

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 15th November, 2016

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

The Speaker (Hon. Ethuro): Order, Senators. I have a number of Communications to make.

MEETING WITH THE CABINET SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

Hon. Senators, on Thursday, 25th February, 2016, Sen. Muthama requested for a Statement from the Chairperson of the Standing Committee on Lands and Natural Resources on the management of community and public land in Machakos County. The Chairperson of the Standing Committee on Lands and Natural Resources responded to the Statement on 13th October, 2016. Thereafter, the House deliberated on the response and found it unsatisfactory. Members raised concerns about the ongoing subdivision of the land in question and resolved that any sale of the land in contention should be stopped until the issue is resolved.

I directed the Standing Committee on Lands and Natural Resources to invite the Cabinet Secretary, Ministry of Lands, Housing and Urban Development and the Chairperson of the National Land Commission (NLC) to a meeting of all Senators to deliberate on this important matter. In this regard, the Committee has invited the Cabinet Secretary and the Chairperson of the National Land Commission to address Senators, tomorrow, Wednesday, 16th November, 2016. The meeting will be held in this Chamber from 10.00 a.m.

Hon. Senators, the meeting will discuss issues concerning;

(1) The contested piece of land LR. No.11491/R in Kiima Kimwe, Muvuti Ward in Machakos County, more specifically as to whether it is public or community land.

(2) Fate of the more than 2,500 squatters who are currently occupying the said piece of land.

(Several Senators stood at the Bar)

(3) Parcels of land in Machakos County that have been set aside for public utilities such as schools, health centers and recreational centres.

(4) Steps taken by NLC and the Ministry of Lands, Housing and Urban Development to address concerns raised by residents of Machakos County regarding the contested piece of land.

(5) Steps taken by the NLC and the Ministry of Lands, Housing and Urban Development to address the long-standing land dispute in Mavoko Sub –County between the local residents and the East Africa Portland Cement Company.

In conclusion, I hereby direct that all committee meetings scheduled for tomorrow morning be suspended to allow Senators time to participate in this important meeting. I thank you.

Members, proceed to assume your seats.

(Hon. Senators entered the Chamber)

PERIODIC REVIEW OF THE SENATE STANDING ORDERS

Hon. Senators, Standing Order No.176(a) of the Senate Standing Orders establishes the Procedure Rules Committee table office, among others; proposing and considering proposed amendments to the Senate Standing Orders. Further, Standing Order No.249 requires the committee to undertake a comprehensive review of the Standing Orders at least once on every term of Parliament, not later than six months to the end of the term.

Considering that we are approaching the end of the current term, the Procedure and Rules Committee has commenced this important exercise. They invite views for Senators and proposals from Senators and other stakeholders on areas of our Standing Orders that may require amendments.

This exercise is particularly important for us as it is the first time the Senate will be undertaking a comprehensive review of its own Standing Orders for use by the incoming Senate. It is important that we seize this opportunity drawing from experiences over the last three-and-a-half years to refine and improve our Standing Orders in a way as to facilitate the efficient and expeditious processing of business by the Senate.

This is therefore, to request the honourable Senators that you forward all such proposals in writing to the office of the Clerk of the Senate not later than Friday, 25th November, 2016. The proposals will be considered by the Procedure and Rules Committee which will then table its report before the Senate for consideration.

I thank you.

Senators, I will assume my seat to allow you to assume yours.

(Hon. Senators entered the Chamber)

VISITING MEMBERS OF STAFF FROM VARIOUS COUNTY ASSEMBLIES

Hon. Senators, the final Communication from the Chair is on the visiting members of staff from various county assemblies.

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of the visiting members of staff from the various county assemblies who are on attachment at the Senate.

I request each member of the delegation to stand when called out so that he or she may be acknowledged in the Senate tradition.

They are:

1. Ahmed Alas –Wajir
2. Issa Samow – Wajir
3. Dennis Mwanza – Machakos
4. Susan Kiluva – Machakos
5. Daniel Murage – Laikipia
6. Valentine Maranga - Kisii
7. Naomi Ogero – Kisii
8. Rose Chepngo – Kericho
9. Koros Cheruiyot- Kericho
10. Kaltuma Nasir – Garissa
11. Ali Noor – Garissa
12. Anne Wanjiru - Laikipia
13. Mathew Kibui - Nyeri
14. Mary Wahome - Nyeri
15. William Sowa – Taita Taveta
16. Peter Ouyo – Uasin Gishu
17. Miriam Sawe – Uasin Gishu
18. John Simwa – Kakamega
19. Doreen Wesonga - Kakamega
20. Godana Abubakar – Tana River
21. Dennis Kogo – Nandi
22. Boniface Kiptoo – Nandi
23. Joyce Gathura – Nyandarua
24. Kennedy Mwaniki – Nyandarua
25. Josyline Nanjala – Bungoma

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

I thank you.

PETITION

ESTABLISHMENT OF BREASTFEEDING AND CHILD CARE CENTERS

Hon. Senators, pursuant to Standing order No.221(1)(a) and 225(2)(b), I hereby report to the Senate that a petition has been submitted through the Clerk by Mr.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Chrispinus Simiyu Wekesa and Ms. Grace Kerongo calling for the establishment of breastfeeding and child care centres in all major towns and urban centers in Kenya.

In their petition, the petitioners state that:

(a) THAT, parents in Kenya experience the challenge of finding suitable public spaces and premises for breastfeeding, cleaning and caring for infants, particularly for mothers who work in public places such as markets as well as when travelling.

(b) THAT, this problem also extends to Government and private offices which do not provide designated spaces for lactating mothers to breastfeed and take care of infants.

(c) THAT, noting that maternity leave is limited to three months when it is commended that babies be breastfed for up to one year, this state of affairs means that young mothers are forced to stop breastfeeding early in order to go back to work. This in turn adversely affects the development of the child.

(d) THAT, if established, the breastfeeding and child care centers would be economically sustainable as parents could pay a nominal fee for use of the facilities and further, would lead to employment creation amongst other benefits.

Consequently, the petitioners pray that the Senate investigates this matter and sets in place a legislative framework compelling the 47 county governments to set up breastfeeding and child care centres in all major towns and urban centres in Kenya.

Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations and clarifications in relation to the petition for not more than 30 minutes.

Hon. Senators, pursuant to Standing Order No.227(1), the petition stands committed to the relevant Standing Committee in this case, the Standing Committee on Labour and Social Welfare. In terms of Standing Order No.227(2), the Committee will be required in not more than 60 days from the time of reading the prayer, which is today, to respond to the petitioners by way of a report addressed to the petitioners and laid on the Table of the Senate.

Next Order.

PAPER LAID

REPORT ON ALLEGED CORRUPTION AND GROSS MISMANAGEMENT BY THE KISUMU COUNTY EXECUTIVE

Sen. (Dr.) Machage: Mr. Speaker, Sir, allow me to lay the following Paper on the Table of the House today, 15th November, 2016:

Report of the Joint Committee on Finance, Commerce and Budget and the Sessional Committee on Devolved Government on the Petition by some Members of Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive.

I thank you.

(Sen. (Dr.) Machage laid the document on the Table)

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

THE STATUS OF THE NATIONAL SECURITY COMMUNICATION SYSTEM

Sen. Haji: Mr. Speaker, Sir, I have the answer to the Statement that was requested by Sen. M. Kajwang but he is not here. This is the second time I am available but he is not available. You will remember that you ordered me on Thursday last week to bring the Statement. Therefore, I would like to have your guidance on this.

The Speaker (Hon. Ethuro): The Chairman of the Committee on National Security and Foreign Relations, Sen. Haji, if we start counting availability and how many times you have your statement ready, that may not be useful. I commend you for having the Statement ready. We will give the Member one more chance and we will proceed with that Statement.

