

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

Tuesday, 13<sup>th</sup> May 2021

The House met at 10.00 a.m.

*[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]*

**PRAYERS**

**QUORUM**

**Hon. Deputy Speaker:** Hon. Members, we do not have the required quorum. I know our Muslim colleagues are celebrating. I order that the bell be rung for 10 minutes.

*(The Quorum Bell was rung)*

Order, Members! Order! Let me order the ringing of the bell to stop. We have Hon. Members within and outside the Chamber and there are others in the tent. We will, therefore, proceed. I can see we are forming a good number now.

Hon. Members, we have a Petition from the Member for Ainabkoi, Hon. Chepkut, who seems to have sensed that he is required. He has just arrived.

Hon. Chepkut, if you are prepared you can proceed. Are you okay to proceed or you want a minute to gasp your breath? What we expect from you is presentation of a Petition on climate action awareness campaign to increase forest cover.

**PETITION**

**CLIMATE ACTION AWARENESS CAMPAIGN TO INCREASE FOREST COVER**

**Hon. William Chepkut** (Ainabkoi, Independent): Hon. Deputy Speaker, I, the undersigned, on behalf of various stakeholders and interested Kenyans in the country; draw the attention of the House to the following:

THAT, climate change globally has been caused by significant changes in the concentrations of greenhouse gas as a consequence of destructive human activities such as deforestation and natural weather change over a period of time;

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THAT, there has been poor implementation of international and national obligations to respond to climate change and progress towards attainment of low carbon climate resilient development through the National Climate Change Action Plan (2018-2022);

THAT, there is an urgent need to mobilize national and county governments to set aside sufficient funds to finance climate change, mitigation, adaptation actions and interventions that will make Kenya be in league with other nations;

THAT, there is a further need to integrate climate change programmes and actions into decision-making and implementation of functions by the sector ministries, State corporations and county governments;

THAT, the national and county governments, private sector, development and multilateral partners, civil society and other holders should immediately enlist to support initiatives meant to immediately jump-start participation in implementing forest cover;

THAT, Kenya and in particular, the National Assembly and the Senate alongside the above mentioned stakeholders must fully prepare and effectively participate in the UN Climate Change Conference on the PARTIES – COP 26, Glasgow, UK in November by having a strong team that will help the county move forward in this campaign.

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Environment and Natural Resources in consultations with relevant Government agencies enquire into the possibilities of putting in place measures to:

- a) Eliminate climate change including reduction of greenhouse emissions and use of non-renewable energies, and wanton destruction of our trees, and among others;
- b) Rally all institutions of learning from primary and secondary schools, tertiary institutions and universities to engage students in tree planting campaigns;
- c) Introduce national and county governments' tree planting programmes that will include all roadsides and any other open spaces available for the project; and
- d) Establish and determine priority areas and the project to be undertaken as a national initiative by Government to involve Regional, County and Sub-County Commissioners.

And your petitioners will ever pray.

**Hon. Deputy Speaker:** Thank you, Hon. Chepkut. Would any Member be interested? I see quite a number of Members who want to speak to this matter. Hon. Chachu Ganya, kindly you have the Floor.

**Hon. Chachu Ganya** (North Horr, FAP): Hon. Deputy Speaker, I would like to appreciate Hon. Chepkut for his Petition.

As you know, I am a ranking Member of the Departmental Committee on Environment and Natural Resources. It will surely be very fast because all the issues he raised are in the Climate Act that we passed in the 11<sup>th</sup> Parliament. We have climate change strategies and policies that this House approved. We also have climate change financing and most of the issues that he raises have been approved, or are strategies that have been clearly articulated and developed by the relevant ministries and the Climate Change Council.

Therefore, it is something we can dispose of very fast. However, I want to inform my brother Hon. Chepkut that as Parliament of Kenya, we have always been part of the national delegation to COP. I have been to Badr myself. I have been to Bonn. My friends have been to

Poland and since the 11<sup>th</sup> Parliament or even before, I think technically since when we have been here we, we have all been part of the Kenyan delegation to these climate change conferences. Therefore, this is an issue we can dispense of very fast. He raised a good issue, but we will deal with it as soon as possible.

**Hon. Deputy Speaker:** Okay. Then I must have given you the opportunity wrongly Hon. Chachu Ganya because you look like you are actually responding to the petition itself. What I wanted is people who will enrich Hon. Chepkut's Petition so that then when it comes to your own committee you can have some things to add up. In any case, if you have done something, there will be quite a few things which of course Hon. Chepkut and the rest of the membership will be trying to buttress on the particular interventions you have made.

Hon. Omboko Milemba, Member for Emuhaya. I will give four members, so do not have a problem. I can see the lady.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you Hon. Deputy Speaker and briefly let me thank Hon. William Chepkut for this Petition and even having intimated that there will be a meeting in Glasgow in the month of November and which Kenya should attend via the committee and other stakeholders. I want to support this Petition and say that climate change is a real issue now. There is suggestion from the scientists that even the COVID-19 which is ravaging the world is courtesy of issues related to climate change, although that is yet to be proven. Therefore, this petition is timely.

I want to briefly say that to increase the forest cover in our...

*(Hon. Caleb Kositany sat closely to an Hon. Member)*

**Hon. Deputy Speaker:** Order, Hon. Kositany. Please maintain safe distance from your colleagues. Hon. Kositany, take a seat; you know better than that.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you Hon. Deputy Speaker for calling Hon. Kositany to order. I think the increase of forest cover especially in places which have been left out like in my own constituency is a good idea. We have Nganyi Shrines and Nganyi Forest which are now being interfered with. These are some of the areas that need to be protected together with the Ebusiekwe Forest.

Finally, this aspect of using schools as centers to plant trees is very good. Let it be given emphasis. Let primary schools, secondary schools and all institutions of learning be given trees to plant. This will actually increase the forest cover.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, Hon. Akoth Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Deputy Speaker, I am Hon. Odhiambo Akoth Millie Grace.

Thank you for giving me this opportunity and I want to thank Hon. Chepkut for bringing this Petition. I know what Hon. Chachu Ganya has said that has been done by Parliament is commendable, but there is no action we are seeing. We can actually see the very serious impact of climate change.

Hon. Deputy Speaker, even though we are seeing the rains now we should have been seeing these heavy rains much more in April than in May. That in itself is evidence, and

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sometimes the rains move to June. Therefore, even the predictability of the weather is changing because of the impact of climate change.

Hon. Deputy Speaker, what I would like the Committee to look into is whether we can find a way of inculcating this right from school, the way we used to have clubs in schools so that people start dealing, mitigating right at the school level because young people are good at that.

Secondly, we would like to know what the Government is doing in areas being affected anew because of the climate change. In my own constituency, flooding has never been a problem but now every few months we are calling the Red Cross. We have become the new Budalangi. Maybe that is why I am sitting next to the Member for Budalangi for pointers, but what budgetary measures are being put in place?

**Hon. Deputy Speaker:** Hon. Millie, you are saying you are sitting next to the Member for Budalangi because of the floods or?

*(Laughter)*

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Deputy Speaker, I can sit next to him for whole lot of other reasons, but you should not get into that too much, unless you also have peculiar interests in that area. Since I know you do not have peculiar interests there, let me get back to the flood which is the natural flood of water. I just want to encourage and ask the Committee to look into what deliberate pragmatic plans the Government has and budgetary allocations for Ogando, Lambwe in my constituency that is now being severely affected. People are losing homes, people are dying because of flooding and it never used to be a serious issue. It is because of climate change. What are we doing in terms of reduction of fish because of impact of climate change?

**Hon. Deputy Speaker:** Okay. Then we have Hon. (Prof.) Ogutu Abel.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Deputy Speaker. I would like to take this chance to thank Hon. Chepkut for this Petition. I consider this Petition a reminder of what we have to do as a nation and also as a House in terms of policy. I would also like to say that as the Committee looks at the Petition there are key issues they may want to also consider. As a nation, we have done very well in responding to climate change issues. We have planted trees. Infact in most places like Kisii region, if you go there you may think you are in a forest, but the trees are not the right ones. Therefore, they may want to discuss the types of species that need to be planted. That is something that is very important.

I would also like the Committee to consider as a country how far we are in paying farmers as part of the motivation through the climate money. I know some countries have gone far because farmers are really dedicating their land especially regions where the land is limited to make sure that there are trees on the ground. Can they not be motivated? This issue is long overdue and it does not seem to have worked in Kenya.

Finally, I will also want the Committee to consider how to deal with the massive consequences of climate change; flooding being one of them and landslides being another one. For the last two years, we have in fact experienced serious landslides in this nation, including areas that had never experienced landslides before. What can the Committee recommend, especially to the institutions including county governments?

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Hon. Deputy Speaker, I support.

**Hon. Deputy Speaker:** Alright. Next Order

*(Loud consultations)*

What is it Hon. Members? I mean, you know we are not yet in the real business of the House. Okay, I see there is a lot of interest. The only problem is the Members who are given opportunities speak too much, and therefore, deny the rest of the membership an opportunity. If you can do a half a minute each you will put yourself on record. I might then start with Hon. Wanjala then we will very quickly make progress. Just very quickly, Hon. Wanjala.

**Hon. Raphael Wanjala** (Budalangi, ODM): Thank you Hon. Deputy Speaker for giving me this chance. The issue of climate change has really affected us; the people who live along the lake. Even today we have floods.

For the people who live along the lake, another phenomenon is that the water is coming from the lake into people's homes. Our engineers have even failed to help us because they do not want to listen to locals for solutions. The meanders of the rivers should be drained. The rivers should be dredged because they have silted since the world was created.

**Hon. Deputy Speaker:** I thought so. I was wondering about the independence.

*(Laughter)*

**Hon. Raphael Wanjala** (Budalangi, ODM): Since the world was created nobody has ever de-silted the mouths of the rivers; the deltas into the lake. The water from the rivers does not move into the lake, instead it goes back and flows into people's homes. These are the issues affecting us because our engineers and the Ministry of water are asleep.

**Hon. Deputy Speaker:** Okay, the rest you can ask in the Committee when it is taken there. Hon. Wangari for only half a minute.

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity. I want to thank Hon. Chepkut for this Petition. My contribution is that I attended the Conference on the Parties (COP 20) in Lima, Peru. There have been consequent ones and last year's was supposed to be in Glasgow.

Kenya has always participated and what I would like to see this Petition yield is the breakdown of the good resolutions that have been done out there and have been domesticated in this country. We want to see actual budgetary interventions in terms of improvement because climatic change is directly related to the Sustainable Development Goals (SDGs). The United Nations has picked this as an issue contributing to poverty, diseases and poor living conditions. So, I hope that the Committee can take time to look at the good resolutions out there and domesticate them in this country so that they fit what we are talking about.

I support the Petition.

**Hon. Deputy Speaker:** Hon. Kangogo.

**Hon. Kangogo Bowen** (Marakwet East, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity to support the Petition by Hon. Chepkut. I come from a place where there is

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serious deforestation because of cutting down of trees in Cherangany and Embobut forests. There must be a balance between the 10 per cent forest coverage and people's livelihood.

We have seen cases where people have been chased away from the forests like in my place and have not been resettled elsewhere. So, we need to balance even as we look at climate change issues and the rights of individuals. This is because in the Bill of Rights, the first right is right to life. I would like as we handle this Petition, we think about human life.

