocols become part of the laws of Kenya.

It is, indeed, unfortunate when we indicate that since one of the treaties was adopted in 2016, no state has ratified it. This is a sad call on us as African countries. We need to up our game. I speak as a former Member of the Pan African Parliament. The PAP currently does not still have legislative authority. If it was given legislative authority, then some of these protocols would pass much faster. Instead, countries are way ahead of PAP. For example, in Kenya, we already have laws dealing with this matter. I also speak as the Chairperson of the Parliamentarians for Global Action (PGA), which is a coalition of Members of Parliament all over the world that work around these issues. So, I am very happy. As Members of PGA, this is one of the areas we have been working on, to ensure ratification of protocols and treaties both internationally and regionally to protect especially vulnerable groups in our society.

The African Commission on Human and People's Rights adopted this Protocol on PWDs in its 19<sup>th</sup> extraordinary session, but the process began in 1999 when they declared the international decade of PWDs and adopted a working group that would ensure that they come up with such a treaty. I am very happy that this is taking effect right now and that Kenya will be one of the first countries to ratify the Protocol.

Hon. Temporary Deputy Speaker, I raised this issue today and I wish to raise it again now. We are given the same time to speak to this Motion and yet we are discussing two treaties. It is like debating two laws in one. It is a bit difficult to talk about PWDs and elderly persons at the same time. I hope in terms of procedure, that will change in future. It makes one of the two suffer.

The Protocols address issues of exclusion, harmful practices, and discrimination especially of women, children, youth and elderly PWDs. The Protocols guarantee equal protection of socio-economic, political and cultural rights to individuals with physical, mental, intellectual and developmental or sensory impairment. It will require countries to take action, including affirmative action, to deal with these issues.

Hon. Temporary Deputy Speaker, you cannot believe that even in Kenya, the way we have dealt with PWDs in the past and not through sensitisation, we have ended up changing. However, until recently, we describe persons with mental disability in law as idiots and imbeciles. That is how ignorant we are. It is not only in Kenya, but even in Gambia, until a decision was made in 1993, they had a law that was called the Insane Persons Act. Mental disability is not something that should be looked down upon. It is a disease.

I can see that my time is almost up, but I support the one on elderly persons. We disregard persons who are elderly because many of us somehow think that if we reach a given age, we will not progress. I came here as a fairly young Member of Parliament, but now I am in my middle age and should I come back, I might be one of the elderly persons. This will happen to all of us. Let us not think that being youth is static. Somebody gave a very good sermon the other day about seasons. The seasons that tells us that if it is winter... (*technical hitch*).

Thank you, Hon. Temporary Deputy Speaker, for indulging me. I just wanted to end by saying that if today is winter, it will come with a letter that says it is summer. Summer will come in with a letter saying that winter is coming. So, if you are in your summer, know that winter is coming. If I am in my 40s, 50s is coming. If I am in my 50s, 60s is coming. If I am in my 20s, 30s is coming. So, treat the 50s the same way you would want the 20s to be treated.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Member for Seme, Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I would like to contribute to this debate because I qualify as one of the older persons. If you are above 60, you are, in fact, in that age set.

Secondly, I have had experience with the African Charter, but I know we also have the UN Charter. To some extent, we are party to those charters and we have not really gone into the African Charter. I think it is long overdue. It is sad to hear from Hon. Millie that very few African countries have signed this Charter. It is sad. It is our obligation because if you talk of these two categories of persons, to some extent, they face the same problems. It is a matter of access to health, employment and participation in community activities. Sometimes it is just a matter of physical access. If you talk of persons with disabilities, you just have a problem of physical access. So, these are issues we have to really look at. Signing this is long overdue. Constitutionally, when we sign it, it becomes part of our laws. That is obviously something we should look into. We have a law in terms of PWDs. We have tried to implement it.