(Statement deferred)

MURDER OF MR. MUSA KOECH FROM NANDI COUNTY

Sen. Sang: On a point of order, Mr. Speaker, Sir. Some four months ago, I sought a statement in this House from the Chairperson of the Committee on National Security and Foreign Relations regarding an incident where one of the residents of Nandi County from Bonchoge area was shot dead by police. You had directed that the Statement be availed in two weeks. Now, it is more than four months and the Chairman has not informed me of the status of that report. Therefore, I seek your guidance on the same. Since he is enthusiastic with Sen. M. Kajwang's statement, I was hoping that he would extend the same to my situation.

Sen. Haji: Mr. Speaker, Sir, I talked to him and he agreed with me that I will make an endeavour to give the Statement. I am now surprised that he is accusing me before all the Members. I will undertake to try and give it next week.

The Speaker (Hon. Ethuro): Sen. Haji, I suppose you invited it. Today is Tuesday. So, let it be next Tuesday.

(Statement deferred)

Let us go by the statements as per the Order Paper. We will start with Statement (a).

STATUS OF HIGHER EDUCATION LOANS BOARD LOANS ADVANCED TO UNIVERSITY STUDENTS

Sen. Karaba: Mr. Speaker, Sir, I have the Statement with me and I am waiting for your instructions. Can I go ahead in the absence of the Member who sought it?

The Speaker (Hon. Ethuro): Order, Chair. The fact that you have the Statement, it is only with you. Even the Clerks-at-the-Table do not have a copy and our rules are that

there are no ambushes. For now, avail the Statement to the Table so that they can make the necessary copies. That Statement will be issued tomorrow.

Sen. Kemb-Gitura: On a point of order, Mr. Speaker, Sir. I am very curious to know how the Chairman of the Committee on Education has the Statement yet the Clerk's Office does not have it. I thought that statements are given to the Office of the Speaker and then to the Chairs to issue them because it puts everybody in an awkward position when statements go to Chairs directly and nobody else knows about them. If that is the case, then, it ceases to be the property of the House and the Speaker's Office does not know. I think that is an anomaly that needs to be corrected.

Sen. Karaba: Mr. Speaker, Sir, I also cannot understand why I have the Statement without you having a copy. I do not know who is to be blamed in this case; whether it is me because I was given---

The Speaker (Hon. Ethuro): Order, Senator! How did you get the Statement?

Sen. Karaba: It was handed to me.

The Speaker (Hon. Ethuro): By who?

Sen. Karaba: By one of the officers here. I thought it came from your office but I am surprised that you do not have a copy. That can be checked later.

The Speaker (Hon. Ethuro): What the Deputy Speaker has said is the ideal position. Of course, we have had cases where the Chairs have been camping in some offices, including peeping at the desks. This is why we have created another device that irrespective of the means of acquisition of the document, the necessary process must be complied with by making copies to all the necessary offices.

Sen. Karaba, that is what we have directed you to do.

(Statement deferred)

Let us have Statement (b) issued by the Chair of the Committee on Devolved Government.

THE ROLE OF THE SENATE AND ITS ENGAGEMENT WITH THE COUNTY GOVERNMENTS

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I have had a chance to talk to the Senator who asked this question and she is no longer interested in pursuing an answer to the question. This was rather a strange question coming to the House as it seems to question the operations in the House. Although the question was directed to the Chair, my boss is the Speaker. It would require that I come to you to provide an answer for me to bring to the House. That was the nature of the question. I think that is the fallacy that the Senator has seen and she said she is no longer interested in following the question.

The Speaker (Hon. Ethuro): That Statement is vacated.

(Statement dropped)

We will now go to Statement (c) to be issued by the Chair of the Committee on Labour and Social Welfare, Justice Retired, Sen. Madzayo.

COLLECTION OF LEVIES BY MCSK AND KAMP-PRISK
FROM BUSINESS PREMISES AND PUBLIC TRANSPORT VEHICLES

Sen. Madzayo: Mr. Speaker, Sir, I have the response to the question that was asked by Sen. Kanainza but incidentally, she is not in. Last week when I received the response, I gave copies to the House including her. Therefore, she is well conversant with the contents of the response I want to issue. With your permission, allow me to proceed because this has been a long standing question that requires me to put to rest.

Mr. Speaker, Sir, I am seeking your guidance.

The Speaker (Hon. Ethuro): Let us give her one more chance. The Statement is postponed to Thursday.

(Statement deferred)

Let us go to Statement (d) to be issued by the Chair of the Committee on Education.

USE OF CORPORAL PUNISHMENT IN LEARNING SCHOOLS

Sen. Karaba: Mr. Speaker, Sir, I have copy of the Statement but I am sure I will be faced with the same predicament. I do not know whether you have a copy. If you do not have a copy, I have just received it. This is a statement we have been looking for the past two weeks and I have just received it.

The Speaker (Hon. Ethuro): Sen. Karaba, it will be subjected to the same procedure like your earlier statement. The Statement should appear on the Order Paper on Thursday this week.

Sen. Karaba: Thank you very much.

(Statement deferred)

FARMERS' PREPAREDNESS FOR THE PLANTING SEASON

The Speaker (Hon. Ethuro): We are now on Statement (e). I cannot see the Chair or the Vice Chair. Do we have any other Member of the Committee?

Sen. Madzayo: Mr. Speaker, Sir, I am a Member of the Committee but unfortunately, the Chairman or Vice Chair is not around. In that regard, I request that you allow me respond to it in the next one week. I believe that by Thursday, either the Chairman or the Vice Chair will be in. If they will not be in, I will undertake to take that responsibility to ensure that I respond to the question.

The Speaker (Hon. Ethuro): Why do you not take the responsibility of looking for them or responding to it by this Thursday? If you look at the nature of that Statement, it is quite critical.

Sen. Madzayo: Mr. Speaker, Sir, I am obliged.

The Speaker (Hon. Ethuro): We will also defer that.

(Statement deferred)

RELOCATION OF THE KENYA TECHNICAL TRAINING COLLEGE

The Speaker (Hon. Ethuro): The Member who requested for the Statement is on official travel. So, we will postpone that matter to next Tuesday.

(Statement deferred)

That is the end of statements because we have disposed all the remaining ones. Sen. Haji, regarding the one that was requested by Sen. M. Kajwang, is it okay for you to give it tomorrow?

Sen. Haji: Mr. Speaker, Sir, if I had powers, it would have been dropped but I am obliged by whatever you order although I made a lot of efforts. It is not fair that Chairmen are put to task and when they are ready, the questioners are not ready. That is not fair.

The Speaker (Hon. Ethuro): Sen. Haji, I deferred that Statement.

Sen. Madzayo: Bw. Spika, umetangulia ukasema *next order* lakini bado tulikuwa katika msitari tukiulizia hoja ya nidhamu. Kuna hisia Fulani ndani ya Bunge hili la *Senate*. Hii ni kwa sababu kuna wale ndugu wanaouliza maswali na jibu linapopatikana, inakuwa tena shughuli ya kumtafuta yule aliyeuliza swali. Hii hutendeka hata baada ya kumpatia stakabadhi ama majibu ya yale maswali. Kitu kingine ni kwamba kuyapata majibu ya yale maswali pia huchukua muda. Sijui kama utatupatia mwelekeo kuhusu jambo hili. Hii itatusaidia kuhakikisha kwamba anayeuliza swali lazima awe kwenye Bunge hili.

The Speaker (Hon. Ethuro): Order, Members. My screen is not working today.

Sen. (Dr.) Machage: Bw. Spika, kufuatana na pendekezo la Sen. Madzayo, ningependa kukujulisha ya kwamba niliamurishwa na Kiti chako kwamba nilete habari kuhusu uzembe wakuiba katika Wizara ya Afya majuma mawili yaliyopita. Lilikuwa swala la Sen. Wetangula. Niliamurishwa na nimejitayarisha leo, lakini utaona ya kwamba sikuorodheshwa katika orodha ya maswala yaliyotakikana. Hii ni vyemakweli?