**Hon. Deputy Speaker:** Okay. We have heard about the lake issues, let us go to the mangrove and close it. Fairly straightforward, Hon. Baya, you have been given the microphone.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you very much, Hon. Deputy Speaker. I would like to speak to the Petition and say there are three companies in Mombasa and the Coast that use firewood to fire up their production. Therefore, people are cutting down all the local catchment trees available to sell to these factories to produce what they want. There is need to audit the people who give licences to companies because up to date the Government is telling people not to use firewood, but use gas instead. Yet, there are companies at the Coast using firewood as fuel and this is leading to huge deforestation. When talking about forest cover, we should look at who is deforesting and the officers allowing people to use wood fuel as a means of powering their factories. This should stop because it has taken away all the catchment trees we have because people are selling to these factories.

Thank you.

**Hon. Deputy Speaker:** Next Order! Hon. Members, we have lobbied too much.

#### PAPERS LAID

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

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June 2020 and the certificates therein:

- (i) State Department for Gender;
- (ii) State Department for Mining;
- (iii) State Department for Wildlife;
- (iv) State Department for Regional and Northern Corridor Development;
- (v) State Department for Labour;
- (vi) State Department for Fisheries, Aquaculture and Blue Economy;
- (vii) State Department for Women Enterprises Fund;
- (viii) Pwani University;
- (ix) The Street Families Rehabilitation Trust Fund;
- (x) Kenya Pipeline Company Limited;
- (xi) National Housing Corporation;
- (xii) Revenue Statements for the Ministry of Defence;
- (xiii) Witness Protection Agency;
- (xiv) Treasury Main Clearance Fund of the National Treasury, and;
- (xv) The National Gender and Equality Commission.

Thank you, Hon. Deputy Speaker.

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**Hon. Deputy Speaker:** Next Order!

### ARIFA YA HOJA

MJADALA KUHUSU HOTUBA YA MHESHIMIWA SAMIA SULUHU HASSAN,  
RAIS WA JAMHURI YA MUUNGANO WA TANZANIA

**Hon. Deputy Speaker:** Under this we have something from the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Sure.

**Hon. Deputy Speaker:** Please proceed.

**Hon. Amos Kimunya** (Kipipiri, JP): Mhe. Naibu Spika, naomba kutoa Arifa ya Hoja ifuatayo:

KWAMBA, kwa mujibu wa Kanuni ya 25 (Mgeni Mashuhuri), Shukrani za Bunge la Taifa zinakiliwe kwa ajili ya Hotuba ya Mhe. Samia Suluhu Hassan, Rais wa Jamhuri ya Muungano wa Tanzania, iliyotolewa katika Kikao Cha Pamoja cha Bunge la Jamhuri ya Kenya, mnamo Jumatano, tarehe 5, Mei, 2021.

Asante, Mhe. Naibu wa Spika.

**Hon. Deputy Speaker:** Utahitaji majadiliano yawe katika lugha ya Kiswahili ama tutachanganya.

**Hon. Amos Kimunya** (Kipipiri, JP): Ningependelea sana na naomba Wajumbe tuweze kujionyesha. Hii ni kwa sababu ya changamoto tuliyonayo ndiyo Mhe. Rais pia aone Wakenya wamechangamka na wanaweza kujadili kwa Kiswahili kama alivyotuhutubia kwa Kiswahili.

**Hon. Deputy Speaker:** Sababu ya kukupatia hiyo fursa kama Kiongozi wa Chama cha Walio Wengi ni kwa sababu nimeona ukisoma hiyo taarifa. Kwa hivyo, nilikuwa nataka kuona kama unaweza kuendelea bila kusoma na nimeona umefaulu.

**Hon. Amos Kimunya** (Kipipiri, JP): Mhe. Naibu Spika, pengine huna habari kwamba nilisomea shule ya upili iliyoko huko Mombasa. Kwa hivyo, naelewa Kiswahili. Tukifika jioni watu wajionyeshe vile wanaelewa.

**Hon. Caleb Kositany** (Soy, JP): Hoja ya nidhamu, Mhe. Naibu Spika.

**Hon. Deputy Speaker:** Nani huyu ako na Hoja ya nidhamu, ni Mjumbe wa Soy?

**Hon. Caleb Kositany** (Soy, JP): Hoja ya nidhamu, Mhe. Naibu Spika. Kiongozi wa Chama cha Walio Wengi amesema kwamba angependa tujionyeshe. Afafanue vile tutajionyesha ili tupate kujua kama ni Kiswahili sanifu kimemshinda.

**Hon. Deputy Speaker:** Unasema nini sikusikia vizuri?

**Hon. Caleb Kositany** (Soy, JP): Ni kwa sababu ulikuwa unamsikiza Mbunge wa Marakwet. Nimesema Mbunge wa Kipipiri ambaye pia ni Kiongozi wa Chama cha Walio Wengi katika taarifa yake amesema kwamba angependa tujionyeshe. Lakini hajafanua vipi kama ni kwa vitendo ama mavazi, pengine ni Kiswahili kimemchanganya.

**Hon. Julius Mawathe** (Embakasi South, WDM-K): Hoja ya nidhamu, Mhe. Naibu Spika.

**Hon. Deputy Speaker:** Naona ni kama Kiswahili kimekuchanganya wewe mwenyewe. Tuendele. Mjumbe wa Embakasi South, hebu tukusikize.

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**Hon. Julius Mawathe** (Embakasi South, WDM-K): Hoja ya nidhamu, Mhe. Naibu Spika. Asante sana kwa kunipatia fursa hii kuchangia hili jambo.

**Hon. Deputy Speaker:** Hakuna mchango kwa sasa. Ni notisi ya Hoja.

**Hon. Julius Mawathe** (Embakasi South, WDM-K): Nilikuwa nataka kumuunga mkono ndugu yangu Kiongozi wa Chama cha Walio Wengi kwa kuwakilisha hili jambo ili tuweze kuzungumzia hotuba...

**Hon. Deputy Speaker:** Utapata hiyo nafasi ya kuchangia na kuunga mkono, lakini kwa sasa tu ni Hoja ameweka mbele ya Bunge. Tutakupatia nafasi ikifika wakati wa kuchangia.

**Hon. Julius Mawathe** (Embakasi South, WDM-K): Asante, nashukuru na kuunga mkono.

**Hon. Deputy Speaker:** Lakini wakati tutaanza majadiliano naomba ukae karibu na Kamusi ili upige msasa lugha yako, ndiyo mambo yaende kwa njia... Sisemi umezungumza vibaya lakini nawaambia Wabunge wote walio hapa waendeleo kupiga msasa lugha ili ikifika wakati wa kuchangia wafanye hivyo kwa njia nzuri. Hoja gani? Kuna hoja nyingi za nidhamu. Sielewi. Huyu ni Mhe. Kathuri. Hebu nisikie una Hoja gani Mhe. Kathuri.

**Hon. Kathuri Murungi** (South Imenti, Independent): Asante sana, Mhe. Naibu Spika. Tulipozindua Kanuni mpya za Bunge, yani *Standing Orders*, tulisema kwamba siku ya Alhamisi tutakuwa tukiongea kwa Kiswahili katika Bunge hili. Ninaomba turudie tena hivyo tu. Siku ya Alhamisi asubuhi huwa tuna mijadala ya Wabunge binafsi tuwe tunajadili katika lugha ya Kiswahili ndio wale wanaotupigia kura waweze kufuata ile kazi tunafanya hapa Bungeni.

**Hon. Deputy Speaker:** Hiyo ni sawa lakini hamna Mjumbe ambaye amekatazwa kuzungumza kwa lugha ya Kiswahili. Najua kwamba tulichanganywa na mambo ya korona na mambo mengine kama hayo na hata sijapata kujua Mjumbe mmoja ambaye amesema hiyo 'Corona' tutaitaje kwa Kiswahili lakini tuendeleo.

Let us go to the next Order. Order, Hon. Millie Odhiambo. There is nothing called 'hoja ya madamu'. It is only 'hoja ya nidhamu'.

## QUESTIONS AND STATEMENTS

**Hon. Deputy Speaker:** There is a Question by Private Notice by the Member for Magarini, Hon. Michael Kingi, then we will go to Ordinary Questions.

## QUESTION BY PRIVATE NOTICE

*QPN No.001/2021*

### COMPENSATION TO FAMILY OF LATE NOEL TINGA KATANA

**Hon. Michael Kingi** (Magarini, ODM): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Energy the following Question:

- (i) What measures is the Ministry putting in place to ensure that the family of the late Noel Tinga Katana, a 10 year old Grade 3 student at Kaya Dagamra Primary School in Magarini Constituency, who died as a result of being electrocuted by a live electric cable on

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15<sup>th</sup> April 2021 while passing near a fallen and disintegrating electric pole in Kaya Dagamra Area, Magarini Constituency is assisted to clear the hospital bill, meet the burial expenses and is compensated for loss of life occasioned by negligence on the part of Kenya Power and Lighting Company (KPLC)?

(ii) What disciplinary action does the Ministry plan to take against the officers of KPLC, Malindi Sub-Station, for negligence and unresponsiveness considering that the matter of the fallen pole had been reported to KPLC severally prior to the incident?

(iii) Could the Cabinet Secretary give an undertaking that KPLC will urgently replace the said pole and all other disintegrating electric poles in the entire Magarini Constituency to avert the looming danger posed by these poles?

### ORDINARY QUESTIONS

**Hon. Deputy Speaker:** Hon. Olago Aluoch is not in and so we will take it to the next Sitting. Let us have the Member for Ainabkoi, Hon. Chepkut. The Member for Nyeri should be preparing himself.

*Question No.047/2021*

COMPENSATION FOR PEOPLE DISPLACED DURING CONSTRUCTION  
OF KISUMU NORTHERN BYPASS IN KOGONY SUB-LOCATION

*Question No.158/2021*

DIGITALISATION OF LAND RECORDS AT  
COUNTY AND SUB COUNTY LEVELS

**Hon. William Chepkut** (Ainabkoi Independent): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

(i) What measures has the Ministry put in place to digitalise land records at the County and Sub County levels to enable easier access to services related to land matters?

(ii) What specific affirmative and other measures is the Government taking to assist residents of Kipkabus/Barman Plateau, Kipgithug/Kilegis, Lamaon, Losirwa/Eitot, Makinyua and Burnt Forest in Ainabkoi Constituency, Uasin Gishu County to enable them secure their livelihood through settlement and issuance of title deeds?

**Hon. Deputy Speaker:** The Question will be replied to before the Departmental Committee on Lands. The previous Question by the Member for Magarini will be replied to before the Departmental Committee on Energy.

Next is the Question by the Member for Nyeri Town, Hon. Ngunjiri Wambugu.

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*Question No.159/2021*

## CRITERIA USED TO DETERMINE PAYMENT OF ENHANCED HOUSE ALLOWANCE TO TEACHERS

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Education the following Question:

(i) Could the Cabinet Secretary explain the criteria used to determine the teachers who receive enhanced house allowance in Nyeri Town Constituency?

(ii) What are the reasons and/or circumstances that led to teachers from some schools such as Kirimara and Chania primary schools, receiving the said allowance, which was later withdrawn?

**Hon. Deputy Speaker:** The Question will be replied to before the Departmental Committee on Education and Research, which you actually serve. So, probably that will make it even easier and faster.

Next is the Member for Soy, Hon. Caleb Kisitany.

*Question No. 163/2021*

## STATUS OF THE LAST MILE CONNECTIVITY PROGRAMME IN SOY

**Hon. Caleb Kositany** (Soy, JP): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Energy the following Question:

(i) Could the Cabinet Secretary provide a report detailing the implementation status of the Last Mile Connectivity Programme in Soy Constituency?

