

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 29<sup>th</sup> November, 2018

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

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

#### PRAYER

#### PAPER LAID

##### REPORT ON COUNTY GOVERNMENTS INFRASTRUCTURE PROJECTS

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday 29<sup>th</sup> November, 2018:-

Report of the Standing Committee on Finance and Budget on the county government's infrastructure projects comprising county executive headquarters offices, assembly chambers, offices and county state officers' residences.

*(Sen. (Eng.) Mahamud laid the document on the Table)*

**The Speaker** (Hon. Lusaka): We move on to the next Order.

#### NOTICES OF MOTIONS

##### ADOPTION OF REPORT ON COUNTY GOVERNMENTS INFRASTRUCTURE PROJECTS

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, the Senate adopts the report of the Standing Committee on Finance and Budget on the county government's infrastructure projects comprising county executive headquarters offices, assembly chambers, offices and county state officer's residence.

**The Speaker** (Hon. Lusaka): Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, it has not been given to me. I thank you for the opportunity. However, I request for a copy from the secretariat so that I can give the notice of Motion.

**The Speaker** (Hon. Lusaka): In that case, let us defer it until you are prepared.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I seek your indulgence.

**The Speaker** (Hon. Lusaka): Have you gone through it and are you sure of what you want to do?

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I am sure of what I am doing.

*(Laughter)*

SUPPORT FOR DYSLEXIC PEOPLE TO REACH  
THEIR FULL POTENTIAL

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT WHEREAS Article 43 (1) (f) of the Constitution of Kenya explicitly provides for the right to education for all;

AND WHEREAS Article 24 of the Convention of the Rights of Persons with Disability (CRPD) recognizes the right of persons with disabilities to education without discrimination and on the basis of equal opportunity and that State parties shall ensure an inclusive education system at all levels and lifelong learning directed to among others, the full development of the dignity and human potential of persons with disabilities;

NOTING THAT dyslexia is a form of disability that involves difficulty in learning to read or interpret words, letters, and other symbols, but does not affect general intelligence;

COGNIZANT THAT with the appropriate intervention, dyslexic children have talents that can be nurtured in an inclusive setting;

DEEPLY CONCERNED THAT lack of appropriate curriculum for dyslexic learners in public schools disadvantages such learners resulting to failure to maximize their full potential;

NOW THEREFORE the Senate calls upon the national Government through the Ministry of Education to:-

1. ensure that educational needs of dyslexic learners are catered for in all public schools;
2. ensure a differentiated curriculum for dyslexic children is developed and accommodated within the regular curriculum;
3. allocate funds for purposes of developing Special Needs Education (SNE) support materials and resources for dyslexic children in regular public schools; and,

4. ensure that an inclusive mechanism is put in place to facilitate economic empowerment of dyslexic children as they transit from school to the work place.

**The Speaker** (Hon. Lusaka): Next Order!

## STATEMENTS

### SIXTEEN DAYS OF ACTIVISM

*(Statement deferred)*

### INVASION AND TAKE-OVER OF KAPETADIYE DAM BY PASTORALISTS FROM A NEIGHBOURING COUNTRY

*(Statement deferred)*

### HIGH PARKING CHARGES IN INSTITUTIONS THAT OFFER PUBLIC SERVICE

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation on the high parking fees charges in institutions that offer public services such as hospitals, schools, malls, among others.

In the Statement the Committee should-

(1) Indicate what policy framework guides parking fees in public and private institutions, especially those offering public and crucial services to Kenyans.

(2) Explain measures that the Government will take to ensure that patients, parents and the general public are not exploited by owners of premises, through high parking fees when they visit such premises for service.

Mr. Speaker, Sir, I know that this might be very controversial, but Kenyans are suffering. When you go for services in hospitals, schools and malls, the charges are very high. Kenyans have to be helped, and I believe it is our duty and responsibility to undertake this.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Wetangula.

**Sen. Wetangula:** Mr. Speaker, Sir, Sen. (Dr.) Abdullahi cannot be so right. Institutions that offer public services have just become money mongers. If you go to Wilson Airport today, and drive in for one hour, as you leave, you pay Kshs200. If you go to Nairobi Hospital, you pay. Everywhere you go, it is just a mania now. As a House that defends the interests of the people of this country, we have to rein in all these parties.