The Speaker (Hon. Ethuro): Hon. Senator, you have raised those concerns starting with Sen. Haji. The Chair is sympathetic to the concerns of the Chairpersons but we have established that the Members who had asked for the Statements have equally lamented when the Statements do not come in good time. We need to be fair to each other. Therefore, it is important to note that if a Member was in the House but he disappears when they had agreed that the Statement will be ready at a particular time, that becomes a problem that needs to be punished. However, it is important for us to have the understanding that we have always had in this House when a Statement is not ready and it is pushed to another time. The same understanding should be applied when it is proved that a Member is not available when a Statement is ready. We have always said that a Member will be given one more time. The word will go out from the day of action to the next day.

We do not expect Members to be enemies. We expect you to be colleagues. If you know that a directive has been given and a particular Member has a Statement but is not available, you should be your brother's keeper. Sen. Madzayo has just done so for the Committee on Agriculture, Livestock and Fisheries. That is the spirit that we would like to encourage. Those are established norms in which we operate. We will proceed with the statement when one does not appear after being given an opportunity because it is the property of the House. Given that both ways do not work perfectly, we have to make some adjustments.

BILLS

The Speaker (Hon. Ethuro): Hon. Members, Order No.8 is a Division and we do not have the numbers. We will postpone that Order until the requisite numbers are obtained. Let us now move to Order No.9.

Second reading

THE COUNTY STATISTICS BILL
(SENATE BILL NO. 11 OF 2016)

(Bill deferred)

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF
ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)

The Temporary Chairperson (Sen. Mositet): Hon. Senators, we are looking at The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No. 8 of 2015)

Clauses 3-4

(Question, that Clauses 3-4, be part of the Bill proposed)

Clauses 5

Sen. Hassan: Mr. Temporary Chairman, I have sought leave from the Speaker. Sen. Sang will do it on my behalf because I have to attend to the County Public Accounts and Investments Committee (CPAIC) report writing session.

The Temporary Chairperson (Sen. Mositet): Could we hear from the Chairperson of the Committee on Legal Affairs and Human Rights?

Sen. Sang: Mr. Temporary Chairman, Sir, for the record, these are the Committee amendments as shown in the Order Paper. They are not amendments by the Chairperson, Sen. Wako. The advantage is that Sen. Hassan sits in the Committee; therefore, these amendments were agreed upon by the sponsor and the Committee.

Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT the Bill be amended by deleting clause 5 and substituting therefor the following new clause-

5. Pursuant to Articles 43 and 53(1)(c) of the Constitution every person has the right to –

- (a) the highest attainable standards of health which includes the right to health care services including reproductive health care services;
- (b) accessible and adequate housing;
- (c) reasonable standards of sanitation;
- (d) be free from hunger and to have adequate food of acceptable quality;
- (e) basic nutrition for children;
- (f) clean and safe water in adequate quantities;
- (g) social security and social assistance;
- (h) emergency treatment; and
- (i) education.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 6

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT clause 6 of the Bill be amended at sub-clause (2)(c) by deleting the words “national and county development plans” appearing immediately after the words “integrate, within their” and substituting therefor the words “respective policies”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 7

(Question that Clause 7 be part of the Bill proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 8

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT clause 8 of the Bill be amended by-

- (a) inserting the words “for purposes of this Act” at the beginning of the introductory phrase to subsection (1); and
- (b) inserting the following new sub-clause immediately after sub-clause (1)-

(1A) In undertaking its functions under subsection (1), the Commission may consult the Commissions established under Article 59 of the Constitution and any other relevant person or institution.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 9

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT clause 9 of the Bill be amended-

- (a) in sub-clause (1) by inserting the words “within six months of coming into office” immediately after the words “County Government shall”;
- (b) in sub-clause (3) by inserting the words “county” immediately after the words “rights within the” appearing in paragraph (a); and
- (c) in sub-clause (4) by inserting the words “for free or” immediately after the words “goods and services” appearing in paragraph (i) .

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 10-18

(Question that Clauses 10-18 be part of the Bill proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 19

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT clause 19 of the Bill be amended in sub-clause (3) by inserting the words “and any other criteria that it may publish in the Gazette” at the end of the clause.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 20

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT clause 20 of the Bill be amended by deleting paragraph (b) of sub-clause 2 and substituting therefor the following new sub-clause-

(b) in the case of conditional grants, disbursed directly to the counties and managed on behalf of the National Government by the respective County Government.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 21- 26

(Question that Clause 21- 26 be part of the Bill proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

New Clause 27

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after clause 26-

Transition

27 (1) Every county government with a county integrated development plan which took effect prior to the commencement of this Act, shall within six months after the commencement of this Act, amend its county integrated development

plan to bring it into conformity with this Act.

No. 17 of 2012

(2) The procedure set out under section 112 of the County Governments Act shall apply to the process of amendment of a county integrated development plan under subsection (1).

(New Clause 27 was read a First Time)

Sen. Sang: Mr. Temporary Chairperson, Sir, on behalf of Sen. Hassan, I beg to move:-

THAT, New Clause 27 be read a Second Time.

The importance of this new clause is that our county governments already have County Integrated Development Plans (CIDPs). This clause will impose the responsibility on county governments to review their CIDPs immediately after coming into force of this law to ensure that they capture the contents of this Bill, so that they can mainstream social and economic rights in their CIDPs.

Mr. Temporary Chairperson, Sir, it will not be lost on us to appreciate that the budgeting process in our counties is supposed to follow the CIDP. Therefore, if we have to achieve the objectives of this Bill, we must obligate our county governments, immediately this Bill becomes law, to review their CIDPs in line with this Bill so that in subsequent budgeting they allocate resources towards achievement of the objectives of this Bill.

I request Sen. Hassan to second.

Sen. Hassan: Mr. Temporary Chairman, Sir, I wish to second the amendment. The Bill envisages every county to have an economic and social rights strategic plan that is part of Section 10 of the County Governments Act, which provides for the County Integrated Development Plans (CIDPs). This places an obligation that within six months, they will all have to develop County Strategic Plans and Economic and Social Rights (CSPEsR) and integrate them within their CIDPs.

I beg to second.

(Question, that New Clause 27 be read a Second Time, proposed)

The Temporary Chairperson (Sen. Mositot): Division will be at the end.

The First Schedule

Sen. Sang: Mr. Chairman, Sir, I beg to move:-

THAT, the First Schedule to the Bill be amended in the heading by deleting the words "SOCIAL AND ECONOMIC" and substituting therefor the words "ECONOMIC AND SOCIAL".

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

The Second Schedule

(Question, that the Second Schedule be party of the Bill, proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 2

Sen. Sang: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended –

(a) in the definition of the expression subsidy programme by deleting the words “limited capacity” appearing immediately after the words “persons with” and substituting thereof the words “in need”;

(b) by deleting the definition of the expression “persons with limited capability” and substituting thereof the following new definition-

“persons in need” means a person who in spite of having a competent social support system, is unable to produce or purchase essential goods and services in adequate quantities and quality for short or extended periods of time; and

(c) by deleting the definition of the expression “vulnerable persons” and substituting thereof the following new definition –

“vulnerable persons” include women, older members of society, persons with disabilities, children including infants, school going children, youth, members of minority or marginalised communities, members of particular ethnic, religious or cultural communities, pregnant and nursing mothers, internally displaced persons and victims of conflict, sick persons with chronic diseases such as HIV/AIDS, persons living in precarious livelihood situations in rural areas, marginalised populations in urban areas, groups at risk of social marginalisation and discrimination and any other group that may be identified from time to time.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Title

Sen. Sang: Mr. Chairman, Sir, I beg to move:-

THAT, the title to the Bill be amended by deleting the word “and” appearing immediately after the word “Human Dignity” and substituting thereof the word “in”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

Clause 1

Sen. Sang: Mr. Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill be amended by deleting the word “and” appearing immediately after the word “Dignity” and substituting thereof the word “in”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Mositet): Division will be at the end.