(ii) Could the Cabinet Secretary also provide the electrification plan for public institutions including all public primary and secondary schools, which are yet to be connected to electricity in Segero, Moi Bridge, Ziwa, Soy, Kapkures and Kipsomba Wards; dispensaries and coffee factories in Soy Constituency, and indicate the status of electricity connectivity to the said institutions?

(iii) Could the Cabinet Secretary further provide the electrification plan intended to cover the following villages of Soy Constituency – Kapchorwa, Emgwen, Chemamul, Marare, Simit, Durfur, Kaboch, Kaongetuny, Chelabal, Chobosia Lalakin and Kapkerek Villages and Daraja Mbili Centre?

**Hon. Deputy Speaker:** The Question will be replied to before the Departmental Committee on Energy. I hope you are sure about Durfur, being the Durfur within Soy and not any other Durfur.

We will now go to the Member for Kabuchai, Hon. Majimbo Kalasinga.

*Question No.165/2021*

## COMPENSATION TO THE FAMILY OF THE LATE KENNEDY SIMIYU WANYAMA

**Hon. Majimbo Kalasinga** (Kabuchai, FORD-K): Hon. Deputy Speaker, I rise to ask the Cabinet Secretary for Energy the following Question:

(i) What measures is the Ministry putting in place to ensure compensation to the family of the late Kennedy Simiyu Wanyama, ID No.12581139, who died as a result of being electrocuted by a live electric cable in Nalondo Area of Kabuchai Constituency on 22<sup>nd</sup> April 2021 during a repair excise by Kenya Power and Lighting Company (KPLC) staff, who were using Motor Vehicle Registration No. KBL 153G to pull the cables?

(ii) When is the said compensation expected to be paid, and could the Cabinet Secretary provide the amount of money that the family of the said victim is expected to receive from KPLC as compensation for negligence caused by its employees?

**Hon. Deputy Speaker:** The Question will be replied to before the Departmental Committee on Energy.

We now go the next segment on requests for statements. Personal statements are also included there. There will be a statement by the Chairperson of the National Government Constituencies Development Fund Committee (NG-CDFC). So we will start with Hon. Samuel Atandi who is requesting for a statement. I do not think that microphone is working. Go to the other one and make sure you have your mask on.

**STATEMENTS**

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Deputy Speaker. Before I read my Statement, I want to notify you that I have asked Questions twice on the Floor of this House, but I have not received answers. The last time you directed the Leader of the Majority Party to ensure that the Chair of the Departmental Committee on Finance and National Planning supplies me with answers to the Questions I raised and it has not been done.

**Hon. Deputy Speaker:** I will follow it up with the Leader of the Majority Party. It is noted.

Proceed with the Statement request.

## INSECURITY AT DOND KOKI MARKET

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Hon. Deputy Speaker, pursuant to Standing Order 44 (2)(c), I seek a statement from the Chairperson of the Departmental Committee on Administration and National Security regarding insecurity at Dond Koki Market, Alego Usonga Constituency.

Hon. Deputy Speaker, there has been persistent insecurity at Dond Koki Market in Alego Usonga Constituency, where there has been breaking into shops and continuous brutal killings of several security guards employed by traders and businessmen in the said market. This has been reported several times by the community and businessmen at Siaya Police Station and

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Nyangoma Police Station. It is of great concern that this trend has led to loss of lives and properties particularly those belonging to business women and men, and to mention a few, Mrs. Elizabeth Abuonji and Mrs. Caroline Akuka among others. The latest attack happened on 29<sup>th</sup> April, 2021, where two-night guards, namely, Mr. Justus Etiang and Mr. Kennedy Eworet were brutally murdered at night by thugs. On this occasion, two shops belonging to Mr. Fredrick Oiye and Mr. Ndolo Jangiya were broken into and goods of unknown amount stolen.

Hon. Deputy Speaker, it is on this background that I seek a statement from the Chairperson, Departmental Committee on Administration and National Security to the following:

- (i) Could the Chairperson state whether any investigations have been carried out into the persistent insecurity and theft of goods and breaking into shops at Dond Koki Market in Alego Usonga Constituency that has led to brutal killings of several security guards employed by traders and businessmen in the area?
- (ii) When will the culprits be apprehended and what measures have been put in place by the Government to curb insecurity in the said area and ensure that the security officers work with the community to help them identify the criminals terrorizing the community?
- (iii) Could the Government consider enhancing security personnel at Karemo Assistant County Commissioners' office, which is the nearer police base and ensure the officers embark on night patrol?
- (iv) Could the Chairperson explain whether there is any role played by the local administration officers in these insecurity incidents in the area such as the assistant chief and the chief of East Alego Usonga Sub-location, and if any, what action will be taken against the officers involved?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** We shall go to the next Statement, the Member for Laisamis, Hon. Marselino Arbelle, who wishes to issue a personal statement. If he is not in, then we proceed to the next Statement by the Chair of the NG-CDF Committee, on the status of the state of disbursement of the NG-CDF, as at 12<sup>th</sup> May 2021.

STATUS OF DISBURSEMENT OF NATIONAL GOVERNMENT  
CONSTITUENCIES DEVELOPMENT FUND

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you very much, Hon. Deputy Speaker for giving me this opportunity to give an update to Members, on the status of disbursement of the National Government Constituencies Development Fund (NG-CDF) for the Financial Year 2020/2021 and the previous years.

Firstly, I wish to remind Members that the Fund allocation and receipts to date for the Financial Year 2020/2021 is Kshs 41.7148. Section 39(2) of the Act provides that disbursement of funds to the constituencies fund account shall be effected at the beginning of each quarter of the financial year, with an initial amount equivalent to 25 per cent of the annual allocation for the constituency. Thereafter, the constituency fund account shall be replenished in three equal installments at the beginning of the second, third and the fourth quarters of the financial year. Because of the challenges we had in the country, it was not possible to disburse in this manner.

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The National Treasury has been disbursing Kshs 2 billion every week from 11<sup>th</sup> August 2020 to 10<sup>th</sup> May 2021. So far, we have received a total of Kshs41.714 billion which was allocated to the NG-CDF for the entire financial year. That means the law has been complied with as per Section 32 of the CDF Act. This is how the amount has been given to the constituencies.

An amount of Kshs36.633billion has been disbursed to constituencies while Kshs 1.365 billion has been disbursed to the board secretariat. At the moment, the board is at the process of disbursing Kshs 3.7148 billion which was received on 5<sup>th</sup> and 10<sup>th</sup> of May to wrap up the entire financial year's allocation. The Kshs20.151 billion has been disbursed to constituencies as per this Financial Year 2020/2021 budget allocation.

Secondly, Kshs16.4918 billion has been disbursed to constituencies with respect to balances in the previous years. In last financial year, so much was carried forward, but this has had to be disbursed in this year's allocation. An amount of Kshs 1.365 billion has been disbursed to the board secretariat and Kshs 3.14 billion is in the process right now as we speak. As early as next week, if disbursement is not concluded today, each Member will receive on average of Kshs 8 million in their kitty. The full breakdown of the disbursement is given on a table here which is detailed. Since I am going to table this, I am not going to read through the entire table. I have given names of all the constituencies and amounts received by each constituency.

As I said, this table here gives the current amount, the status of the amount per constituency, what is in progress, the amount that is to be released in the next one or two days, and the last coin is the grand total per constituency. Some constituencies have received more than Kshs80 million up to Kshs90 million, others up to Kshs80 million. So, on average, at least each constituency would have received Kshs80 million.

Hon. Deputy Speaker, I assure Members that the balance of Ksh13.7 billion which was captured in the Supplementary Budget will continue. The Cabinet Secretary (CS) for Finance and National Treasury has assured the Committee that the weekly disbursement of Ksh2 billion will continue and by 30<sup>th</sup> June 2021, these disbursements would have been concluded and each constituency would have received their share of the allocation of NG-CDF. We want to ensure that nothing is carried forward from this financial year to the next financial year. This is an understanding we have had with the National Treasury. We hope that what happened in the previous years will not happen now. We are working together to ensure that apart from what was captured in the Supplementary Budget, there is the element of Ksh4.9 billion which is brought forward from the previous years, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015. These arrears, according to the National Treasury, was supposed to be subjected to discussion audit before they are released.

As you are aware, when it comes to the projects in the NG-CDF and particularly, there is a provision in Section 6 and Section 7, I invite Members to look at that because I am not going to make reference to it now. If you look at Sections 6 and 7, they make it clear that all funds for NG-CDF, whether carried forward or not, will have to be released to the constituencies. Therefore, what we only require is an audit and verification to ensure that this amount that was brought forward is due to certain constituencies for particular projects and if it has not been released, it should be released. So, we are appealing for this to also be captured, if there will be Supplementary Budget II or in the main Budget, so that we make sure that no money is carried forward. This is what I wanted to assure Members.

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Hon. Deputy Speaker, I thank the National Treasury because they kept their word of making weekly disbursements. I also urge colleagues to spend these funds towards the projects as earmarked, so that we make treads in developing our areas. Again, I want to conclude by saying that as the year is drawing to an end, next year is an election year, I urge Members to prepare early, to identify projects early — if you have ongoing projects identify them, if you have new projects identify them early — so that when we close the year, you will immediately present the projects for funding.

With those few remarks, I thank you, Hon. Deputy Speaker, for the opportunity.

**Hon. Deputy Speaker:** Okay. That Statement, Hon. Members, is self-explanatory. We probably do not need to take a lot of time on it. I will just give the Member for Kitui South, Hon. (Ms.) Rachael Nyamai a chance.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Deputy Speaker. I would like to take this opportunity to thank the Chairperson of the National Constituencies Development Fund Committee, Hon. Wafula Wamunyinyi. He has done a very good job to tell us where we are. I also thank the National Treasury for keeping their word. We know that times are hard with COVID-19 but we would like to thank them for keeping their word by ensuring that we get the weekly disbursements.

I encourage the Chair to ensure that by the end of the financial year we get as much as possible so that we are able to keep our promises, ensure that the projects that we have already started implementing are completed and fulfill all the promises that we have made to *wananchi*. It is only through working with NG-CDF that Members of Parliament make it back to this House. So, I thank the Chair and also encourage other Members of Parliament to support the Chairperson who is doing a very good job.

**Hon. Deputy Speaker:** Okay. Hon. Samuel Atandi.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Deputy Speaker. I thank the Chairperson, National Government Constituencies Development Fund Committee, for that Statement and the information that he has given us on disbursements. However, there is something which he needs to clarify. There is the Ksh4.7 billion which he has mentioned and which is not captured in the Budget.

What we did in the last Supplementary Budget was to bring back Ksh13.7 billion which will push the disbursements by the end of the financial year to around Ksh110 million per constituency. That means it is about Ksh16 million to Ksh17 million which is not in the Budget. This is where the Chairperson needs to inform the House how that money will be realized by Members. If that is not sorted out, we are going to have a shortage of our allocations and Members will be surprised when the financial year ends and we are in shortage of about Ksh20 million which is not in the Budget. So, the Chairperson, National Government Constituencies Development Fund Committee, needs to make that clarification.

Secondly, Hon. Deputy Speaker, because I sit in the Budget and Appropriations Committee, the National Government Constituencies Development Fund Committee needs to do more than waiting to present statements of disbursements. When we were doing the Supplementary Budget, I did not like the performance of the National Government Constituencies Development Fund Committee before us. They need to push the National

Treasury and the Budget and Appropriations Committee. We actually did this job on their behalf.

I thank you.