On elderly persons, I do not remember whether we have a specific law dealing with them. Maybe, we have a gap there. We must, however, look at our structure of Government. Where are these people placed? It may be in the Constitution, but do we have it in the structure of Government? In Kenya, we do. We have it in the Ministry that deals with the PWDs and elderly persons. Our former Minister is here and we work together on this one. They all face issues of dignity, stigma and hostility, and sometimes care.

There is another element that comes with it. It reaches a point that there is another person who gets involved in severe disability or have elderly persons and they need people to take care of them. In Kenya, we are trying, but we still have a problem. There are places where elderly persons are viewed with hostility, suspicion and they can even be harmed. The job situation in the country tends to discriminate against them. There is an obvious feeling that at a certain age, people should not be involved in active employment. That is something we have to look at. It is not proper employment in Government or Government structures, but you must have a provision where people can be gainfully employed or active in employment as part of living. This is because if you are not in active employment or anything active, you cannot do that.

In Kenya, we must sign this Agreement because structurally, we have programmes. We have the law for PWDs in respect of which we just implemented the access aspect of it, including sign language, lifts and buildings that are accessible to PWDs. Those are the things that we have. In the public transport sector, we have not done so, but it is something we can do. Then we have stipends for them. We even have some funds that can be used by PWDs to engage in business. Elderly persons will have the stipends under the social assistance structure. In as much as we are doing that, we still have a lot to do. Therefore, we need to sign this Agreement. However, with regard to the elderly persons, the one thing that we have to look at, that is rapidly changing, is lifestyle. For a long time, elderly persons have a lot of support from...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Your time is up. Let me have the Member for Mukurweini, Hon. Kiai Githiaka.

**Hon. Anthony Kiai** (Mukurweini, JP): Hon. Temporary Deputy Speaker, I support the Motion.

The Motion before us is very good. As a country, we should be at the forefront in ratifying such Protocols. I am very proud that Kenya is among the first African countries to ratify the Charter on Human and People's Rights, especially on elder people and PWDs. We all know that older people are vulnerable. The more they get older, the more we leave them to fate. Young people are running to urban centres to look for employment. It has become extremely difficult for young people to support elderly people in rural areas and urban centres due to lack of opportunities. We have a situation where older people are left alone to suffer.

I want to commend the Government because in its own wisdom, it came up with this social safety net programme that is meant to ensure that older people are taken care of. Although the effectiveness of the project is a doubt, it was well thought out. It was meant to ensure that older people do not suffer or do not get exposed to vulnerability due to the harsh conditions of life.

In Mukurweini, we have taken charge to ensure that older people are taken care of. We ensure that we pay the National Hospital Insurance Fund (NHIF) for many of them who are over 70 years old. We make sure that the medical bills that they accumulate because of old age are taken care of by the NHIF cover and this ensures that they live longer without being attacked by opportunistic diseases.

Hon. Temporary Deputy Speaker, in Mukurweini, we ensure that the *Mau Mau* veterans, who are many in the area, receive some stipends from our office to ensure that they live a comfortable life. Yesterday, I was in a house of one of the *Mau Mau* veterans and we were connecting him to the Last Mile connectivity programme to ensure his life is better and more comfortable.

When it comes to the matter of PWDs, I am happy to note that under the Constitution and, of course, Cap. 133 Laws of Kenya, PWDs are well taken care of. However, we still have a long way in ensuring that these people are integrated into our society. In my constituency, I have made sure that we have employed a person with a physical disability, and we have a constituency office that is PWDs friendly. Not only that, we have also employed a person who has challenges in talking and hearing. Indeed, sign language in our office is one of the three languages that we are all learning to communicate with the people. We want to add dignity and make them feel part and parcel of us. So, any law that is going to uplift the lives of the elderly and PWDs should be ratified as soon as possible. I support.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Hon Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, very much Hon. Temporary Deputy Speaker. I rise to support this Motion on the Report of the Departmental Committee on Defence and Foreign Relations on the Ratification of the Protocols to the African Charter on Human Rights, Rights of the Older Persons and the Rights of Persons with Disability.