We have come to the end of amendments of that Bill.

Sen. Sang, approach the Chair.

(Sen. Sang approached the Chair)

Sen. Sang: Mr. Chairman, Sir, pursuant to Standing Order No. 139, I beg to move that a Committee of the Whole reports progress on its consideration of The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No.8 of 2015) and seek leave to sit again tomorrow.

Sen. Haji seconded.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

The Temporary Speaker (Sen. Mositet): Could the chairperson report progress?

PROGRESS REPORTED

THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)

Sen. Hassan: I beg to report progress that a Committee of the Whole has considered The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bill No.8 of 2015) and seek leave to sit again tomorrow.

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee in the said Report.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate*

Sen. Haji seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Mositet): Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. Mositet) left the Chair]

IN THE COMMITTEE

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

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL (SENATE BILL NO. 13 OF 2015)

The Temporary Chairperson (Sen. Sang): Order, Senators. We are in the Committee of the Whole to consider Order No.10, which is, The Persons With Disabilities (Amendment) Bill (Senate Bill No. 13 of 2015).

Clause 3

Sen. Madzayo: Mr. Temporary Chairman, Sir, I beg to move:-

THAT Clause 3 of the Bill be amended-

(a) in sub clause (1) of the proposed new section 2C by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) two persons, one man and one woman, having knowledge and experience in matters relating to persons with disabilities, nominated by organizations representing persons with disabilities, in such manner as the county executive committee member may determine, and appointed by the Governor by notice in the *Gazette*;

(b) in the introductory clause of paragraph (b) of the proposed new section 2D by inserting the words “residing within the county” immediately after the words “ of persons with disabilities”;

(c) in the proposed new section 2F by inserting the following new sub clauses immediately after sub clause (2)-

(3) A member proposed to be removed under subsection (1)(f) shall be informed of the grounds of the proposed removal and shall be given an opportunity to be heard on the grounds of removal.

(4)The Governor shall be bound by the recommendation of the Committee under subsection 2(b).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): The Division will come at the end.

Clause 4

Sen. Madzayo: Mr. Temporary Chairman, sir, I beg to move:-

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause:-

Amendment of Section 4 of No.14 of 2013

4. Section 4 of the principal Act be amended-

(a) in subsection (1)-

(i) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) not more than four persons nominated in a manner approved by the Minister, by organizations representing persons with various categories of disabilities, at least one of whom shall be from a rural based organisation;

(ii) by deleting paragraph (b);

(iii) by deleting paragraph (c) and substituting therefor the following new paragraphs:-

(ca) the Principal Secretary in the Ministry responsible for matters relating to labour and social welfare or an alternate designated in writing;

(cb) the Principal Secretary in the Ministry responsible for matters relating to education or an alternate designated in writing;

(cc) the Principal Secretary in the Ministry responsible for matters relating to health or an alternate designated in writing;

(iv) by deleting paragraph (d); and,

(v) by deleting paragraph (g);

(b) by inserting the following new subsections immediately after subsection (1):-

(1A) The members nominated under subsection (1)(a) shall equitably represent the types of disabilities within the country.

(1B) The Council may co-opt not more than two members to sit in the Council, whose knowledge and skills are found necessary for the performance of the functions of the Council, and who shall have no right to vote.

(1C) A member co-opted under section subsection (1B) shall serve for a specified period as may be determined by the Council.

Mr. Temporary Chairman, Sir, the purpose of this amendment is to reconstitute the National Council of Persons With Disabilities. When fully constituted, the Council will comprise 22 members mostly drawn from the national Government institutions.

This amendment, therefore, seeks to reduce the number of members of the Council from 22 to seven. Secondly, it ensures that the membership of the Council equitably represents the various disabilities within the country. Thirdly, it ensures that persons co-opted into the Council would add value to the operations of the Council and such persons do not become permanent members of the Council.

(Question of the amendment proposed)

Clause 5

(Question, that Clause 5 be part of the Bill, proposed)

Clause 2, Title and Clause 1

(Question, that Clause 2, Title and Clause 1 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

That brings us to the end. Since we do not have the requisite numbers to vote, we need to report progress.

Mover.

Sen. Chelule: On a point of order, Mr. Temporary Chairman, Sir. Is it in order for us to do amendments when the concerned persons – the persons living with disabilities – are not here?

The Temporary Chairperson (Sen. Sang): Sen. Chelule, one, you are raising your point of order too late in the day; that is water under the bridge. Two, the amendments that have been moved by the Chairperson are from the Committee. Therefore, the moving of those amendments was perfectly in order. Three, when you indicated that persons living with disabilities are not in the House, I suspect you meant the sponsor of the Bill, Sen. Godliver Omondi. The Senator had no objections to these amendments by the Committee. If she had any objections, she would have been in the House to raise those concerns. We are, therefore, perfectly in order.

Sen. Murkomen: On a point of order, Mr. Temporary Chairman, Sir. I sympathize with the position of Sen. Chelule. You have said that Sen. Godliver Omondi has excused herself, but is it in order for Sen. Njoroge, who has been vocal on all other matters, to be absent when the most important matter - a Bill that represents the constituency that sent him to represent them here – is being dealt with?

In your own retreat and ruling in the future, you should take note that when matters touching on persons with disabilities come to the House, Senators like Sen. Njoroge should spend more time to focus on them, instead of being vocal on non-issues.

The Temporary Chairperson (Sen. Sang): Sen. Murkomen, you are completely out of order. On several occasions, we have had Bills in this House relating to all manner of sectors. For example, you come from a county that largely thrives on sports and we have had Motions and Bills relating to sports. However, we have never held anything against you for being absent for one reason or another whenever those matters have been dealt with. I want to leave it at that.

Sen. Madzayo: Mr. Temporary Chairman, Sir, I wish to inform the House that the two Senators living with disabilities have actively participated in my Committee and are fully aware of the amendments that have been moved today.

The Temporary Chairperson (Sen. Sang): Very well.
Proceed.

Sen. Madzayo: Mr. Temporary Chairman, Sir, pursuant to Standing Order No.139, I beg to move that the Committee of the Whole reports progress on its consideration of The Persons With Disabilities (Amendment) Bill (Senate Bill No.13 of 2015) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL (SENATE BILL NO. 13 OF 2015)

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Persons with Disabilities (Amendment) Bill (Senate Bill No.13 of 2015) and seeks leave to sit again tomorrow.

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

Sen. Murkomen seconded.

(Question proposed)

(Question put and agreed to)

Next Order.

COMMITTEE OF THE WHOLE

(Order of the Committee read)

[The Temporary Speaker (Sen. Mositet) left the Chair]

IN THE COMMITTEE

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

**THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)**

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are now in the Committee of the Whole to consider The Basic Education (Amendment) Bill (National Assembly Bill No. 35 of 2014).

Clause 3

(Question, that Clause 3 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 4

Sen. Karaba: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 4 of the Bill be amended in the proposed new section 20-

(a) in sub-clause (1) by-

(i) deleting paragraph (a) and substituting therefore the following new paragraph-

(a) the county commissioner who shall be the chairperson of the Board;

(ii) deleting paragraph (d).

(iii) deleting paragraph (i) and (d);

(iv) deleting paragraph (k) and substituting therefore the following new paragraph-

(k) one person jointly nominated by the Primary Schools Heads Teachers Association and the Secondary School Principals' Association.