**Hon. Deputy Speaker:** Okay. Some of these things you can respond to in the next Statement that you will be giving. Just note them. That is the Statement that you will give because you will be giving it on... That is actually fairly straightforward, the Ksh4.7 billion and then we end that one.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD – K): Thank you, Hon. Deputy Speaker. I know that NG-CDF is not just for the National Government Constituencies Development Fund Committee, it is for the entire House — all the Members of this House. So, the Budget and Appropriations Committee should not wait to be pushed. I appeal to Hon. Samuel Atandi that, while I appreciate what you did, you should not wait to be pushed to capture this in the Budget.

The Ksh4.9 billion alluded to will not be Ksh18 million or Ksh20 million as stated by Hon. Atandi. The amount of Ksh13.7 billion given to all constituencies will be about Ksh48 million per constituency. From where we are, at above Ksh80 million we will, therefore, be at about Ksh128 million when we receive this. We are hoping to have received this by end of June. We will be at about Ksh128 million per constituency. The balance which I said can either be captured in Supplementary Budget II or in the main Budget, there is that comfort from Section 6 and Section 7 to the effect that the money will not be lost. There has to be verification to ensure that the money is due to some specific projects.

I thank you.

**Hon. Deputy Speaker:** Okay. Then we move to the next Order.

## BILL

### *Second Reading*

#### THE LAW OF SUCCESSION (AMENDMENT) BILL

*(Hon. Peter Kaluma on 11.3.202)*

*(Debate concluded on 11.3.2021- Morning Sitting)*

**Hon. Deputy Speaker:** We had resolved this one.

*(Question put and agreed to)*

*(The Bill was accordingly read a Second Time  
and committed to a Committee of the whole House tomorrow)*

**Hon. Deputy Speaker:** What is it, Hon. Kangogo Bowen?

**Hon. Kangogo Bowen** (Marakwet East, JP): Thank you, Hon. Deputy Speaker. I apologize for interrupting you. I want to raise a serious national issue, especially what is

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happening on Mombasa Road. We appreciate the Government's efforts to construct the road from Mlolongo to Westlands. However, the Chinese contractor on the ground has caused mayhem and nightmare for the people using Mombasa Road. There are Members in this House...

**Hon. Deputy Speaker:** I suggest that you raise it in the afternoon so that we get through the rigors of how you can raise it. What you are doing is fairly unprocedural. We have heard what you have said. However, it will be difficult for us to allow you to proceed. I want to ask you to approach the Clerks-at-the-Table, so that you can be given the best way of raising it and you do it in the afternoon.

We will go to the next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Deputy Speaker (Hon. Moses Cheboi) left the Chair]*

### IN THE COMMITTEE

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

#### THE LAND (AMENDMENT) BILL

**Hon. Chairman:** Hon. Members, this is a fairly brief Committee of the whole House. Please be very keen. We will finish it quickly. This is the Committee of the whole House to consider the Land (Amendment) Bill, 2019.

#### *Clause 3*

**Hon. Chairman:** Hon. Nyamai has an amendment. Proceed.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause—

Amendment of Section 12 of  
No. 6 of 2012.

3. Section 12 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section 12—

(13) A public body or institution shall apply to the Registrar for registration of public land allocated by the Commission in the prescribed form.

(14) The Registrar shall register public land allocated to a public body or institution by the Commission.

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(15) Pursuant to Section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act, 2019, the Registrar shall register land set aside by persons or a land buying company for a public purpose consequent upon a proposed development.

(16) Upon registration of land under Sub-sections 14 and 15, the Registrar shall issue a certificate of title—

- (a) in the case of an incorporated public entity, the certificate of title shall be issued in the name of the entity;
- (b) in the case of an unincorporated public entity, the Cabinet Secretary to the National Treasury as trustee; and
- (c) in the case of a county government, in the name of the county government.

Hon. Chairman, the importance of this amendment is to cure what Hon. King'ara may have missed. One, the amendment makes it clear that the honours of applying for registration of public land should be placed on a public body. Two, the amendment is also necessary to align the Bill to the Physical and Land Use Planning Act, 2019. The Bill refers to the Physical Planning Act, 1996, which was repealed. Three, the amendment is also necessary to make it clear who or which body shall be issued the certificate of title. That is either the Cabinet Secretary of the National Treasury or a certain corporation.

This amendment will also cure a matter that was raised by Hon. Otiende Amollo with regard to constitutionality in subdivision of land. Therefore, we have deleted Subsection 16 to comply with the Constitution. This is the only amendment that the Departmental Committee on Lands has. I have given the justification.

Thank you, Hon. Chairman.

**Hon. Chairman:** That is a detailed justification.

*(Question of the amendment proposed)*

I can see that there is no Member who is interested in contributing to this amendment. So, I will put the Question.

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

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

*(Clause 3 as amended agreed to)*

*(Clause 2 agreed to)*

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*(Title agreed to)*

*(Clause 1 agreed to)*

Having finalised that, I ask the Mover to move reporting. I thought that the Chair of the Committee would be the Mover. Proceed.

**Hon. Simon King'ara** (Ruiru, JP): Hon. Chairman, I beg to move that the Committee reports to the House its consideration of the Land (Amendment) Bill (National Assembly Bill No. 54 of 2019) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]*

*(Loud consultations)*

**Hon. Deputy Speaker:** Order Members! Let us have the Chairperson.

### **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

#### **THE LAND (AMENDMENT) BILL**

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Land (Amendment) Bill (National Assembly Bill No. 54 of 2019) and approved the same with amendments.

**Hon. Deputy Speaker:** Very well. Let us have the Mover to move agreement with the Report.

**Hon. Simon King'ara** (Ruiru, JP): Hon. Chairman, I beg to move that the House agrees with the Committee in the said Report. I also request Hon. Kabinga Wathayu, Member for Mwea, to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Deputy Speaker:** Let us have Hon. Kabinga.

**Hon. Josphat Kabinga** (Mwea, JP): I am Hon. Kabinga Wachira Wathayu wa Mucere. Thank you, Hon. Deputy Speaker. This is a very important Bill. I second.

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*(Question proposed)*

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Let us have the Mover of the Bill to move the Third Reading.

**Hon. Simon King'ara** (Ruiru, JP): Hon. Chairman, I beg to move that the Land (Amendment) Bill (National Assembly Bill No. 54 of 2019) be now read the Third Time. I also request Hon. Waihenya Ndirangu, Member for Roysambu, to second.

**Hon. Deputy Speaker:** Member for Roysambu.

**Hon. Isaac Ndirangu** (Roysambu, JP): I second, Hon. Deputy Speaker.

*(Question proposed)*

*(Hon. Owen Baya stood in his place)*

**An Hon. Member:** Put the Question.

**Hon. Owen Baya** (Kilifi North, ODM): I have a right to contribute to this Bill.

**Hon. Deputy Speaker:** Do not say that you have a right to contribute.

**Hon. Owen Baya** (Kilifi North, ODM): I apologise, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** The rights here are vested elsewhere. To show you that you do not have a right to contribute, I will ask you to sit down, as I consider whether I will give you an opportunity to contribute.

*(Laughter)*

Since you are a first-timer, I am sure that you meant that you wish to speak. Can you speak now?

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Deputy Speaker. I apologise for that. This is a very important Bill. Today, the land that is always taken away and grabbed because of the subdivisions will now be vested in the people through either the Ministry or county government. That secures the land.

My point is, when this law moves from here, I am sure it concerns the counties and probably, it will end up in the Senate. This is a very important piece of legislation that aims at securing the land that we have right now. How long the Senate takes could determine how much land is lost between now and then. My appeal to you is that we try to ensure that Senate fast-tracks these very important Bills. We have brought many Bills here but they end up getting stuck in the Senate, yet they have very many people and a lot of time to ensure that the Bills that come from the National Assembly are fast-tracked.

The spirit in which the Member of Parliament for Ruiru has brought this Bill is that he wants to solve the problems that befall land right now. But then what we will face is that Senate will take a year and probably this law will be finalized in the next Parliament. I would ask that the Senate be made to fast-track this Bill so that it helps the situation as it begets now.

I thank you.

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**Hon. Deputy Speaker:** Hon. Baya Yaa, of course I hear your sentiments loud and clear. The best we can do is to make sure that it lands in the Senate in good time. Every Member here has a Senate representative including yourself. I am sure you can also help by consulting with your own Senate representative from your county that they move with speed, as it has been done here. There is nothing much that the Office of the Speaker can do once the matter lands in the Senate. But Hon. Yaa, you have been heard loud and clear.

Let us then proceed.

*(An Hon member walked into the Chamber)*

Order! You must freeze like in the fridge.

*(Question put and agreed to)*

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

Next Order!

## MOTIONS

### *Second Reading*

#### THE NARCOTICS, DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL

*(Hon. Paul Koinange on 2.3.2020)*

*(Resumption of Debate interrupted on 11.5.2021 –Afternoon Sitting)*

I can see that there is not much interest in it. So, I believe we should conclude on this matter quickly. Is there any interest? I do not see any interest. Therefore, can I call the Mover to respond?

**Hon. Members:** Yes!

**Hon. Deputy Speaker:** Mover.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Deputy Speaker. Let me start by thanking all Members who have contributed and those who have suggestions to enrich the provisions of this amendment Bill. I accept that if there are any amendments or additional clauses, Members will bring them in the Committee of the whole House for processing.

Hon. Deputy Speaker, it is good to note that the framework which was set for combating abuse of narcotic drugs and psychotropic substances is contained in the Narcotics, Drugs and Psychotropic Substances Act of 1994. Despite that, several times we have seen the same substances pass through our country. This Bill then seeks to seal those loopholes that have been experienced though the Act is in place. It is important to note that enhanced provisions in the current Bill is to do with the punishment of those who handle narcotics or illicit drugs. Also, the

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finances that will emanate from the Act will be enhanced to make sure that they are punitive enough for people to be afraid of dealing with them. They will also make sure that those officers who assist in drug trafficking or concealing of those who are trafficking, are going to be punished to the extent of even losing their jobs.

It also speaks to the issue of those who are dealing with drugs outside Kenya by way of providing for information sharing between the Kenya Government and foreign governments. It is also good to note that people hiding behind the right to privacy to information; this is now addressed here to limit that right, so that information especially for traffickers regarding narcotics can be exposed.

This Bill is therefore very timely. I know that Members are quite interested. I have listened to the contribution by the Deputy Majority Whip and also the Member for Dagoretti South on the issue of the medicinal value of some of those substances like *marijuana* and industrial hemp. I expect to engage them further during the Committee of the whole House to consider if they have any amendments that are going to be beneficial to our people in this country. So, while thanking Members, I will also urge them to put in place and submit any additional amendments to enhance the Bill.

With those many remarks, Hon. Deputy Speaker, I beg to reply.

**Hon. Deputy Speaker:** Very well. Let me confirm the numbers now. I see that quite a number of Members have gone out shortly.

Now, I confirm that there are a few other Members in the alternative chamber outside. Therefore, I will proceed and put the Question.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

### *Second Reading*

#### THE ASSISTED REPRODUCTIVE TECHNOLOGY BILL

**Hon. Deputy Speaker:** That one is to be moved by the Hon. (Ms.) Millie Odhiambo-Mabona.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon Deputy Speaker for giving me this opportunity.

**Hon. Deputy Speaker:** I am very surprised that when I said that, very many people quickly corrected me. I do not know ...

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Deputy Speaker, Mabona is very important. I think I already have four or five names; it becomes the sixth- Millie Grace Akoth Odhiambo Mabona.

**Hon. Deputy Speaker:** Proceed.

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**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you. I was requesting whether I could lower my mask because I am going to speak for a while.