We travel all over the world and airports offer services. They are not an impediment to travelers. When you go to Heathrow, you do not see anybody paying when they are entering or leaving the airport. However, you have to pay at Jomo Kenyatta International Airport, Wilson Airport, Kisumu International Airport, Malindi

Airport, Moi International Airport, Mombasa and other places. It is like they want to drain the last drop of blood from every Kenyan, and we have to stop this.

Mr. Speaker, Sir, I thank Sen. (Dr.) Abdullahi, the Senator for Wajir, for bringing this request for a Statement. I hope that the Committee will interrogate every public institution that is making it so difficult for the ordinary person in this country to operate.

**The Speaker** (Hon. Lusaka): Sen. Aaron Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I want to congratulate or rather agree with the issues that are being raised by our colleague, Sen. (Dr.) Ali. To the best of my recollection, the first hospital to carry out this exercise was Aga Khan Hospital in Nairobi. The explanation they gave following the protestations that were coming from citizens was that, that money would be used to run charitable activities within the institution. Of course, nobody audits to find out whether it is true or a lie.

Within a short period of time, every other public space has caught up with this very bad behavior. Even public parks like Uhuru Gardens along Lang'ata Road cannot be accessed until you pay Kshs300, even at 5.30 p.m. These are public spaces and, therefore, it falls upon us, as a House of Parliament to act. One of the dictates of our Constitution is that no other institution apart from Parliament can issue directives that have a force of law.

What they are subjecting people to pay is equivalent to giving a directive that has a force of law. Therefore, as a House, this is something that we urgently need to address and find a long lasting solution to. I hope that the Committee that will look into this will give a long standing solution.

Thank you. Mr. Speaker, Sir.

**The Senate Majority Leader** (Sen. Murkomen): I want to thank Sen. (Dr.) Ali for coming up with this very important Statement. For those of us who use public and private facilities, and particularly airports, as long as you have entered, there is a tax. Whether or not you are parking you will still pay. Even when there is a flight delay and you go round the airport as you wait for your visitor, you will still pay a particular fee.

Why should this House and Parliament be paying Nairobi Hospital and other hospitals money using our insurance, and they again charge us another fee for going to the hospital itself? What is the mischief for one to put money in a hospital that is already charging for the services they are going to give? Why are they taxing people to come and actually pay for services? Does it mean that they suspect that there are idlers who go to park their vehicles in the hospital, yet they work elsewhere? Is it not possible to track a person who has come to the hospital from the time he arrived and where he is going? I have singled out Nairobi Hospital, but the same applies for Aga Khan Hospital and other private hospitals, yet they are providing an important public service.

I wish they were hearing what we are saying today. I saw one lawyer complaining on social media about this menace. We must provide solutions, as the Senate. We must also know what that charge that is meted on us is as a result of what.

I want to thank Sen. (Dr.) Ali because most of us in this country get angry with things that go wrong, but do nothing about it except lamenting. The few of us, like Sen. (Dr.) Ali, who see problems and think about solutions, must be supported by this House to ensure that we get the right answers.

Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I wish to thank Sen. (Dr.) Ali for bringing this to the attention of the Senate. I did not know how big this is until we had a Petition from Narok County in the last Session. The companies that are collecting this money are making billions of shillings; it is a booming business. In fact, in this case where they are collecting from the airport, they charge their commission in advance. So, they are paid their 10 per cent before they remit the money to the Kenya Airports Authority.

What is actually worrying, like the case of the airport, is whether the Kenya Airports Authority is disclosing this sort of income that they are collecting from cars that are busy getting in and out the airports. It is a business where people are collecting money, whether in national parks, airports, hospitals or shopping centres, and it does not actually make sense. You are charged to go to the shopping centre. Instead of watchmen making sure that you go shopping, their work is to charge you for patronizing shops.

Mr. Speaker, Sir, by the time we unearth this mystery of these airports, you will find that there are certain Kenyans whose business is to wait for people to wake up in the morning and park their cars, and by evening, they are millionaires without doing anything. Therefore, be prepared early to find snakes under the rocks.

Thank you, Mr. Speaker, Sir.

**Sen. Omogeni:** Thank you Mr. Speaker, Sir. I also want to join my colleagues in thanking Sen. (Dr.) Abdullahi for this very timely request for a Statement. This issue is worse than what is appearing in the Statement. I have never seen any country in the world where people drive into supermarkets and they are forced to pay. I have travelled to the United States of America and Australia, and you cannot drive into a mall for shopping, where you are bringing business, and you are forced to pay parking fees. This is a rip-off. Imagine driving into a mall to do shopping, where the tenant pays service charge, and on top of that you pay money that goes to the owner of that building. This is an issue that the Senate should take seriously. We should step in to bring an end to this mistreatment that is meted on Kenyans.