(b) by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) in appointing a person as a member of the County Education Board, the Cabinet Secretary shall-

- (a) observe the principles of –
 - (i) gender equity
 - (ii) regional, ethnic and religious balance;
 - (iii) transparency;
 - (iv) openness;
 - (v) competitiveness; and
 - (vi) equal opportunities for persons with disability; and,
- (b) ensure that persons appointed meet the requirements of Chapter Six of the Constitution.
- (c) in sub-clause (4) by deleting the words “Member of Parliament” appearing at the beginning of the sub-clause and substituting therefore the words “Senator and Women Representative”.

(Question of the amendment proposed)

Clause 5

Sen. Karaba: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 5 of the Bill be amended-

(a) in the proposed new section 25A-

(i) in sub-Clause (2) by deleting paragraph (h) and substituting therefor the following new paragraph-

(h) one person jointly nominated by the Primary School Head Teachers Association and the Secondary School Principals Association;

(ii) by deleting sub-Clause (3) and substituting therefor the following sub-Clause-

(3) In appointing a person as a member of the Sub-County

Education Board, the Cabinet Secretary shall-

(a) observe the principles of-

- (i) gender equity;
- (ii) regional, ethnic and religious balance;
- (iii) transparency;
- (iv) openness;
- (v) competitiveness; and
- (vi) equal opportunities for persons with disability; and

(b) ensure that the persons appointed under sub-section (1) meet the requirements of Chapter six of the Constitution.

(b) in the proposed new section 25B-

(i) deleting the words “village polytechnic” appearing immediately after the words “private youth” in paragraph (e) and substituting therefor the words “vocational centers”;

(ii) by deleting paragraph (g) and substituting therefor the following new paragraph-

(g) facilitate the registration of basic education institutions and for that purpose, make such recommendation to the County Education Board as it considers necessary;

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 6

Sen. Karaba: Mr. Temporary Chairperson, I beg to move:-

THAT Clause 6 the Bill be amended in the proposed new sub-section (4) by inserting the words “in consultation with the Council of Governors” immediately after the words “Teachers Service Commission”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 7

Sen. Karaba: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 7 of the Bill be amended-

(a) by inserting the following new paragraph immediately after paragraph (a)

(aa) deleting the words “at their own expenses” appearing immediately after the words “chaplains”.

(b) in paragraph (c) by deleting the new proposed paragraph (f) and substituting therefor the following new paragraph-

(f) to make recommendations in consultation with the Teachers Service Commission on persons appointed or deployed as head teachers, principals and their deputies in public sponsored institutions.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clauses 8-12

*(Question that Clauses 8, 9, 10, 11 and 12
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 13

Sen. Karaba: Mr. Temporary Chairperson, Sir, I beg to move:-

Amendment of
Section 56 of
No.14 of 2013

THAT the Bill be amended by deleting Clause 13
and substituting therefore the
following new Clause-

13. Section 56(1) of the Principal Act is amended-

(1) by deleting paragraph (a) and substituting
therefor the following new paragraph-

(a) three people elected to represent parents of the
pupils in the school or from the local community;

(2) by inserting the following new paragraph
immediately after paragraph (f)-

(fa) one person co-opted from the Parents Teachers
Association;

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 14

(Question that Clause 14 be part of the Bill proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

New Clause 13A

Sen. Karaba: Mr. Temporary Chairperson, Sir, I beg to move:-

Amendment of Section 94

of No.14 of 2013.

THAT, the Basic Education Bill, 2014 be amended by inserting the
following new clause immediately after Clause 13:-

13A. Section 94 of the Principal Act is amended by inserting the following new
sub-section immediately after sub-section (1)

(a) Inserting the following new subsection immediately after subsection (1)-

(1A) The National Council for Nomadic Education in Kenya shall be a body
corporate with perpetual succession and common seal and shall, in its
corporate name, be capable of-

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or
disposing of moveable and immoveable property;

- (c) entering into contract;
- (d) undertaking or performing all other activities necessary for the proper performance of its functions under this Act that may lawfully be done or performed by a body corporate.

(Question, that the New Clause 13A be read a Second Time proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Clause 2

Sen. Karaba: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 2 of the Bill be amended by deleting paragraph (b) and substituting therefore with the following new paragraph-

(b) by deleting the definition “manager” and substituting therefore the following new definition-

“manager”, means a person appointed by the proprietor with the approval of the Cabinet Secretary to coordinate and oversee the implementation of education policies and guidelines in an institution of basic education and training and may perform delegated teacher management functions.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Title and Clause 1

*(Question that the Title and
Clause 1 be part of the Bill proposed)*

The Temporary Chairperson (Sen. Sang): Division will be at the end.

Hon.Senators we do not have the numbers to proceed to the division. We will therefore report progress.

Sen. Karaba: Mr. Temporary Chairperson, Sir, pursuant to Standing Order 139, I beg to move that the Committee of the Whole reports progress of its consideration of The Basic Education (Amendment) Bill (National Assembly Bill No. 35 of 2014) and seeks leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED**THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.35 OF 2014)**

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that a Committee of the Whole has considered The Basic Education (Amendment) Bill (National Assembly Bill No. 35 of 2014), and seeks leave to sit again tomorrow.

The Temporary Speaker(Sen. Mositet): The Mover, Sen.Karaba.

Sen.Karaba: Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee of the Whole in the said report.

The Temporary Speaker(Sen. Mositet): Did you have a seconder?

Sen. Karaba: No, Mr. Temporary Speaker, Sir. The one I had is not in the House.

The Temporary Speaker(Sen. Mositet): Can you get one?

Sen. Murungi seconded.

(Question proposed)

(Question put and agreed to)

BILLS*Second Readings***THE CYBER SECURITY AND PROTECTION BILL
(SENATEBILL NO. 12 OF 2016)****THE IMPEACHMENT PROCEDURE BILL
(SENATEBILL NO. 8 OF 2016)**

(Bills deferred)

**THE TREATY MAKING AND RATIFICATION
(AMENDMENT) BILL(SENATEBILL NO. 5 OF 2016)**

The Temporary Speaker(Sen. Mositet): Sen. Haji.

Sen. Haji: Mr. Temporary Speaker, Sir, the purpose of this Bill is to amend the Treaty Making and Ratification Act No. 45 of 2012 in order to reinstate the role of the Senate in the Treaty making and ratification process.

The Constitution of Kenya Article 2---

The Temporary Speaker(Sen. Mositet): Sen. Haji, you need to move by saying that you are reading the Bill for the Second Time before you start explaining. Just read it the way it is, and say you beg to move.

Sen. Haji: Mr. Temporary Speaker, Sir, thank you. I stand corrected. I beg to move that The Treaty Making and Ratification Act No. 45 of 2012 be read a Second Time.

As I said earlier, the Constitution of Kenya Article 2(6) states that:-

“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

Pursuant to Article 94(1) of the constitution:-

The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

Further, Article 94(5) states:-

“No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.”

Mr. Temporary, Speaker, Sir, as we all know, Parliament consists of both the National Assembly and the Senate. Consequently, the function of considering and approving the ratification of treaties is a function that resides in both Houses of Parliament in exercise of their shared legislative authority under Article 94 of the Constitution.

Mr. Speaker, Sir, the Constitution was very specific on treaty making. However, when the British Government and the Kenyan Government entered into a defence pact recently, it went to the National Assembly and without referring it to us. They deleted the power of the Senate. That is what we are trying to address because the Constitution is very specific that Parliament is made up of both Houses. Therefore, such treaties must be considered by both Houses. Therefore, the amendment is addressing the position that Parliament should have its role in treaty making. Therefore, we want that power table office be reinstated to us as it is with the National Assembly.

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

Sen. Murungi: I second.