**Hon. Deputy Speaker:** Well, we have agreed as a House that we will listen to you and hear you well even with a mask. Let us proceed with the mask on. I mean you are very close to the Member for Nairobi there and others.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you. It is a bit of a challenge but it is okay, I will try. Thank you for giving me this opportunity. I move that the Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019) be read a Second Time. This is a Bill that seeks to provide for the regulation of assisted reproductive technology, to establish an Assisted Reproductive Technology Authority, to make provision in relation to children born of assisted reproductive technology processes, and for connected purposes.

Let me give a little bit of a background. There are several cases that have gone to the courts that deal with issues of assisted reproduction. In explaining the issue of assisted reproduction, we have instances where couples are not able to get children naturally. You will find that people who have been married for 20 to 30 years have been trying to have children, but are totally unable.

Currently, in Kenya, assisted reproduction is not illegal or unlawful, but there is no legal framework. So, what tends to happen is that many couples usually seek medical assistance hence are able to get children, but the children are not recognized legally. They are then forced to go to court for the court to declare their own children as their children.

Sometimes it is even complicated especially in cases of surrogacy where one mother carries a child for another woman to term, and then because the surrogate mother has bonded with the child, they change their minds and now want the child as their own. This may actually make the courts have the challenge and problem of dealing with those cases because they are not regulated by any law or regulation. So, it is a freefall where everybody does what they want, for instance, people charge any fees they want and patients can also be abused in the process because there is no legal framework.

The High Court requested Parliament to come up with a legal framework to assist in issues of assisted reproductive technology. Therefore, this Bill seeks to fill that void that the court has talked about.

As a Christian, I know there may be moral and ethical issues that may be raised. One of the things that I am seeking to do is to address the moral and ethical issues because we cannot bury our sons because the issue of assisted reproductive technology is going on, but it is not regulated. I have read the Bible, both the Old and New Testaments, and there is nothing in the Bible that precludes assisted reproductive technology.

In the olden days, because we did not have technology, people like Sarah and Abraham decided to use the traditional process and she got a woman for the husband which created conflict. We know of women, for example, Hannah, who cried to the Lord for years because they were not able to have children and God remembered them. We are living in days when our faith may not be as strong as the Hannah's and the Sarah's of the Old Testament who could pray until they reach the age of 100 years and have children.

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I want to declare my interest because I do not have a child, and I have not gone through the process of assisted technology because of lack of a legal framework. That is why I am declaring my interest. Other than the court, I want to give my personal experience on this issue. I came to this Parliament when I was fairly young of a reproductive age. I did not even think much about whether I am having children or not. The first salvo that was thrown at me when I wanted to vie for a parliamentary seat was that I cannot lead because I am a *lur*. *Lur* in my language means a barren woman. People even ask me why I mention it because it is a terminology that people do not talk about. It is stigmatized and looked down upon.

I thank God for bringing me to this House at such a time as this for a purpose, that I may be able to speak on behalf of thousands of women who cry and mourn in their houses, and who have been divorced because they do not have children.

Hon. Deputy Speaker, you have seen me having political disagreements with some male leaders including those who are not MPs like when I had a disagreement with Hon. Sonko. He told me that I should not speak until I have opened my legs and given birth. I am a leader and a strong woman. What about another woman who may not be as strong as me, and is being derided, looked down upon and is about to be chased from a home because she is not able to open her legs and have a child?

I have seen in my own constituency that when I have public meetings, people will address me by categories. I know that the issue of HIV/AIDS has been very stigmatized yet when I address the public, people will address me from that category. After I speak, people will come and say that they are farmers, fishermen and so on. The women who are HIV positive and who are on antiretroviral (ARV) drugs will stand up and tell me: “We also want our voices to be heard because we are *jondilo*.” *Jondilo* are those who take ARV drugs. They are not ashamed to say that they are on ARV drugs because they have HIV.

I am giving the example of HIV because it is one of the most stigmatized diseases yet one of the common things I have seen is that the women who have no children will not raise their voices because they are too embarrassed to do so. They will hide and come to see me after everybody else has gone. They will whisper to me so that others do not hear, and tell me: “*Mheshimiwa*, we are *lur* like you, that is, we are barren like you, and we do not have a voice.”

I am here to speak on behalf of all the *lurs* in this country. I was amazed at the number of women, and not just the women, but even men, who have since come to me. When I brought this Bill in the last Parliament, about three male MPs came to me and told me that they have had their children through assisted reproduction which saved their marriages. Hon. Joyce Lay who was a Member of this House broke down and cried when she narrated her story on how she was not allowed to take her own child because the child was born through surrogacy, and it was the court that had to give her the child.

There is a woman MP – she was not an MP by then, and I will not say who she is. If she wants, she can air her voice – who called me before I brought this Bill. Even though I say I have an interest, I brought this Bill mainly because of the voices I heard from women. That woman called me and told me: “Hon. Millie, can you please project our voices. I have gone through a horrendous time trying to have a child.” I am happy, as we speak, that she managed to get a child through assisted reproduction, and I also thank God that she is now an MP. I can see that she is not here today, but I hope that she will add her voice to this. A male MP – he is not here – who

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had told me that he wanted to second this Bill has had triplets through assisted reproductive technology. That is the reality.

However, not all the stories are rosy. When I brought this Bill, a young woman who is only 38 years old sent me a text message and told me that she had been divorced because she could not have children. I have even seen younger women aged 25 and 26 years who are being threatened with divorce because they have been married for two to three years, but they do not have children.

I am here to say that God has made us fearfully and wonderfully because the Bible says that I am fearfully and wonderfully made with or without children. Having said so, I am here so that a woman who may not have the level of confidence that I have – I do not care what you brand or do not brand her – and who may go to her early grave because of branding, may get a chance to be able to get children through assisted reproduction.

The Hon. Member that I am talking about is now in the House. She introduced me to a group of young women. They are different women who have now formed a support group of young women who are not able to have children. I went to their group. One of them also happened to be my relative. Many of them were in tears as they narrated their stories to me. Some of them have gone through this process five or six times. The average cost at that time was between Kshs500,000 and Kshs600,000, just for the hospital fee alone. If you were to put all other costs, it goes even much higher. When the process fails, you pay exactly the same amount. So, there are people who have paid up to Kshs5 million in trying to have children. I am here speaking for them. I urge Members that we pass this Bill so that we give those people opportunities, and we may save their marriages.

There is also an element of gender dynamics in relation to this issue. For the medics who are here, they will let you know that sometimes it is not just the fault of the woman. Sometimes it is also the fault of the man. However, the society does not care about that. If you read the poem titled *A Leopard Lives in a Muu Tree*, by Jonathan Kariara, it speaks to this issue. It speaks to a man who is not able to have children. He turns his face away so that his brother can sneak in and sire children with the wife and he says the children are born with stripes which resemble his brother. That is what he calls a leopard that lives in a Muu tree. The leopard is basically helping so that he can have children. It is different in our traditional societies.

The last time we were here, a lot of people were saying this is un-African. Those of us who think that it is un-African probably they do not know their tradition. I have researched amongst several of our communities. This process was there. This process was allowed in a lot of communities in varying forms. I can tell you, for instance, amongst the Luo community, if a woman was not able to have a child, what the woman would do is to get a relative of hers – either a younger sister or a niece – to have children with the husband. Those children are not considered the children of her sister or her niece. They would be considered her own. The other woman would be there not as a wife but for purposes of procreation. After that they would be treated as house girls or housemaids who are sent here and there. We are in a different world where we do not need to raise conflicts like that of Sarah in the Bible. Through technology, we can now help.

If you look at the original version of this Bill, it was written “In-Vitro Fertilisation”. I just want to thank Hon. (Dr.) Nyikal. He, through his own initiative and several other doctors and

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gynaecologists who were in this House in the last Parliament, told me that this Bill is very vital. I have since become very educated on medical terms. They told me “when you talk of IVF, it is only one form of assisted reproduction. There are different forms of assisted reproduction. Hence, we should be looking at a wider level.” That is why we no longer refer to this as the IVF Bill but as Assisted Reproduction Technology Bill. We have since had a discussion with them. I will be proposing further amendments based on further research and practices that we have seen in other countries. I encourage Members that we support this Bill so that not only should we then abide by the court order but we also help those who need our assistance.

To briefly take Members through what the Bill is about, Part I is the preliminaries which, of course, has the Short Title and Commencement date, Interpretation and Application sections.

Part II establishes the Assisted Reproductive Technology Authority that will be a body that regulates assisted reproduction. Right now because there is no law, the things that the church fears can actually happen because there is no legal framework. We can actually have people mixing human gametes with those of animals. It is, for me, an ethical issue. So, the proposed authority will be setting up regulations on what can be done and what cannot be done. It will also be a licensing body that will be enabling people who practise this assisted reproduction. Currently, we do not have any regulation. So, we have people doing anything, even people who are not experts. A lot of desperate couples are exploited in the process.

Part III highlights prohibited activities, including when and how long you can keep an embryo. It is suggested that if you can keep it for 10 years you need consent of parties, so that you do not have somebody using your eggs or your sperms without your permission. I can decide, seeing Mr. Speaker sitting there, he is handsome, brilliant, he can manage the House well and I somehow go and find his sperms and create a baby. This law seeks to protect that so that nobody uses your sperms without your permission except by law.

It also talks about posthumous consent, whether or not that should be allowed and if it is to be allowed, under what circumstances. I know this is a moot issue because I have been talking to a lot of people on the issue of assisted reproductive technology for procreation purposes. I have actually provided that it should be for procreation purposes only. I know the scientists and the doctors that I spoke to had told me to open it up because of the issues of technology and research. If we limit it, it means we cannot do research. For instance, when we have COVID-19, perhaps, some of those researches that we may do may help us. It also talks of circumstances for undertaking assisted reproductive technology where it is precluded, when it is allowed – like prohibiting taking of gametes from a minor except if they are sick.

Part IV also talks about the rights of parents, donors and children. What it seeks to do is to confer legal rights on the child. Perhaps, I want to say that what this Bill seeks is to entrench what we call “gestational surrogacy” as opposed to genetic or traditional surrogacy. What that means is that there are times when there is a woman who cannot carry a child on their own but will use somebody else to carry a child for her. What this Bill seeks is to ensure that the person who carries the child should not be the bearer of the eggs because it tends to create legal issues. If I have my eggs and I am the one who is carrying the child, it means, when I give birth to the child I will insist that it is my child because I am the biological. So, what we are seeking is gestational surrogacy so that the mother who is carrying a child for the intended parents has no

biological connection to the child. Again, I will let Members decide whether they want that or they want to expand it.

The other issue that it seeks to deal with which we have not included here but after further discussions I will bring via amendments, is the issue of national and international surrogacy. If you look at a country like the United States of America, in which a lot of states allow surrogacy, the price is very prohibitive. On the other hand, a country like Sweden is still grappling with the issue of surrogacy but for very interesting reasons. I was talking to one of the senior officers at their agency and the reason they do not allow surrogacy is because they say people can abuse the practice and force their own relatives to carry a pregnancy for them when they do not want to. They say, for example, I can psychologically force my sister to carry a child for me when she may not want to. Instead of leaving it open, we need to provide it in law. That is why I am talking about fixing it to gestational as opposed to traditional genetic surrogacy.

I will expect this House to give me direction as Members contribute, because one of the things is that if we find it acceptable then we can consider what is called medical tourism. The reason India is preferable to many Kenyans is because of the cost of a lot of their processes. When I was doing my research, I discovered that in the USA the process of surrogacy would cost between Ksh7.5 million to Ksh15 million on the prospective parents.