First of all, let me acknowledge the heroes who have brought us along this journey, Hon. (Dr.) Naomi Shabaan and Hon. (Dr.) Nyikal who are medical doctors by profession. Hon. (Dr.) Naomi Shabaan was the Minister while Hon. (Dr.) Nyikal was the Permanent Secretary in that ministry. At that time, I was working in the National Council for Persons with Disability and all the gains that we have achieved in terms of protection of older persons and protection of person with disability is through their efforts. These are truly the heroes of this journey.

Hon. Temporary Deputy Speaker, because of westernisation instead of civilisation, we have adopted the western culture which means we no longer have that social fabric that glued our

families together. We have left our older persons languishing in poverty in our rural areas without any medication and sometimes without food and proper care. In worse cases, they are branded as witches and we have had them being killed in other parts of this country.

I want to concentrate on the ratification of the Protocol on the rights of persons with disability. The African Protocol on the rights of persons with disability, I must first of all declare my conflict of interest that I was one of those who developed this protocol. It is a very nice protocol. Kenya is ahead of time. I do not know why we cannot ratify it because it will not have any burden in terms of resources and legislation because we are already ahead.

In terms of disability rights, we are number one in Africa. All that is needed in this Protocol has already been implemented. Article 54 of the Constitution talks about the need for persons with disability to be treated with dignity and not to be referred in demeaning manners, which is in this Protocol. The Persons with Disabilities Act of 2003 and Sessional Paper No.14. have more provisions that are already in this Protocol and we have implemented some of them. In 2008, we ratified the United Nations Convention on the Rights of Persons with Disability and so it is part of our laws. Most of what we brought to the African Protocol on the Rights of Persons with Disability (APRPWD) were brought from the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). For example, in our country as Hon. (Dr.) Nyikal has said, we have conditional cash transfer to cushion the severely disabled persons to give, at least, a stipend to the caretaker who gives them 24 hours care. Our sign language is the Kenyan recognised sign language and it is examinable in our exams. No other country in Africa has done that. In our performance contracting in ministries, department and agencies (MDAs), there are marks awarded and indicators in terms of disability mainstreaming. It may never be anywhere else in the world.

In all Government tenders, there is a reserve for persons with disability to economically empower them through the policy of Access to Government Procurement Opportunity (AGPO). Since my time is up and we are really ahead of this, I do not see the reason why we cannot ratify it. We have come from far as a country. For a long time, a child born with disability in some communities was considered a curse and killed at birth by giving cholesterol as their first food which would coalesce in the stomach and this child would die from hunger. Some mixed sniffing tobacco with water and gave as first food to perforate the intestines. Others threw the child into the camel pen to be stamped on. That is the far we have come from. So, I can say that we have made a lot of strides in disability rights, but we are not yet there. Ratification of this African Protocol on the Rights of Persons with Disability will be another step towards the right direction.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, let us have the Hon Member of Cherangany.

**Hon. Joshua Kutuny** (Cherangany, JP): Thank you, Hon. Temporary Deputy Speaker, I rise under Standing Order 95 that the Mover be called to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are standing on Standing Order 95 and not 94 as you put it that the Mover be called upon to reply.

As the Temporary Deputy Speaker, I will only put the Question.

*(Question, that the Mover be called upon to reply, put and negated)*

Let us have Hon. (Dr.) Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Temporary Deputy Speaker. I am quite happy to support this Motion on the Ratification of the Protocol to the African

Charter on Human and People's Rights. I will have the House know that this is an area I am quite familiar with as it is an area which my master's thesis focused on, namely, the African system of human rights protection. The structure of the Charter is such that it has to be supported by protocols. So, over the years, various protocols have been developed like the Protocol on the Women Rights, for example, the Protocol on African Court on Human Rights and every other protocols on human rights.