(Question proposed)

The Temporary Speaker (Sen. Mositet): Hon. Senators, I am not seeing any request. I thought we have very senior counsel in the House.

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to support this very important Bill. This country has a new Constitution. The provisions of the Constitution of Kenya 2010 are well thought out. This country adopted the Constitution after a long process of negotiations. It is unfortunate that we have institutions in this country who still think that the country is still being governed by the old constitution. There are new institutions courtesy of the new Constitution. Previously, we had a unicameral Parliament. Under the new Constitution, we have a bicameral Parliament; that is the Senate and the National Assembly. However, many of our people think Parliament is made up of the National Assembly.

It is unconstitutional for Members from one Chamber to propose amendments to various legislations without, including participation of the other House. For example, the Bill that the National Assembly passed to remove the role of the Senate in the process of ratifying treaties is completely unconstitutional. The Members moved an amendment

to remove the contribution of the Senate to that process and they know that the treaties as provided under the Constitution form part and parcel of the legislation in this country. There is no institution as mentioned by the chairperson that has the authority to make legislation to the exclusion of the Senate. This is one of the challenges that we have faced in this country. For the last three years, we have battled as a Senate to entrench the responsibility of the Senate in the passage of Bills. It must be understood that there is a point in having the Senate to look at legislations because the responsibility of this House is to look into the affairs, the interests and serve to protect the interest of counties.

Mr. Temporary Speaker, Sir, some of the treaties that this country has ratified have serious implications with regard to agriculture and health and yet those two functions are fully devolved. Therefore, there is no way that this country can be treated to a circus where devolved functions like agriculture, health and infrastructure, this country will be committing itself and ratifying some of the treaties within those sectors. The contribution of the Senate must be mainstreamed and must be ensured in these Bills.

I want to congratulate the Chairperson for bringing up this amendment. However, I am saddened by the fact that we had a situation where even the President was misled into signing an amendment Bill that was contrary to the Constitution that eliminated the contribution and the role of the Senate in the ratification process of treaties in this country. Members of the National Assembly must rise up to the occasion and appreciate the fact that we are living in a new constitutional dispensation.

We need to appreciate the roles given to each of the Houses of Parliament by the Constitution. This is one of those important Bills that even as we discuss in this House today, we must sit down and reflect on the relationship between the two Houses. On several occasions, we have had an initiative driven by membership of this House to look at the Constitution afresh. We were able to point out the issues and the areas that should be amended so that this Constitution can lead to the spirit of what Kenyans expected after passing it. If we, as a Senate, will not be serious in protecting this Constitution, there will be systematic changes to it. Some of them will take the form of an Act of Parliament like in this case where an Act of Parliament was purportedly enacted to try and address a constitutional provision. Therefore, we, as a House, must be able to defend this Constitution.

Mr. Temporary Speaker, Sir, it is important for us to do a comprehensive review of the Constitution. Kenyans are aware of the process that was started by the National Assembly last year where they devoted some resources into a review of the Constitution. Members are aware the report said that some institutions need to be abolished. They even went to the extent of suggesting that the Senate should be abolished. What did you expect from a procedure or a process where one House is giving and devoting resources towards a review of the Constitution? The position of the National Assembly has always been known with regard to the position of the Senate, county governments and many other institutions. It has in one way or another felt threatened by the execution by the mandate of those institutions.

Mr. Temporary Speaker, Sir, it is therefore, important for this House to demand for that report that was done by the Auditor-General. I understand it was an audit into the Constitution. This will enable us, as a House, to ventilate and point out the issues. We do

not want to dismiss the document in its entirety. Some of the key provisions might have been influenced by the position taken by the National Assembly on several occasions.

We need to review the report and ensure that we entrench the position of the Senate table office protect the interest of the counties such that county governments are properly entrenched within the Constitution. We must ensure that independent institutions including the Ethics and Anti-Corruption Commissions and other Commission are protected as provided for by the Constitution. The independence of the Judiciary, Parliament and the Executive must be entrenched in the Constitution.

In terms of Parliament, we have had discussions in this House on how to ensure that the two Houses exist in a harmonious way. We should ensure that Bills flow between the National Assembly and the Senate. We should ensure that Article 110 of the Constitution is not used in a manner to disadvantage this House in the passage of Bills. This House is being set up for failure by our partners in the National Assembly. I have sponsored four Bills which were approved by this Senate. They are lying at the National Assembly. The National Assembly has not taken steps to prioritize the work of this House.

We must also, as Senate, sit and ask ourselves how we will address this challenge. On several occasions, a Bill from the National Assembly rarely takes more than a month and it is scheduled in the Order Paper of the Senate, we dispose with it and make them happy. At the end of the day, when 2017 comes and each of the Houses will have to produce a report card, we will see tens of Bills that have been processed and passed that originated from the National Assembly. We will have a lot of Bills that have originated from this House but never saw the light of the day.

On some of those accounts, Kenyans will be presented with a skewed report card that the National Assembly has passed over 150 Bills into law and that the Senate has passed about 15 Bills only, say, the Division of Revenue Bill, the County Allocation of Revenue Bill. Yet, it is a fact that Members of this House have developed the highest number of private Members Bills as opposed to the other House. We need to find a working formula between the Senate and the National Assembly. Each of these Houses must hold their counterpart in high esteem in consonance with the Constitution.

It is unfortunate that one House would think that they have a greater mandate and theirs will illuminate the role of the other House. This House has always respected the position of the National Assembly. It is high time that the National Assembly respects this House. I congratulate the Chairperson of the Standing Committee on National Security and Foreign Relations for taking up this matter and bringing up this amendment Bill. I hope we will pass this Bill. The only tragedy is that once this Bill is passed, it has to be taken to the National Assembly. The same institution that amended the law to eliminate the role of the Senate in treaty making is the same institution that once we pass this Bill, we will present it to for ratification.

Mr. Temporary Speaker, Sir, whereas common logic would dictate that we should have forgotten about this thing because it is still going to go to them, it is important for us to underscore what the Constitution says. The reason why the chairperson of this committee has brought up this amendment is because it is the right position as provided for by the law. This is a Bill that seeks to restore one of the mandates given to the Senate that the National Assembly has tried to take away through the back door. It is a Bill that

all of us should support and approve in the shortest time possible. It should go to the National Assembly and we hope it will see the light of the day. They should look at the provisions of the Constitution and approve it so that we have the constitutionally provided means of ensuring that the treaties that this country enters are ratified in accordance with the Constitution.

With these remarks, I beg to support.

The Temporary Speaker (Sen. Mositet): Well done, Senator.

Sen. Wako: Mr. Speaker, Sir, thank you for giving me this opportunity to speak on this important Bill. It is a Bill that has been brought by the Chairperson of the Committee which deals not only with national defence but also foreign relations.

It is appropriate that I speak on this Bill because I have just come from New York and last Friday, we had elections to the International Law Commission which is one of the five organs of the United Nations. The organs under the United Nations Charter include; the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice and the International Law Commission. I was re-elected for another five-year term starting January 2017.

The International Law Commission is concerned with codification and progressive development of international law. In fact, at our last session in May, we were concerned about the Vienna Convention on the law of treaties. What came out clearly is that there is now a developing international law that needs codification on the way treaties are ratified. In this country, under the old Constitution, there is one main method but there are really two methods of ratifying treaties. One was Cabinet decision that a treaty can be ratified. However, under the new Constitution, the treaty can only be ratified by approval of Parliament.