In Kenya, the costs may be much but not prohibitive. The Bill seeks not to entrench commercial surrogacy but non-commercial surrogacy. I would love to hear Members' opinions on that. What that means is that if you use a surrogate parent, you do not commercialise the process; you pay only the costs that are related to their carrying the child. That therefore means, if a woman will be carrying your baby for 12 months, you must make sure that she stays in a residence that you would love your child to stay in. She must have nutrition that is suitable for them. She should be able to access clinics and all the medical facilities. If she was working and stops working, you should be able to compensate her for the period that she is not working because she is carrying your baby.

The Bill prohibits setting a price for surrogacy so that people do not commercialise the practice. If you commercialise the practice especially in a country where people are struggling, then it is likely to be abused. On the other hand, if we find a friendly system to Kenyans and even to people from other countries, and with a proper legal framework, then people can come to Kenya on medical tourism that would then boost our economy. I know a lot of people have talked about the issue of child trafficking. Surrogacy will actually stop child trafficking, so that we will no longer have miracle babies. If somebody were to carry your child and there is a legal framework, then we will be seeing and following the development of the child for nine months, not for two months like in the case of miracle babies. We will know which facility you went to because this Bill provides for confidential record keeping. The Bill also has very clear provisions about who the mother of a child is.

Part V prohibits access to information except for valid legal reasons. Part VI provides for licensing and the conditions around which licensing can be suspended or stopped. Where the authority has gone beyond its powers, you can appeal first to the authority and then to the High Court. Part VII contains general financial provisions. Part VIII is a miscellaneous section containing offences and general penalties.

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Hon. Deputy Speaker, I will stop at that and ask Hon. Peters Owino to second. Thank you.

**Hon. Deputy Speaker:** Hon. Owino.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you for the opportunity, Hon. Deputy Speaker. I rise to second the Bill. This is a bipartisan approach. That is why the Chair of the Departmental Committee on Health asked me to second this Bill. It is not a women or men affair.

The Bill seeks to regulate rights and obligations relating to assisted reproductive technology. It aims to regulate the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Furthermore, the Bill aims to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the latter services.

Pursuant to provisions of Article 118 of the Constitution and Standing Order 127(3), the Committee through local daily newspapers, on Monday, 7<sup>th</sup> October 2019, published an advertisement inviting the public to submit memoranda. Further, through letters dated 5<sup>th</sup> March 2020, the Committee invited individuals and institutions to make presentations on this Bill. Those who presented their memoranda include the Ministry of Health, the Federation of Women Lawyers (FIDA-Kenya), Family Health Options Kenya (FHOK) and the Kenya Medical Association. Others were the Centre for Citizen Empowerment Programme, PATH, Intersex Persons Society of Kenya, Kenya Obstetricians and Gynaecologists Society (KEOGS) and Christine Kipsang' and advocate.

The Committee observed the following after having a lengthy discussion on this Bill:

1. The Bill seeks to provide regulation of assisted reproductive technology to prohibit certain practices in connection with assisted reproductive technology and to establish Assisted Reproductive Technology Authority and to make provision in relation to children born through assisted reproductive technology process.
2. The principal object of the Bill is to regulate rights and obligations relating to assisted reproductive technology. It also aims to regulate the use of assisted reproductive technology to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Furthermore, the Bill aims to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect the recipients.
3. In addition, the Bill contains provisions that define rights touching on, among others, issues relating to consent preceding assisted reproduction, such as handling of embryos resulting from assisted reproductive technology; protecting the identity, status and welfare of children born of assisted reproduction; and duties of persons who undergo assisted reproduction and their legal status as parents.
4. The Bill establishes an Assisted Reproductive Technology Authority to regulate the process, including licensing, standards, research and infrastructure related to assisted reproductive technology. The legislative scheme of this Bill has been modelled in a manner that addresses the balance

between the need to regulate ethics and advancement of modern science and technology.

5. The Committee noted that the Health Act, 2017 enabled the Cabinet Secretary to establish a directorate under the Ministry of Health to deal with specific areas of health. In this regard, and taking note of the need for rationalisation of semi-autonomous state agencies under the Ministry of Health, there were no sufficient reasons for establishment of the authority as there were existing structures that could be realigned to take on its role including the MOH Reproductive Health Unit.
6. The Committee also observed that the Bill lacked sufficient provisions to deal with pertinent issues arising from assisted reproductive technology such as prohibition of commercial surrogacy, provision of compensation mechanisms to ensure that service is not exploitative in nature, the need for prohibition of sex selection and abandonment of children when they are born.
7. The Committee also notes that Section 11 of the Births and Deaths Registration Act needs to be aligned with the proposed Bill to allow registration of children born out of assisted reproduction by commissioning parents as currently provided, registration can only be undertaken with the surrogate mother. This has posed a great challenge as the biological parents have to undertake the legal adoption process in order to be registered as parents.
8. The Committee finally noted that the Senate was in the process of considering the Reproductive Health Bill, 2019 whose objectives are to provide for rights and reproductive health care, set standards of reproductive health and also, provide the right to make decisions regarding reproductive health and for connected purposes.

This Bill seeks to provide legal framework for enforcement and implementation of reproductive health and assisted reproduction. However, the National Assembly Bill specifically deals with assisted reproduction and does not delve into the entire realm of reproductive health rights. In this regard, some memoranda received were misplaced to the extent that they proposed the amendments dealing with this aspect of reproductive health which were not relevant.

Hon. Deputy Speaker...

*[The Deputy Speaker  
(Hon. Moses Cheboi) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) took the Chair]*

Hon. Temporary Deputy Speaker, I see there is a change of guard. Sorry, I did not look up for long.

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**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Yes, there is a change of guard.

**Hon. Martin Owino** (Ndhiwa, ODM): From the Departmental Committee on Health, we are pleased that the Bill is before this House for the Second Reading. It is long overdue.

I wish to thank the originator and the Committee. We had a lot of time to deal with this. In the process, we will encourage Members to seek their hearts and vote for this Bill. As the originator has said, it has caused social distress in many families. It also causes economic distress because some families are paying too much in order to realise children. It can have medical implications and affect relationships. One of the things that human beings despise the most is rejection which has been seen in many families.

As the originator said, we are in a global village and many countries have structures and laws to guard this. The Committee will however have to do some amendments at the Committee stage especially on commercialisation of activities and compensation which is touchy and also see how we can hold to account those who are recipients so that they do not get away with the children they are contracted to carry for nine months and give birth. There are some grey areas which we need to implore all Members to think around so that we can get them together in form of amendments.

This is a good Bill. It will bring dignity to both women and men in their families. It will also bring social order when it comes to the family unit. Right now, many families are broken, many have already divorced, separated and others have experienced emotional suffering because of rejection.

On behalf of my Chair, Hon. Sabina Chege, and the entire Committee, I second the Bill.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kaki, do you want to speak to this one?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

I would also like to make a few comments in support of this Bill that was moved by Hon. Millie Odhiambo-Mabona.

I was the Chairperson of the Departmental Committee on Health in the 11<sup>th</sup> Parliament when Hon. Millie made an attempt to push for this matter regarding assisted reproduction.

At the outset, I support this Bill. It is a Bill that requires a lot of consultation so that matters to do with assisted reproduction can be done in an ethical way. I support it having looked at what the Committee has been able to do and all the institutions that they were able to meet, from the Ministry of Health that has given its in-depth analysis to this Bill, and also shown where there could be pitfalls. They had suggested amendments that are likely to come through the Departmental Committee on Lands, the county governments having interacted with it, different women organisations and institutions that seem to be supporting this Bill but also offering their guidance on areas that need to be changed and the Kenya Medical Association.

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In the 11<sup>th</sup> Parliament, Hon. Nyikal kept saying that this is a wonderful Bill. This is because assisted reproduction is happening in a haphazard way in our constituencies, in the villages. People make decisions, they agree, and then they implement. At times, it goes on quietly. When it comes to registration of children, it happens even though a lot of information is hidden. Registration officers identify parents in a way that is not legal. So, this is already happening and it is important that we have a legal framework as Hon. Millie said. I listened to her as she gave her own account. I would like to thank her very much for being forthright and straight. This is because there are many women who have reproductive issues who may not have the courage that Hon. Millie Odhiambo has; giving herself as an example. I wish to say that I know of so many young women, in their twenties and thirties, who are struggling to have children.

Therefore, this is a matter that needs to be taken up by this House. I have also seen an individual - a lawyer- who also went through this in depth and gave very strong recommendations.

Hon. Temporary Deputy Speaker, I have heard the Mover and the Seconder also talk about being careful about research in this area. It is because this is an area that can be highly misused, especially with regard to the children born without a clear legal framework. I still would like to agree with Hon. Millie. I think she was trying to give an example of exactly what is happening in her area. Within the Kamba community, assisted reproduction happens in an old and traditional way: if a woman cannot bear children, she is allowed by her family to bring another woman as her 'wife'. This 'wife' now bears children on behalf of the woman. Given the current concerns in our contemporary society, I think this is now going to be a bit too old and not easy to implement. Also, there is the issue of the current status of the economy. Therefore, I would like to say that this Bill is long overdue. The Kamba community, we may not be able to continue with the *Kaweto* concept where a woman bears children on behalf of a fellow woman who cannot bear children. Therefore, it is important that we get a legal framework as women of this country so that people can have children without having to go through the traditional approaches, which are very difficult to implement within the contemporary society.

Hon. Temporary Deputy Speaker, I have seen that the Departmental Committee on Health, led by Hon. Sabina Chege, has also done so well in focusing on the budgetary allocation for these matters. Indeed, this is a programme that will require serious budgetary allocation. I would also like to agree with the Committee that we may not need an authority to deal with these issues. When I was Chair of the Health Committee, I remember that there were so many authorities. Each and every specialization within the ministry wanted to have its own authority. I agree that we need to have this within the ministry and its departments. That way, they will be able to consider proper budgetary allocations for purchase of equipment and medicine, and ensuring that we learn from the international community.

There are so many countries struggling with this, as Hon. Millie Odhiambo has said. There are countries that have already got the way forward on how to deal with assisted reproduction. We can learn from countries that have already succeeded.

Hon. Temporary Deputy Speaker, as I perused through the Bill this morning, I learnt that it seeks to regulate rights and regulations relating to assisted reproductive health for individuals and couples. When it comes to individuals, I think it goes beyond the Ministry of Health. It

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involves the Ministry of Labour and Social Welfare. It affects children, especially when you talk about an individual who would like to have children. I am sure this can be taken care of as they move to the next step where they will be doing amendments.

I have also seen that this Bill is dealing with qualifications of a health practitioner. As I had said earlier, there are many individuals who are involved in assisted reproduction and taking advantage of the fact that there is no law. Therefore, this Bill is going to ensure that there are qualified medical practitioners, identified and registered by the Ministry. They must have the right technology to assist and ensure that we protect the rights of the recipients. The technology should not bring destruction that was not anticipated.

Hon. Temporary Deputy Speaker, the authority, as far as the Bill is concerned, is supposed to regulate the requisite processes, ensure that there are proper standards, and ensure that research is being done in an ethical way. My contribution to this is that all these can be done within the Ministry of Health without having to come up with an authority which will require a different budget. It will be an autonomous institution which may require a different budget. They can enhance the budget from the ministry.

Hon. Temporary Deputy Speaker, I would like to thank Hon. Millie Odhiambo for coming up with this Bill again and say that I support it. I support women in this country who are suffering because they do not have children and are struggling within their marriages. Let us take this opportunity to make sure that we support this Bill with all the amendments that will make it better. Let us make sure that this Bill that Hon. Millie Odhiambo has tried to push through in this House - I think this is the third time - sees the light of day.