Someone who has gone to a hospital for treatment is again forced to go to their car and look for a parking bay. This should not be allowed to happen. I thank Sen. (Dr.) Abdullahi and appeal to the Members of the Committee that will be charged with this task, to ensure that they bring this to an end. This is not something that we should tolerate as leaders. I do not know who chairs that Committee, but this is something that should be done sooner. We should give Kenyans a Christmas gift.

Thank you, Mr. Speaker, Sir.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I also join my colleagues to support the Statement by Sen. (Dr.) Ali. This matter started with shopping malls and the disease spread to hospitals and now to airports, which are all very important public spaces. Whatever it is that motorists drive to the airports, shopping malls or hospitals to do, they are paying for those services. It should not be that when you go to buy groceries in a shopping mall, you are being charged to park your car to buy the groceries.

Mr. Speaker, Sir, I have heard what the Senator for Makueni County has said, that the Committee to which this Statement will be committed should be prepared to deal with snakes under the rocks. I ask that Committee to crash the heads of those snakes in the best interest of motorists and the public in this country.

Thank you, Mr. Speaker, Sir.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to join my colleagues in congratulating Sen. (Dr.) Ali, because this is a very important issue. It is, of course, important for us to regulate what is happening in terms of payment of parking fees.

Mr. Speaker, Sir, if I go to a place nearer my home today, I will come with a parking card that I have paid for. However, after one or two months, the parking company has changed and you end up changing your card every now and then. You then wonder what they are looking for. It is important for the country to regularise this area so that if a parking card is for Nairobi Hospital, it can be used elsewhere. This is because you do not need to have a parking card for Nairobi Hospital, another shopping mall and another one. We, therefore, need to regulate this area. This Statement is, therefore, very critical and timely.

Secondly, Mr. Speaker, Sir, when you go to those parking malls, you will find the security team harassing people. You then wonder what they were looking for in your car because they do not have the requisite equipment for keeping security. They are not regulated and they are not experts in terms of what they are looking for, and you are then subjected to some harassment. We, therefore, need to regulate these issues and stop these shenanigans.

Mr. Speaker, Sir, security is a very important aspect in this county and it is best placed under the relevant ministry to regulate these security agencies who are checking people's cars in those malls and in other places.

Thank you, Mr. Speaker, Sir. I beg to support.

**The Speaker** (Hon. Lusaka): Lastly, Sen. Kang'ata.

**Sen. Kang'ata:** Thank you, Mr. Speaker, Sir. Let me start by congratulating Sen. (Dr.) Ali for this very good Statement. I know that the Committee is going to do a good job of interrogating it. This problem does not only affect people in urban areas, but also those of us who come from semi-urban counties like Murang'a.

Mr. Speaker, Sir, like in my region in Murang'a County, there have been a lot of complaints where motorists argue that they pay a lot of money to the counties yet there are no services being rendered by the County. Therefore, they would want the parking fees which are being levied to be commensurate to the services that are being offered to the people.

Mr. Speaker, Sir, I urge the Committee that will be handling this Statement to look at these issues *vis-à-vis* Murang'a County, and in particular at urban areas like Kangari in Kigumo, Murang'a Town, Kiereini, Mathioya, Kangema in Kangema Constituency; Maragua in Maragua Constituency; Kenol, which is one of the fastest growing regions in Murang'a County; and also Kigwara in Gatanga. There have been a lot of complaints by motorists who use those urban parking slots as to whether, one; the fee being charged is commensurate with the services; and two, whether there is extortion. I, therefore, urge the Committee that, as they consider this Statement, they should hear representations from the people of Murang'a County.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Kang'ata.

We will now receive Statements under Standing Order 51(1)(b). I now call upon the Chairperson of the *ad hoc* Committee on Maize to issue a Statement relating to the activities of the Committee.

ACTIVITIES OF THE *AD-HOC* COMMITTEE ON MAIZE

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. Our Chairperson, Sen. (Prof.) Kamar, is out of the country. I wish to give the Statement, relating to the activities of the *ad hoc* Committee on the maize crisis on her behalf---

**Sen. Wambua:** On a point of order, Mr. Speaker, Sir. I am sorry for interrupting my leader. I am just wondering whether the Statement by Sen. (Dr.) Ali has been committed to any Committee.