This is a very important part of legislation in this country. Article 2(5) comes after the word “Any law” including customary law that is inconsistent with this Constitution is void to the extent of its inconsistency. After that, we have paragraph 5 and 6. Paragraph 5 talks about the general rules of international law. In the process of ratification and the country adhering to the provisions of the international customary law and the provisions of the treaty that has freely entered into, it may very well be that that treaty could supersede a bit of the Constitution. For example, if under the current Constitution, Kenya entered into an obligation or a union with a neighbouring country, then that treaty can only be entered into by amending the Constitution of Kenya to permit that union to take place. When one talks about issues of integrity, it is the whole purpose of integration, particularly economic and political integration. It is about a nation ceding part of its sovereignty to a larger body like the African Union or the East African Community and so on. So, to the extent that a legislation that is ratified in a treaty can have those effects in Kenya, it becomes important that that legislation has to be endorsed by Parliament under Article 94.

Under Article 94, Parliament has to protect the Constitution and promote democratic governance of the Republic. We cannot protect the Constitution as Parliament unless we are also involved in the ratification of the treaties. Ratification of treaties can have a very serious impact on the current Constitution. In fact, I am sure the “King of Meru” will agree with me that even when we were in college, it was more or less taken for granted that where a nation has entered into an obligation under a treaty, you cannot,

thereafter, as a nation, go to an international body which oversees that treaty and plead that you cannot adhere to parts of the treaty because of your own internal laws. In other words, we cannot plead that because of our internal laws in our Constitution and so on, we cannot adhere to a certain treaty which we freely entered into. Sometimes, the danger of just allowing one arm of Government like the Legislature to be involved in the ratification of treaties is that you do not have a double protection to ensure that that treaty does not conflict in any way with our Constitution. If it conflicts with the Constitution, we may need some amendments to our Constitution to allow the treaty to be ratified and be given forth in this country.

Mr. Temporary Speaker, Sir, I am saying this because we have heard a few nations like the Republic of South Africa saying that they want to withdraw from the Rome Statute. Burundi has also given notice that they want to withdraw from the obligations and the Treaty and so is the Republic of Gambia. I was in the United States of America (USA) in the General Assembly when this matter was being discussed. The Ambassador clearly stated that unless that the Rome Statute is fundamentally reformed, it will be very difficult even for Kenya to continue adhering to the treaty.

Mr. Temporary Speaker, Sir, through the International Crimes Act, we have ratified that particular Bill. Can you imagine the National Assembly making amendments to the International Crimes Act alone without us being involved? This Bill that has been brought by Sen. Haji is very timely because if that issue comes up and we have to withdraw from the Rome Statute and the National Assembly approves and we think that is enough, we are now giving notice that we as Senate will be saying that it is not enough. It is important that the matter is also discussed before the National Assembly.

The history of what has been going on between us and the National Assembly and the history of what has happened in respect of this Bill has been outlined quite clearly by my Vice Chair, Sen. Sang, and I do not have to repeat what he said. I thank the Committee for coming up with this legislation. As the Chairman of the Committee on Legal Affairs and Human Rights, I want to add that we also considered this Bill. It came to us and we gave it our approval. The Senate must be involved.

Treaties concern the relationship between this country and other countries. Therefore, I cannot agree to a decision that that relationship is based on illegality in the international law to some extent. Therefore, treaties entered into by this country can be decided without the involvement of the Senate which is the “Upper” House. All over the world, even in USA, when it comes to issues which touch on your relationship with other countries and where you have a bicameral parliament, the senate has been involved.

Mr. Temporary Speaker, Sir, in furtherance of this idea, I hope that the amendments that had been proposed to the Constitution through the Committee that we ourselves set up will be looked into after the general elections in order to amend the Constitution properly, so that all these issues, including what we are discussing today, are made very clear. If my memory is right, there were some proposed amendments about the role of the Senate. It was going to be made very clear that the Senate must be involved. That clarification is necessary because of the tendency of the National Assembly to think that where the word “Parliament” is mentioned, it connotes the National Assembly alone to the exclusion of the Senate. The provisions of the Constitution are very clear.

“Parliament” means “National Assembly and the Senate.” Therefore, I hope that after the elections, we will have a referendum to amend the Constitution.

When the bi-partisan report came before us, not only the stalwarts of Jubilee such as the “King of Meru” and others agreed but also the stalwarts of the Opposition such as Sen. James Orengo and others and they all agreed. It was a bi-partisan agreement on the type of amendments that are good for this country. I hope that after the elections, there will be a follow-up on those recommendations so that we pass the amendments which will make very clear the role of the Senate. As of now, this amendment clarifies that role and there is no room for argument.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support.

Sen. Karaba: Mr. Temporary Speaker, Sir, thank you very much for allowing me to contribute in support of this Bill. Since the promulgation of the Constitution in 2010, quite a number of Members have not understood the Constitution. Before then, there was a gathering which took place at the Bomas of Kenya. Some of us were there and we contributed a lot towards the making of the Constitution framework. Some Members who were not there were represented by some people who believed that the moment somebody read the Constitution, he could interpret the same to the masses. Since so-and-so has read, we will also not read the Constitution because we were told what is there by the person who read it and understood it. These are some of the problems that we are now facing. These are the fruits of misinformation and poor delivery of the Constitution to the people. The consumption of the Constitution has not been well taken by some people. Worse of it all is that some of these people are parliamentarians. It is important to note that we are all parliamentarians whether elected as a Senator or a Member of the National Assembly. That is why it is stated as Parliament in the Constitution.

We need to understand the rules of the game now that Parliament is an august House. We need to be sure of who a Member of Parliament is and what kind of legislation goes on in Parliament. It is true that Bills are passed by both Houses of Parliament. There is something negative when the National Assembly decides not to recognize some Bills passed by the Senate. This is because they are trying to negate some of the principles of the same Constitution that we all passed in the Bomas of Kenya and promulgated in 2010. I fear a situation where we run into problems of misunderstanding because those misunderstandings that may lead into problems. For us to understand one another, I propose that there should be a retreat for the Members of Parliament from the National Assembly and the Senate.

We have heard people who have said that the Senate should be abolished yet it is in the Constitution. I think this is happening because people are trying to understand what the Senate means. We have even had some people who have come to Parliament for the first time in the Eleventh Parliament saying that they have the powers and that they cannot recognize what is already recognized in the Constitution. This is the reason why we need to have a session where the Constitution will be taught again to all sitting Members for them to understand what roles each House plays. They should understand what mediation is. Why should we go to mediation when it is an obvious Bill or legislation which needs to be passed by either of the Houses?

It is important to help the Members of Parliament to understand what a bicameral Parliament is. It is also important to fit the Senate to what we call the Senate of the world.

That will help us get to know what powers we have as the Senate and we will also get to know if we are behind, ahead or in the middle. We can compare ourselves with the Senates in India, USA, Russia, Germany, Australia and other countries. Otherwise, we will be lost. This is because somebody might just wake up one day and say that the Senate is not doing anything. Some of the people in the National Assembly who are telling us this were not even there when we were struggling with the Constitution making process. It is a pity to see that whatever was discussed at the Bomas of Kenya is being watered down.

There is nothing that has not been included in this Bill on ratification. They know what a treaty is and there is no way you can allow a treaty to be passed without involving the Senate. This is because treaties are important especially to a country like Kenya. Most countries have noted that Kenya is a gateway to East Africa and that is why the cable connectivity has passed through Kenya before it goes to other parts of East Africa. This is because Kenya has housed a number of United Nations (UN) agencies such as the UNEP, HABITAT, and we have a number of people willing to come and invest in Kenya. We have also had a number of dignitaries who have seen it fit to come to Kenya which includes the Pope. This is because Kenya is viewed as friendly country and it has all the goodwill to attract foreign investors. All these things have been observed by foreigners.

When we go to benchmark in places like Malaysia, Korea and so forth, we always tell them that Kenya was in the same level as Korea, Malaysia and Vietnam yet we are behind them. That is because of some of these things that people do not understand. It is one thing that the National Assembly does not understand and that does mean well to all of us. This is in a bicameral Parliament, when there is something like ratification of a treaty, it should be ratified by both the National Assembly and the Senate. We can then go for mediation if we do not agree. How long can it take? The process will take long and it will be overtaken by the other countries in Africa that are trying to claim Kenya's position in economic development.