Thank you Hon. Temporary Deputy Speaker for the opportunity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. (Dr.) Nyikal Wambura.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity, which I really appreciate.

*(Hon. David Sankok walked into the Chamber)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sankok, you are walking in with a lot of noise. You seem to be consulting with yourself as you walk into the House. That is not allowed! You can only consult with other Members not with yourself. You are shouting. Let us have Hon. (Dr.) Nyikal. Go ahead.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, let me start by really congratulating Hon. Millie Odhiambo for persisting and bringing this Bill back. The main object of the Bill is the regulation of assisted reproduction practice through technologies that are actually varied. There is: in vitro (IVF) fertilization, where the ovum is fertilized outside and introduced in the womb of the mother; artificial insemination, where you actually take semen and introduce it into the mother; and intracellular fertilization, where you actually take out the ovum, take a single sperm and inject into it and then introduce it. Therefore, there are various technologies. They are many. This Bill is important and is needed because a lot of couples actually suffer. Men suffer equally. We know women can hide their shame in tricky ways as has

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been said. However, it is true that women suffer a lot. Infertility is a big issue in the practice of gynecology. Therefore, there is need to solve that problem for the families that are involved.

Hon. Temporary Deputy Speaker, because of that the technologies that exist are going on in this country without any regulation at all. The problem is that this is causing a lot of distress to the people involved. It is very expensive and they have to go to other countries. They have to do it in a hidden way and, therefore, the few people offering the service are actually extremely expensive. If it is regulated and done openly then, obviously, there will be no problem. However, what is worse is the fact that all the undesirable aspects of assisted reproductive technology are actually not outlawed. So, even if things go wrong the practitioners may not be taken to court because they will not have broken the law.

To me, this is the biggest issue we need to address and this Bill does that. It establishes an authority that sets the standards of practice because some people will suffer since unqualified people will try to do this. People will suffer and can die because some processes are extremely critical. This authority will also set the processes of licensing who and what institutions can do this and in what circumstances it can be done.

It also outlaws all the practices derived from all the issues whether they are moral, legal or social. There are many issues around this for example, the obtaining of sperms from young males has to have a law. We have sperm banks but there is no law regulating them. The obtaining of ova from young girls involves some form of operation, which I know is being done illegally and women can die from this. Obtaining of embryos or gamete – this is when you put the ovum and sperm together at the early stage and later on it becomes an embryo which is a viable living organism. How will they be kept, utilised and for how long? This is extremely important.

What about their donation, the banks and consent? At what age should a male be allowed to donate sperms and at what age should a female be allowed to donate an ovum? These are issues which will be addressed in this. After we have done this if children are born, to begin with there will be issues of parenthood. If you get a sperm from one person and ovum from another person and introduce it into another person or couple, whose child is it? As it is now, there is no law that clarifies this. You have to go to court and the courts do not have clear guidance because there is no law.

It is also possible to do a sex selection during the process. So, some embryos will be thrown away because people are selecting the sex. But an embryo is the beginning of a human being. Do we just throw them away because we want a particular sex? This is important. When it comes to parenthood whether it is fatherhood, motherhood or if a woman carries an embryo to term is the child hers or the person who donated the ovum? So, this is an issue. What about fatherhood, can you imagine a situation whereby a young person in university donates a sperm and not being careful years later he is faced with a situation that he is a parent? How will that person be protected and how do we protect them from exploitation?



The embryos or gametes can be used to clone human beings. This is because at an early stage you can divide an embryo into the numbers you want and have identical people. Where shall we stop? This needs to be looked into. Therefore, this law will help us with this. These embryos are also called stem cells and can be developed to produce organs at one stage. People can start to export them so that they are used to create organs that are sold. At this moment, we do not have any law stopping us from doing that. So, people may say we should not go into it for legal and moral issues but remember that opens a space for other people to do it because there is no law they are breaking. So, we need to bring that into being. Think of the research itself. People can start to cross species. You can have a human ovum being crossed with an animal one. You do not know what research people can do. There has to be law that stops that. We need to have a law for the information that the children and the parents will need later on. Thirty years later what will happen? People may want to donate sperms when they are sick and fear that they might die. Sperms can be used posthumously. What is the law? When you talk of parties, is it only married couples that will actually be allowed to do this? What about couples that are not married? What does the law say? Worse still what about same sex couples? They may want to have children. So, we need the law. What about the commercialisation? Are you going to give sperms or eggs for a fee or embryos to be sold? How do you do that in surrogacy? Are you going to do...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Nyikal, finish in a minute.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Speaker, we need the law to help us in all these areas. In fact, all the fears, whether they are moral, religious, legal or social, if we do not have the law, are real. Anybody can do anything. For that reason, I support this Bill and call upon my colleagues to support it so that this practice can be done legally within our country. All other issues like tourism are secondary but this law can look into them as well.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Chachu.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to support this Bill. At the outset, I strongly support this Bill and appreciate Hon. Millie Odhiambo for this Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019).

I have had an opportunity of serving with Hon. Millie since the 10<sup>th</sup> Parliament. She is a special lady. Most of her Bills and the laws she has sponsored focus and are tailored for the most needy and vulnerable members of the society. I still remember Bills about children that she sponsored and many other similar ones. I may have to state that a few years ago while I was serving with her in this House – and we have been serving uninterrupted for that period anyway – I met a lady who is not even a Kenyan but who had a child with somebody and that somebody was not taking care of the child and the child was suffering. I really wondered who could help her. I remembered her Non-Governmental Organisation (NGO), The Cradle, which I have been associated with because both of us used to work with the civil society before we came to Parliament. I went and shared with her that story and through her intervention and her NGO, that woman got assisted. The child is in one of the best schools in Kenya today and that child's suffering ceased.

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This Bill is very similar to that. This Bill is trying to provide a legal framework for us to have assisted reproductive health technologies and services in this country. Not only having a legal framework but the Bill requires the Government to also invest in this reproductive health need. In short it is called ART. It alleviates the burden of infertility. It takes away the personal grief and suffering of couples who are infertile and are not able to have children. We know the grief and suffering the ladies who are infertile in our culture; the pastoralist community go through. They have a very low standing in the society. They cannot inherit from their husbands and most likely their husbands will go for a second wife because they must procreate and have children. The marriage is likely to end up in separation or divorce. We know so many of them in our regions. This technology is a big relief for them. If this Bill will enable them to have children and take away their suffering and grief, I have every reason to support it. This technology is the only hope and means for infertile couples to have children.

In 1978 the first child was born through ART. Since then, about 1.5 million children globally have been born through ART. According to the World Health Organisation (WHO) 68 million people experience infertility and most of them live in developing countries like Kenya. I have heard of some arguments against the ART especially in developing countries. It is argued that, since we are already overpopulated we should not enable more people, particularly the infertile women to have children. It is argued that this will increase our population and create more problems. It is also argued that since we have limited resources we should use our resources for more useful health concerns but not on this one. It is also argued that since we have so many challenges in our health systems, this may not be health care priority in our countries. This is total bullshit and total nonsense.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyua): You may want to use a bit of proper language, Hon. Ganya.

**Hon. Chachu Ganya** (North Horr, FAP): That argument is misplaced and does not hold water because couples have a right to have children, to be like any of us, be in a position to have children and procreate like the rest of us. We have enough resources but we are selfish, we do not use them strategically to support the most marginalized in the community. If in Kenya we lose about Kshs 2billion every day through corruption, how can you argue that we do not have enough money available to assist the very vulnerable members of our society?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyua): Hon. Omulele what is out of order?

**Hon. Christopher Omulele** (Luanda, ODM): This Member for Chachu is a ranking Member of this House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyua): He is the Member for North Horr, his name is Chachu.

**Hon. Christopher Omulele** (Luanda, ODM): He is Hon. Chachu the Member for North Horr, the biggest constituency in this country. Is he in order to state as a fact on the Floor of the House that we steal Kshs 2billion every day?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyua): Hon. Chachu, I am sure you cannot substantiate that, so you must rephrase your statement.

**Hon. Chachu Ganya** (North Horr, FAP): Hon. Temporary Deputy Speaker, I really respect Hon. Omulele's point of order on this and it will not be easy for me to substantiate the obvious at this particular minute. I, graciously withdraw for the sake of enabling me to continue.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Speak to what you can substantiate.

**Hon. Chachu Ganya** (North Horr, FAP): I still strongly believe we have enough resources to invest in this health care need for the most vulnerable members of our society. I have passion for this because many years back when I was in the university I had a friend who did not have a child. After many years I remember visiting the USA - which I do often - and I was told she had a problem. After using ART, today she has two beautiful girls in senior high school in the USA. It is possible and doable. I think our women and men who have these challenges - I am told even men have these challenges - can have children through this and live very dignified lives. Of course, there are some moral and ethical issues that people are going to raise but for these fundamental reasons and even being a very strong Christian, I fully support this Bill.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. (Ms.) Dennitah Ghati.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for granting me the opportunity to support the Assisted Reproductive Technology Bill by Hon. (Ms.) Odhiambo-Mabona.

Hon. (Ms.) Odhiambo Mabona has passionately pushed for this Bill and the recognition of women. Issues of fertility are, funny enough, considered women issues. In our culture and society, when a couple does not have children, it is usually a problem of the woman. Hardly does society think that men can be infertile or men cannot reproduce. Therefore, for me, this is a very genuine Bill. It is a Bill that is seeking to protect families.

Hon. Temporary Deputy Speaker, I served with Hon. (Ms.) Odhiambo-Mabona in the 11<sup>th</sup> Parliament when we had Hon. (Ms.) Joyce Lay. Hon. (Ms.) Odhiambo-Mabona has pushed this agenda in this House. Allow me to say that Hon. (Ms.) Odhiambo-Mabona deserves recognition because she speaks for the women and men of this country who have found it extremely difficult to conceive and to have children. Fertility issues are not just a matter for women. The fact that the Bill is seeking to provide a legal framework that is going to guide and govern how this work will be happening will definitely cushion women because women are the majority who are seeking these services in this country. I have had the opportunity to live out of this country for a long time. The issue of surrogacy is recognized in so many developed countries. There is nothing like a fuss out of it. Women are getting services of other women who completely decide, out of their own volition, to help a woman conceive.

Hon. Temporary Deputy Speaker, if you go to the rural areas, where we come from – leave alone Nairobi because in Nairobi nobody really cares – you will see how women are suffering in the hands of their mothers-in-law, fathers-in-law and their extended families. This Bill speaks for that Wanjiku in Isebania and Turkana. Women who are unable to have children are referred to using derogatory words. Look at where a woman who did not conceive or have children is buried when she dies in our communities. It is extremely terrible. We come from

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communities where we have seen these things happen. Hon. (Ms.) Odhiambo-Mabona speaks for so many of us, women, in this country who are seeking this kind of recognition.

Hon. Temporary Deputy Speaker, this Bill is going to establish an authority which will develop guidelines. I happen to sit with Hon. (Ms.) Odhiambo-Mabona in the same technical group that is called, “The Reproductive Health Bill Technical Group” – a *WhatsApp* group that comprises of women and men who are passionate about reproductive health. Issues of surrogacy are reproductive health issues and these are issues that are in our Constitution. We cannot talk about public health in this country without addressing reproductive health. Health is a devolved function. I am happy because if you look at this Bill you will realize that it addresses the issue of assisted reproductive technology authority.