These two protocols join the long list of protocols that necessitate and support the Charter in the structure of protection of human rights in Africa. This Motion is in tandem with Article 2(6) of the Constitution, to the extent that Article 2(6) dictates that treaties and conventions that have been ratified become part of the laws of Kenya. It follows naturally that the protocols that are then developed to support the Charter, which we had already signed and acceded to, would be approved. Our Constitution, more than any other constitution in Africa, emphasizes the rights of the persons with disability. It dedicates the entire Article 54 to that, with various very positive provisions which mirror what is in the protocol.

Again, more than any other constitution in Africa and the world, ours is the one that recognises the rights of older persons. Article 57 dedicates a lot of time to this and even goes as far as saying that the older persons are entitled to assistance by family and the State. Again, this is very much in tandem with the provisions of the Protocol requiring support to older persons. The direction of having protocols supporting the infrastructure of human rights is very good. This is a trend which should continue. We should continue identifying other vulnerable groups and supporting them in terms of protocols and directly.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have Hon. Gideon Konchela, Member for Kilgoris. You can use the Dispatch Box.

**Hon. Gideon ole Konchela** (Kilgoris, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak on this very important matter. I would have said more, but the two Members who have spoken before me, my brother Sankok and Senior Counsel, have rightly belaboured the points. So I will not say much.

I was in Europe last week and when we went to some shopping malls, we saw older people working. In other words, in Europe, as long as you are able to work, you are given an opportunity. So, I support these protocols on older people and those with disabilities. They have proved, as a colleague of mine, Hon. Sankok, has said, that given opportunities, they will produce and provide support to every community.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, as a matter of culture, that is not how we do it.

**Hon. Gideon ole Konchela** (Kilgoris, JP): Hon. Temporary Deputy Speaker, I think he is happy because of being given accolades. Looking at our nation today, according to the Constitution, we are at 99 per cent or almost 100 per cent in ratifying or implementing the protocols as required. So, we do not have much to lose or ask the National Treasury to provide because we have already done this as per the Constitution. What is remaining is mostly implementation by various Government agencies.

Looking at our communities, we are still supporting our older people and those with disabilities. As we urbanise and more people move to towns, these people are left to fend for themselves. They are unable to support themselves if the Government or systems do not provide opportunities to empower them through cash transfers. When they are sick, medical services must be provided to the older people and those with disabilities.

I do not want to belabour much, I support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Gichugu. The names look similar Gichimu Githinji.

**Hon. Gichimu Githinji** (Gichugu, JP): Yes, my initials are GGG. Thank you, Hon. Temporary Deputy Speaker. I also rise to support these protocols. I noticed the first Protocol was adopted on 30<sup>th</sup> January 2016 on the Rights of the Older Persons and the other one was adopted in 2018. I believe this country has taken the right steps to have these Protocols brought to Parliament for purposes of ratification so that people living with disabilities and older persons can fully benefit from whatever is sought to be achieved through these Protocols.

I also want to echo my colleague's contribution that Kenya has taken very serious strides in terms of ensuring the rights of people with disabilities are respected, adhered to and also those of older persons under our Constitution and laws. However, there are gaps or areas that need improvement in terms of implementation of these laws. One of the areas that has been a challenge including in my constituency of Gichugu, is that there are so many older persons who have attained the age of 70 years and are eligible for the cash transfer for older persons, but have not been enlisted. The listing of these people has not been consistent and I believe this is a challenge which every other Member has been facing in their constituencies with people asking when they will be listed to receive their pay. It is now about six or seven months since they last received a penny. I think this is an area which is already in law and requires serious improvement.

Another area is pensions. Older persons are really suffering before they receive their pensions. I have received so many calls including today from a sub-chief in Gichugu Constituency saying he retired about eight months ago and has not received even a penny. These are people who have religiously worked for the Government and are not being treated well. As we support this, we also require serious implementation of the already existing laws and rules governing people with disabilities and older persons.