This story is not yesterday's, we have had treaties which have been ratified and they are still useful to us today. We have treaties such as Helgoland-Zanzibar Treaty which was signed by the British and the German in 1890. It is that treaty that was ratified by the then Kenya that made it possible for the British troops to be withdrawn from the German Island called Helgoland and it also made it possible for the Germans who were living in Witu to leave Kenya thus making Kenya a British Protectorate. Treaty making and ratification is as old as history and it is not today's or yesterday's activity. It has been there for a long time.

That is why we are taking ourselves back to the 1880's when we have to teach people about ratification of treaties. The 1890 Helgoland-Zanzibar Treaty made it possible for Kenya to be a colony because without it, British would not have occupied Kenya in 1894. That is why the railway line was to be constructed from Mombasa to Kisumu in the name of protecting the protectorate. Ratification of a treaty goes to as early as 1890. There is the Hamerton Treaty of 1845 and the 1822 Moresby Treaty that shaped Kenya. We are here because of these treaties. Therefore, when one says that they are not going to ratify treaties now, it means that they have lost the track and we are not going to understand what is going to be the future of this country. The future of this country is not now. What is happening now will be seen as history and people will be reading it as

history just like the promulgation of the Constitution. If we make mistakes now, 2016 will go down in the annals of history as the year when mistakes were made. It will be seen as the year when a certain treaty was not ratified and it will also be noted that Kenya failed to note that there was an East African Treaty which was there in the 1970s.

If we do not involve the Senate, then, what else are we saying? Therefore, we are wasting time. I appreciate that this Bill has come at the right time. If it was not for the Chairman of the Committee, some of us will not have known what happens. I appreciate that it has come at this time. As the Senate, we are debating it and we support it. Let us not shy away from supporting what is good for our country. If what we are talking about today will be read by our children in future, then they will be saying that Senate saved a position in Kenya which would have gone haywire if it were not for this Bill. So, the Bill is correct; it is in the right place and has been ably moved by the Chairman.

Mr. Temporary Speaker, Sir, we should support it. Without doing so, other countries will be passing their treaties unabated, for example, Nigeria, Egypt and so on. They have their treaty making process. If we sideline this process and decline to go the way other countries are going, Kenya will lag behind because it will lack partners. This is a good ingredient. Other countries should know that Kenya has friends, and more so international ones. As of now, we can maintain international friendship without a treaty. There is no way we can have a treaty which is not ratified.

We are aware of the ratification of a treaty which has not been considered by Parliament. If this a bicameral Parliament, why do we allow the National Assembly to sit and ratify treaties without even informing the Senate? The Senate is an “Upper” House. It is a House of serious people. So, let us be given that right to peruse and see what it is so that before something like that one is passed, we will determine whether it is right or wrong. We will compare ourselves with other countries which have already moved up because of such agreements which are very useful. Without ratifying some of these treaties, how do we partner with those countries which would like us to partner with them? It is through ratification of treaties. I have given you examples in history. We have seen how we have benefited from past treaties. We can also benefit in future.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

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

Sen. Haji: Mr. Temporary Speaker, Sir, I thank my colleagues for enriching the purpose this Bill seeks to achieve.

As I said earlier, my colleagues emphasized the role of the Senate as stipulated in Article 96(1) of the Constitution, which is to protect the interests of the counties and their governments. The treaty which provoked us into bringing this Bill is as a result of the military treaty between Kenya and the British. These military exercises are done in the counties. We know the hue and cry by people in Kajiado, Samburu and Laikipia as a result of the exercises that are being done by the military in this regard.

Therefore, it was totally unacceptable and wrong for the National Assembly to disregard the role of the Senate. If some Kenyans will go to court as a result of the passing of that treaty with exclusion of the Senate, I believe the courts will nullify that treaty. We are trying to correct this so that these kinds of things do not continue to happen, and, even if when it goes to them, they will sit on it; we have the provision for

mediation. We can pursue it through this so that we reinstate the role of the Senate as far as this matter is concerned.

Mr. Temporary Speaker, Sir, pursuant to Standing Order No.54(3), I request that you defer the putting of the question to tomorrow as there are no sufficient number of Members for Division.

The Temporary Speaker (Sen. Mositet): Okay, it is deferred.

(Putting of the Question on the Bill deferred)

Next Order!

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL NO. 12 OF 2015)

The Temporary Speaker (Sen. Mositet): I defer that order to tomorrow.

(Bill deferred)

MOTIONS

COUNTRYWIDE AUDIT ON THE DISTRIBUTION
OF TEACHERS IN ALL PUBLIC

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

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

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

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

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

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

The Temporary Speaker (Sen. Mositet): Sen. Khaniri is not there. So, I defer it.

(Motion deferred)

CREATION OF THE OFFICE OF AN AUDITOR TO SPECIFICALLY AUDIT
THE BASIC EDUCATION INSTITUTIONS' FUNDS

THAT, whereas Article 53 (1)(b) of the Constitution provides that every child in Kenya has the right to free and compulsory basic education;

RECOGNIZING the importance of education in the alleviation of the main challenges facing Kenya's sovereignty identified at independence, namely; poverty, illiteracy and disease;

APPRECIATING the gains made following the implementation of the free primary education program in 2003 and cognizant of the principles set out in the Basic Education Act of 2013 whose objectives include promotion and regulation of free and compulsory basic education besides providing for accreditation, registration and management of basic education institutions;

NOTING the substantial resources invested by the national and county governments, parents, sponsors and development partners in the provision of basic education;

FURTHER NOTING that pursuant to the Basic Education Act, the County Director of Education is vested with numerous responsibilities including facilitation of auditing of all basic educational institutions in the respective county thereby leaving fundamental gaps of governance especially in the management of the available resources;

NOW THEREFORE, the House recommends to the Cabinet Secretary for Education to facilitate the creation of the office of an auditor to specifically audit the basic education institutions' funds to enhance transparency and accountability and improve governance in the management of these institutions.

The Temporary Speaker (Sen. Mositet): Sen. (Prof.) Lonyangapuo is also not there. It is deferred.

(Motion deferred)

INSTALLATION OF CCTV CAMERAS IN ALL
POLICE STATIONS AND POLICE POSTS

THAT, CONCERNED about the numerous reports of the arbitrary arrests of innocent people by the police;

FURTHER CONCERNED that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

DEEPLY CONCERNED that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

ALARMED by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police

post, only for them to be found days later, in another area far from the police post, having been brutally killed;

APPRECIATING that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

NOW THEREFORE the Senate calls upon the National Government to-

- a) install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station;
- b) have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and
- c) ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

The Temporary Speaker (Sen. Mositet): Sen. (Eng.) Muriuki is also a Member of County Public Accounts and Investments Committee (CPAIC). I think they are meeting somewhere. It is deferred.

(Motion deferred)

IMPLEMENTATION OF THE POLICY STATEMENTS AND STRATEGIES MADE IN THE NATIONAL SPECIAL NEEDS EDUCATION POLICY FRAMEWORK

AWARE that Article 43 (1) (f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education;

COGNIZANT that Article 54 (1) (b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

RECOGNIZING that education in Kenya is a shared function of both the county and national governments;

CONCERNED that while significant gains have been made under the Free Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

NOW THEREFORE the Senate directs the Standing Committee on Education to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

The Temporary Speaker (Sen. Mositet): Since this is my Motion, and, I cannot see other Members of the Chairperson's Panel, there is no way I can move when I am the Chair. So, it is deferred also.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, there being no other business, the Senate stands adjourned until tomorrow, Wednesday 16th, November, 2016, at 2.30 p.m.

The House rose at 4.50 p.m.