Hon. Temporary Deputy Speaker, in line with our devolution principle, Part II of the Bill says that the authority may establish such branches or organs as it may deem necessary in this country to reach the women in *mashinani* who suffer at the hands of their mothers-in-law. If you do not have a child in the rural setting, it is a serious business. This is a Bill that has endorsements from various recognised women’s rights organisations, including Federation of Women Lawyers (FIDA). These are strong organisations that protect the rights of women. This is a Bill that seeks to protect the rights of a woman in marriage. If I am unable to conceive, how then can I still keep my marriage and continue to realise a family? We have seen cases of divorce where women do not conceive.

People must start looking at infertility as a joint issue. If people marry and a child does not come out of it, it is a problem of a woman. We must protect women in this country. This is a Bill that will help our mothers and men who rarely talk about infertility in this country. Through our technical working group on this Bill, we saw that there are so many other institutions in this country which address infertility issues. One of them is the Waiting Wombs. There are organisations that help women. Men and women who are unable to conceive share their experiences in the Waiting Wombs Institution in this country. We must regulate and help our people to live dignified lives.

I am happy because this Bill establishes the Assisted Reproductive Technology Authority which will not only look at the plight of women and men but will also protect the children who come out of this assisted reproduction. What are the rights of these children, as enshrined within the Children Act? Those children who come out of this kind of a union have rights that must be known. Hon. Joyce Lay gave extremely harrowing experiences at the hands of surrogates in the 11<sup>th</sup> Parliament. We were here in this House. Every Member of Parliament shed tears in this House. I am happy because she eventually got a child whom she is happy with. How then can we help in such situations, if we have a law that guides how all this work happens? We will not talk about divorce and misunderstanding within our families. Barrenness in this country is a taboo. It is stigmatised. A barren woman is divorced immediately after she gets married, even before they find out whether it is the man or woman who has a problem.

We must protect our women. We must ensure that their rights within marriage are protected, so that the family goes on very well. We cannot live in families where as a woman, you are thought of as the one who has a problem. You live in a situation where you are embarrassed before your in-laws. This Bill will give reprieve to so many women and men. It will bring social order, that is, the way the society must live. I come from Kuria Community. The

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Chair of the Departmental Committee on Lands has explained what happens in Kamba community. Just like in her community, when a woman is unable to conceive and she has come of age, she is allowed to marry another woman by my tradition. This is the woman who now bears children for her husband and life continues. It is a culture that is there. How do we enhance this culture in a more modernised way, so that everybody feels okay and our people who seek these services are not harassed or exploited? We are looking at the issue of exploitation. If health is a devolved function, how can we ensure that this healthcare reaches majority of our barren women who are in the rural areas where we come from?

Hon. Temporary Deputy Speaker, with those few remarks, allow me to support this Bill and thank Hon. Millie Odhiambo for speaking for so many women and men in this country who cannot speak on this issue. I highly support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Very well said, Hon. Ghati. Let us have Hon. Baya Yaa.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Temporary Deputy Speaker, for allowing me to speak on this important Bill for this country. I would like to appreciate and applaud Hon. (Ms.) Millie Odhiambo for this effort. From the outset, I would like to say that Kenya requires this law. The reason being that it will help stabilize families; families that are in distress and dire straits because of childlessness. The advent of technology is the beauty of living in this world today. Technology has come to solve the problems that we have. One of them is this assisted reproductive technology that we have today that can actually be used in this country to ensure that families become stable.

Today, there are many families where there is a lot of discord because they have never had a child. Either the man is unhappy, or the woman is unhappy because either of them are unable to bear children. The in-laws look at this woman and say: "Look at this woman, she came here but she is not helping to grow this family." However, using assisted reproductive technology is an opportunity that we have but the problem is that we do not have a legal framework. The opportunity presented here by Hon. (Ms.) Millie Odhiambo is that now we are going to have legal framework that can help these families have children.

Hon. Temporary Deputy Speaker, we have had a lot of depression cases in this country. We have had suicides as a result of depression. We have had people suffering from high blood pressure because of these issues. When we solve this problem by ensuring that there is a legal framework, we are probably going to see a decline in the number of depressed people in families. Also, we might see a decline in the cost of seeking medical care because of high blood pressure and related issues. Why? We are giving a solution to this.

This 12<sup>th</sup> Parliament needs to go into history that it actually came through for the country by ensuring that we have a legal framework for assisted reproduction. I have seen and read the Report and the several recommendations that have been made. I have been to India and they have very many specialized clinics for assisted reproductive health. When you go into those clinics, you will see many Africans and many Kenyans who leave this country carrying millions of shillings to India to ensure that they seek these services. When they do that, medical tourism benefits India so much. They do not seek it here because it is expensive. The few doctors who practise here are very expensive. These people spend a lot of money going to India to seek this treatment.

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However, with a legal framework that has started the journey in this House, we are going to see reduced costs and also allow specialists in this area to set up shop in this country. There are many young doctors who are trained in this area but they are unable to practise because we do not have a legal framework and so, they have to borrow frameworks from other countries to operate. I believe that with the introduction of this Bill and eventually enactment into law, we are going to have many doctors who will be able to assist. Many Kenyans have to travel to Nairobi and seek these services because they are only found here. However, with a legal framework, we will be able to have doctors empowered and able to set up shop in other parts of this country to offer this service.

Hon. Temporary Deputy Speaker, I have to draw your attention to the exploitation of young girls in this country by the few doctors who offer this service. They harvest their eggs and these girls do not even understand what is going to happen. These doctors then earn millions of shillings from this one egg or several eggs that they have harvested from innocent students. The university students are given lunch and probably Ksh10,000 and they go and think that they have earned something. However, even to protect the donors and the people who help in this process, we need this legal framework. To protect the donors and the people who help in the processes, we need this legal framework that is being proposed today in this House.

The question: “whose child is this?” will, probably, be sorted in this law. If you have donated an egg or sperm and somebody else has carried that baby, whose child is it? This law will sort it out. Again, there is the question of surrogacy. If you watch a movie called *When the Bough Breaks* which is a popular movie that depicts this surrogacy thing, you will see the pain and suffering of both the surrogate mother and the couple that was waiting for a baby. You will see the pain and suffering if you watch this movie. It is a classic when it comes to these issues of assisted reproductive technology.

Therefore, this Bill will give the rights and responsibility of both the family and the surrogate mother and all that. In Africa, a child that you have carried in your womb, whether the sperm or the egg came from someone else, will definitely be called your child and you will have some attachment. For this child you have given out there, it could bring a lot of stigma. Many couples or willing surrogate mothers may not want to go through the process because of the stigma that may be associated with it. This Bill tries to sort out that issue.

I have a question that Hon. Millie Odhiambo may want to consider. Is this only for married people or young ladies who do not want to get married today, but want to establish families? I am a Christian. I profess the Anglican faith and the idea of a family as father, mother and child. So, today, if a young lady who does not want to get married decides to go for in vitro fertilization or assisted reproductive technology, do we want to allow that in this country? The Catholics will ask that question. The Anglicans will also ask that question.

I want to ask it on behalf of the Anglicans: can a young woman who does not want to get married today seek the services of IVF then have five children on her own and we do not know who the fathers of these children are? Is that sorted out in this Bill or would you want to sort it out so that we know that these services can only be sought and clinics in this country can only provide IVF or any other thing to people who present themselves as couples who are legally married within the law?

If you look at the Bill that we have just passed here today, that is, the Law of Succession, that my friend, Hon. Kaluma, proposed in this country where he wants to protect families *vis-à-vis* this, I do not know... However, Hon. Millie Odhiambo, within the forest of laws that you know, we need to sort out that and let it come out very clearly so that religious organizations or Christian faith do not come and say: “No, this law will not be very good for this country because it goes against the spirit of what a family is.” That needs to be safeguarded so that we have a good law without necessarily being impeded by the religious and societal things that are there.

I support this Bill, but I also want to ask something. This Bill will, probably, stop child trafficking. People who are able to go out there and buy children do it because maybe they do not have a child. Child trafficking is becoming a very lucrative business. So, for those people who can afford to spend millions of shillings to buy a child, I also believe that they can spend some money to go for assisted reproductive technology. This will reduce that crime of child trafficking. Therefore, this Bill will sort out a lot of the issues that we have in this country.

There are very many families who go through a depressing journey of trying to get a child. When you decide to go for Assisted Reproductive Technology, you have actually set another depressing and frustrating journey because, one, it becomes expensive to travel outside the country. If you want to do it here in the country, it is also very expensive and there is no legal framework. So, if you eventually get a child, you will have to go to court to claim that child to be yours. That is why I think we need to stop. If you are frustrated in getting a child, you should not again be frustrated in trying to get ART services.

Thank you, Hon. Temporary Deputy Speaker. I pray that Members support this Bill; the issues that come out are sorted out and we are able to have a law that will help families, and stabilise families in this country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I am sure Hon. Millie is picking the questions and the issues. So, Hon. Millie, make sure you participate in this to the end so that we can collect everything—very important points.

Hon. Maoka Maore.

**Hon. Maoka Maore** (Igembe North, JP): Thank you, Hon. Temporary Deputy Speaker, for the moment to say a few words about this Bill.

First, I would like to state that it is a momentous moment for this House to actually join hands with Hon. Millie Odhiambo in putting this issue into legislation. We need to remember that you can have the ideas that you do not concretise into legislation. That is why we need to thank her for putting the effort, time, passion and commitment to ensure that we have this law in our statutes.

On the issue of barrenness, for those of us who are familiar with very many characters and figures in the Bible, we will remember the woman called Sarah. There is Rebecca. There is Rachel. In about two occasions they combine the husband and the wife—like when they have Zechariah and Elisabeth in the birth of John the Baptist. Both of them were old for the birth of John the Baptist and the miracle that happened after the prayers in the temple. We have Elkanah and Peninnah about the birth of Samuel. If you read the whole of 1Samuel 1, you will find the description of the agony that Hannah went through, praying to an extent of somebody in the temple describing her as drunk.

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I have just mentioned that to relate it to our traditional beliefs. They stigmatise barrenness or lack of children and then blame it on woman. Thanks to modern science. It has established that the majority of barrenness in the family is actually from the man. It is possible, with this Bill, that there are scientific methods of enhancing the chances of couples being able to have children. So, as we deliberate on this piece of legislation, we must be more emphatic about the limits and the sanctions involved that we are about to introduce and also emphasise that in our traditions and religion, we also recognise the steps made by modern science. As we do so, we will run away from stigmatizing women who are barren and embrace modern science. Also, as we embrace this science, we should not lose sight of abuse.

I have noticed almost every speaker has also emphasised about the commercial and criminal aspect of it and the regulations we ought to have. For example, if a child is born out of IVF, or a woman wants to conceive through sperms of a stranger, what are the regulations? Will she turn out to be a gold digger and after a short while want to know the father?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Maoka Maore, I will stop you there because I see you have very good points, so you do not cut them short. You have a balance of five minutes when the debate is back in the House. I think it is better for you to stop there, reorganise your thoughts and pick-up from where you will leave because of time. You can now sit.

The Bill had a total of three-and-a-half hours. We have a reminder of one hour and 58 minutes and this gives sufficient time for all these ideas to come together. I know some Members like Hon. Mule has a business idea around the issue, others have medical and economic aspects. Like Hon. Ghati said, Hon. Millie deserves a pat in the back because this is one of those issues or debate that typify giving a voice to the voiceless.

*(Applause)*

This is because of the stigma around fertility issues in our society. I am sure Members who have not spoken will ensure they are in the House to follow when it comes back in the Order Paper and give their good ideas.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, the time now being 1.01 p.m., this House stands adjourned until today, Thursday 13<sup>th</sup> May 2021 at 2.30 p.m.

House rose at 1.01 p.m.