Another area which requires a lot of serious attention is discrimination against people with disabilities. I think I will bring a Question or Statement in this Parliament for an audit to be done across the two levels of Government. This will ascertain whether the county governments and the national Government have adhered to the Constitution in terms of appointing people with disabilities for employment. There are gaps at the county level where people with disabilities have not been receiving what they deserve. Since time is not on my side, I fully support these Protocols because they will enhance the already existing laws in this land.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Kwanza, Hon. Wanyonyi Kevin.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker, I have been waiting patiently for this opportunity. This ratification is long overdue because times are changing and the youths do not respect the older people. So, we should enhance this because I know for sure, in the last Parliament, we passed that all buildings must have provision for disabled people. I have gone round and in some areas this provision has not been taken care of.

The older people have been neglected and I want to agree with the previous speaker on the delayed cash transfer to our people. Most of them are registered and I think this Committee should fast-track this. When I go round, people keep asking me what I am doing because they have not received their money. Some of these people have worked well and religiously, yet they have not been paid. Therefore, the Committee concerned should fast-track this, so that the elderly are paid

because it is part of what we do here. Apart from that, I am not sure, but I am told that in some tribes in Africa, disabled children are actually killed at birth. I do not know where, but I am told that this happens. It is very unfortunate. The fact is that older people are not taken care of particularly with the generation that is changing. Let us have that coming out. You can even go out to the streets in town and there is no provision for elderly people in the transport sector. I have tried. I got into a vehicle in Eldoret going to Kitale and realised that the crew discriminate against older people. That, again, must come out very clearly so that elderly people of 80 or more years can be accorded the respect that is due to them. It is just common sense. There are no provisions for the elderly and the disabled in some passenger service vehicles.

I appreciate that the rights of the elderly and the disabled people come out very clearly in this Protocol, and its ratification is long overdue. Therefore, I support it. Whoever is responsible or the Committee in charge of this should fast-track it so that it is implemented to accord respect to the disabled and the elderly people in this country.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Mwingi West, do you want to speak to this Protocol?

**Hon. Charles Nguna** (Mwingi West, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. Let me thank the Committee for the wonderful protocols they are bringing to the House. I support the ratification of this Protocol to the African Charter on Human Rights of older people and people with disabilities.

Hon. Temporary Deputy Speaker, you will recall that an elderly person at home or anywhere is a living treasure. Personally, I am lucky to have a grandmother who is 116 years old. She brings a lot of joy in the family. Who am I to object the ratification of any protocol that is protecting the rights and privileges of such elderly people? The ratification of this Protocol on elderly people will ensure that they enjoy the equality and protection they deserve.

Let me take this opportunity to laud the Government of Kenya for initiating the cash transfer programme. However, we still need to double our efforts because there is a lot of controversy. These funds are being accessed by people who are 70 years old while others who are over 90 years are not accessing them. We still need to do a lot to ensure uniformity in implementation of the cash transfer programme.

On issues of people with disabilities, any person can become disabled at any time. I always acknowledge that fact. We have people with disabilities in almost every homestead. These people require special attention in terms of legislation and other policies that we are going to validate in this House. One of the key issues we need to note as we ratify this Protocol is that we need to have constant legislation and reporting on these protocols on yearly basis. I am happy to note that nine countries have signed it. Let Kenya become the first one to ratify it and I will be very happy.

There are many advantages of ratifying this Protocol. It will avoid stigmatisation of these people. It will also do away with the abuse and discrimination of their rights as human beings. Let me take this opportunity to thank Hon. Kibaki for giving us the current Constitution in 2010, which enshrined all these fundamental rights of people with disabilities and elderly people in it.

With those few remarks, I strongly support the ratification of the Protocol.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Keiyo South, Hon. Rono Kipkosgei.

**Hon. Daniel Rono** (Keiyo South, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity to also weigh in on the ratification of this Protocol. First and foremost, I thank the Committee which has handled this Protocol. I also thank my brother,



Hon. Sankok, for the comments he made on PWDs and the elderly, and also as my colleagues have also mentioned.