**The Speaker** (Hon. Lusaka): It is committed to the Committee on Roads and Transportation.

What is it, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** This is my concern, Mr. Speaker, Sir. The Standing Orders – unless I am wrong – the Statement will lapse at the end of this Session. What will happen when we go on recess next week and Sen. (Dr.) Ali has not received a response? There is an issue there.

**The Speaker** (Hon. Lusaka): If it lapses, he may have to bring it up again.

**Sen. Mutula Kilonzo Jnr.:** It will lapse.

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

**Sen. Wetangula:** Sen. (Dr.) Ali, be ready to bring it up yet again in an even stronger version.

Mr. Speaker, Sir the *ad hoc* Committee on the Maize Crisis was established by a resolution of this House on Wednesday, 8<sup>th</sup> August, 2018, to investigate and come up with a solution that will enable farmers to overcome challenges related to production, management and sale of maize. The Senate required the Committee to report back within 60 days. The Senate later extended the life of the Committee by a further 45 days vide a Motion passed on 11<sup>th</sup> November, 2018.

Mr. Speaker, Sir, the specific mandate of the Committee was so inquire and report to the Senate on why farmers who have delivered their produce to National Cereals and Produce Board (NCPB) have not been paid to date.

*(Sen. Murkomen consulted several Senators loudly)*

**Sen. (Dr.) Ali:** On a point of order, Mr. Speaker, Sir. There is a group there, near the entrance, who are making a lot of noise and we cannot hear what Sen. Wetangula is saying. It is comprised of the Majority Leader and his team there.

**The Speaker** (Hon. Lusaka): Leader of Majority, let us consult in low tones.

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

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

**Sen. Sakaja:** Mr. Speaker, Sir, if I heard right, the good Sen. (Dr.) Ali, who is very experienced, has said that Senators are making noise. As far as I know, Senators do

not make noise; that will look very bad on the record of his House. Could he, please, clarify what he said? I think they were consulting.

**Sen. (Dr.) Ali:** In a group.

*(Sen. (Dr.) Ali spoke off record)*

**Sen. Sakaja:** Mr. Speaker, Sir, he said they were in a group, yet there are no groups in the House, unless there are strangers in this House. Let him clarify that.

**The Speaker (Hon. Lusaka):** Sen. (Dr.) Ali, can you---

**Sen. (Dr.) Ali:** There are some Members of the Senate who are discussing in high tones.

**The Speaker (Hon. Lusaka):** That is now correct. Proceed, Sen. Wetangula.

**Sen. Wetangula:** Mr. Speaker, Sir, I will give Sen. (Dr.) Ali *pro bono* legal services; it is a grouping of Senators.

*(Laughter)*

Mr. Speaker, Sir, the specific mandate of the Committee was to inquire and report to the Senate why farmers had not been paid after delivering maize, the quality of duty free maize imported into the country during the duty free window which was to end in October, 2017 and why the period was extended. It was also to consider the challenges facing the maize farmers and the National Cereals and Produce Board (NCPB) and make recommendations on how to resolve the challenges.

It was also to consider the maize received by the NCPB for the 2017/2018 season; establish the suppliers and the criteria for identification of millers and business persons involved in the importation of maize into the country.

Mr. Speaker, Sir, the Committee conducted an in-depth and detailed inquiry into the maize crisis in the country by inviting submissions from different stakeholders involved in the entire maize value chain and persons of interest concerned with the delayed payments to maize farmers. These included-

- (1) Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation;
- (2) Cabinet Secretary, Ministry of Devolution and ASALs;
- (3) Cabinet Secretary, The National Treasury;
- (4) Cabinet Secretary, the Ministry of Industry, Trade and Cooperatives;
- (5) The Council of Governors' Committee on Agriculture;
- (6) The Managing Director, National Cereals and Produce Board (NCPB);
- (7) The Managing Director, Kenya Bureau of Standards (KeBS);
- (8) The Chairman, Ethics and Anti-Corruption Commission (EACC);
- (9) The Director General, Kenya Revenue Authority (KRA);
- (10) The Chairman, Kenya Ports Authority (KPA);
- (11) The Chairman, Strategic Grain Reserve Trust Fund (SGRTF);
- (12) The County Executive Committee Members (CECM) in charge of Agriculture;
- (13) Grain Millers Associations; and



(14) Farmers Representatives.