If you travel to the developed world like the United States of America and Europe, there is a category of people called senior citizens and PWDs. They do not play games with those individuals. They give them the decency and the respect they deserve. It is ridiculous that we do not do so in Kenya. You sometimes even go to the streets and find a disabled person begging and maybe the mistake that that person made was being born disabled. This Protocol has come late.

We have just talked about the cash transfer programme that is now addressing the plight of our senior citizens. We start a very good thing of giving our senior citizens who are 70 years old and above cash transfers and then we do not follow it through. We are even failing in this House. What are we doing about it? Year in, year out; and month in, month out, we are told that there are delays of three months or six months. Some elderly persons have not been enlisted while others have been enlisted, but they have not received any cash. The fingerprints of others could not even be captured. Elderly people are dying day in, day out. They will never even enjoy the cash transfer programme.

So, we need to be serious about the cash transfers. We need to make the individuals concerned in the ministry to appear before the relevant departmental committee, so that this matter can be given top priority. Sometimes you find money being squandered left, right and centre and then we see our senior citizens, who have served this country over the years, not being given the decent life they deserve.

I have just talked about the way senior citizens are taken care of in the developed world. We need to borrow a leaf from them because if you even enter a *matatu* or a bus, immediately a senior citizen enters that bus, if you are seated and you are 30 or 40 years old or below, you automatically give up the seat for the senior citizen. We need to give the same respect that we see out there to our people right here in Kenya. The PWDs and the senior citizens deserve respect, decency and attention. So far, we are not giving them the attention they deserve. I commend Hon. Sankok for always fighting for them left, right and centre. We should support him as much as we can.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Mwingi Central, Hon. Mulyungi Mutemi.

**Hon. Gideon Mulyungi** (Mwingi Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I rise to support these Protocols. The Bible says, he who helps the poor and the vulnerable, helps God. The Government should be the first authority to lead by example. I am aware that there have been all these cash transfers to the elderly, but I can assure you that that process, including even cash transfers to the disabled, orphans and the widowed, has not been managed effectively. I think statistics in Kenya show that less than 30 per cent of the elderly receive the cash transfers. That is based on the figures in my constituency. There are so many senior citizens, respected elderly men and women, who are dying of hunger because they do not work, they cannot farm and have no income. Only a few are blessed with children who can support them. If you do not have children who can support you, you are just waiting to die. Let the Government not preach wine and drink water. Let the Government preach water and drink water.

I support these protocols if they are going to be managed in a fair manner so that all the elderly people in Kenya and the disabled who need our help, orphans and the most vulnerable people, receive Government support.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Dagoretti South.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I am conscious of time and so, I will be very brief in my support for the ratification of this Protocol.

Firstly, I would like to commend the Committee that has prepared this Report. Secondly, I will single out an individual in this House, in the name of Hon. Sankok, for the amazing work he has done in the representation of the over six million Kenyans who depend on him to give them a voice on the Floor of this House. The ratification that we are doing is important to my mind for two reasons. One is because there exists an African Charter. To me, the African Charter is a big step for this continent in going towards Pan Africanism and building a United Nations of Africa. The African Charter, on its own, does not solve the problems of this continent. So, we need protocols that support the African Charter as our way of coming up with a continent that is united and that lives to the aspirations of the Pan African founding fathers of this continent.

Secondly, it is the good book that tells us that whatsoever you do to the least of my brothers that you do unto me. This afternoon, by accepting this Report from the Committee and ratifying this Protocol, we are taking care of the least among the least in our society.

There are many articles in this Protocol that guarantee quite a number of things for the elderly people. There are few that stand out for me. The moment you get to an advanced age in some societies, people start institutionalising you, so much so that even if we are celebrating some development in the developed world, there are things as Africans that we cannot do because of our African principles. The moment you institutionalise an individual, you are departing the person from your community, banishing them, but if we ratify this Protocol, we will be going towards taking care of the elderly people. We have to think, as human beings, that age is just a number. Today, I might be considered a middle aged man, but yesterday they were calling me a youth. But tomorrow, I shall be an elderly person. I might be doing this today thinking that I am doing it for the older people in society, but I am planting a seed that I might reap in my advanced age.

People living with disabilities are quite a small percentage of our population. I am notified by Hon. Sankok about time, so that we are able to get the Mover to reply. I shall cut my speech short by saying that I support the Report of this Committee and commend it for the good work. I single out Hon. Sankok for the great work he is doing for this demographic that we call people living with disabilities.

Thank you, Hon. Temporary Deputy Speaker, for that opportunity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I have a request from Hon. Omar Mwinyi.

**Hon. Omar Mwinyi** (Changamwe, ODM): Asante sana, Bi. Naibu Spika wa Muda. Nitachukua muda mfupi kwa sababu wakati umeisha, kuwaunga mkono wanakamati waliokuja na Hoja hii. Na ziada ya waliotajwa ni Daktari wawili pamoja na Mhe. Sankok. Kusema kweli, shida ya hawa watu wazima au wazee ni kuwa sote tutakuwa wazee. Kwa ufupi, ni muhimu taifa letu liangalie maslahi ya wazee. Wengi katika ndugu zetu walio nje hutaka kuja kustaafu hapa, lakini huwa wanaogopa kwa sababu maslahi yao hayalindwi hapa.

Pia, nashukuru shirika la *Association for the Physically Disabled of Kenya (APDK)* ambalo limeweza kuwaajiri robo tatu ya wafanyikazi wao kuwa watu ambao wana ulemavu. Itakuwa jambo la maana sana shirika kama hili likiungwa mkono.

Nakumbuka Rais mstaafu Hayati Moi ambaye alichangisha tukapata majumba mawili, Rehema 1 na Rehema 2, ambayo yalikuwa ni ya kusaidia walemavu. Sijui kama pesa hizi bado

zinasaidia walemavu ama vipi. Pengine Bunge hili lingeweza kuangalia swala hili. Vile vile, ningependa kuhimiza, tusiwafanye walemavu wetu kuwa ni waombaji. Kila mahali ukienda, waombaji ni walemavu. Pengine serikali za kaunti pamoja na Serikali Kuu zinastahili kutafuta namna ya kuwasaidia ili waweze kuchangia katika uchumi wetu.

Kwa hayo machache na kwa sababu ya muda, napongeza Hoja hii.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): There being no other Member wishing to speak to this, I call upon the Mover to reply.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. Let me thank the Hon. Members who were having a very keen interest in this Motion. I need to remind Members that all is not lost. Kenya is ahead of most African countries. In 2003 when I joined this House as a young Member of Parliament, we had no cash transfer for the elderly. Today, we have it. It might not be enough, but it is a step in the right direction. In 2003, we did not have a policy to ensure that people who are physically challenged, women who are disadvantaged, have space to do business.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Charles Kilonzo, I give you two minutes to finish.

**Hon. Charles Kilonzo** (Yatta, Independent): There was no policy on that. Today, we have a policy for those disadvantaged people to do business. In 2002, we had no adequate laws neither did the Constitution provide for protecting the elderly and the physically challenged. Today, we have. For the aged, age is just a number. Trump ran for president at a very advanced age and so, is a Kenyan citizen, Hon. Raila Odinga. It is just a number. It does not mean that when you attain the age of 60, you have nothing to do in this country. Your brains are perfect.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the House is not properly constituted for me to put the Question to Order No.13. So, I order deferring of the same.

*(Putting of the Question deferred)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order Members. The time being 7.02 p.m., this House stands adjourned until Thursday, 7<sup>th</sup> October 2021 at 2.30 p.m.

The House rose at 7.02 p.m.