The Committee undertook various meetings with maize farmers and opinion leaders in, among others, Trans Nzoia, Nyamira, Bungoma and Nandi counties.

Mr. Speaker, Sir, the Committee is grateful to you for having attended one of its meetings at the Eldoret Town Hall during the inaugural sitting of the Senate in Eldoret, Uasin Gishu County.

As a consequence of our inquiry, the Government reacted by attempting to hasten the process of paying the farmers, albeit unsuccessfully. Indeed, the workings of the Committee have jerked the Executive to appoint its own taskforce to look into maize farming.

Mr. Speaker, Sir, the Committee was also cognizant that during the process of our inquiry, the DPP and the DCI and other investigative agencies were seized of the matter. Currently, some cases relating to this maize issue are on-going in court. We urge the two offices not to relent in going after all the culprits in the maize scandal until they are brought to book.

The Committee tabled its detailed report on the Floor of the Senate on Tuesday 27<sup>th</sup> November, 2018, which now awaits debate and adoption.

Without anticipating debate, the Committee has recommended a raft of proposals, including legislative interventions by this House which we shall be urging the House to adopt at the relevant time.

Furthermore, in order to ensure the work of this and, indeed, other *ad hoc* Committees is implemented, we have proposed that the relevant Standing Committee, in this case, the Senate Committee on Agriculture, Livestock And Fisheries, follows up on specific recommendations – follow up basis on the form of implementation - once the House adopts the report.

Mr. Speaker, Sir, I wish to thank the Members of the Committee, particularly, our Chairperson Sen. (Prof.) Kamar and all the Committee Members who worked with the Committee, for their dedication throughout the inquiry and for producing a good report which if implemented, could transform the maize sector forever.

I also heartily thank the Office of the Clerk and, indeed, the Secretariat of the Committee who worked tirelessly to facilitate the Committee.

Thank you, Mr. Speaker, Sir. I beg to lay the Statement on the table of the Senate.

*(Sen. Wetangula laid the Document on the Table)*

**The Speaker** (Hon. Lusaka): Thank you, Sen. Wetangula. Let us have the Chairperson, Standing Committee on National Cohesion, Equal Opportunity and Regional Integration.

#### ACTIVITIES OF THE COMMITTEE ON NATIONAL COHESION, EQUAL OPPORTUNITY AND REGIONAL INTEGRATION

**Sen. Mpaayei:** Mr. Speaker, Sir, Standing Order No.51(1)(b), provides that at least every three months, the Committee Chairperson is expected to make a Statement relating to activities of the Committee. In fulfilment of this provision, I wish to make a

Statement in regard to the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration for the period commencing 9<sup>th</sup> August, 2018 to 9<sup>th</sup> November, 2018.

Mr. Speaker, Sir, the Committee was constituted in December, 2017 during the first Session of the Twelfth Parliament, pursuant to the provisions of Senate Standing Order No.218. It is mandated to consider all matters related to National and intercommunity cohesion, the equalization of opportunities and improvement to the quality of life and status of every person.

It also considers matters related to regional integration, the East African Legislative Assembly (EALA) and the Pan African Parliament (PAP).

Mr. Speaker Sir, as outlined in Standing Order 215(2), the activities of the Committee shall entail the following-

- (1) Bills considered by the Committee;
- (2) Statements considered by the Committee;
- (3) Petitions considered by the Committee
- (4) Inquiries undertaken by the Committee and progress of any such inquiry;
- (5) Any county visit undertaken by the Committee and the outcome of such visits; and,
- (6) The manner and the extent to which the Committee met its public participation obligations in respect of the business of the Committee.

Under Standing Order 218(4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the National Executive, including adopted Committee reports.

Mr. Speaker, Sir, during the period under review the Committee has held a total of six sittings and engaged with several stakeholders. On reporting on the activities of the Committee, I wish to provide the details of each activity as follows:-

On Bills considered by the Committee, it considered the East African Community Statistics Bureau Bill 2017, the East African Community Monetary Institute Bill 2017 and approved them. It also the East African Community Oath Bill and approved it. The Bill is awaiting Presidential assent during the East African Community (EAC) Summit.

Secondly, we have the legislative proposals considered by the Committee. During the period under review the Committee did not receive a legislative proposal from the Senate to consider.

Thirdly, we have the Statements considered by the Committee. It considered a statement on the funding of the East African Community (EAC) and requested a response from the Ministry of East African Community and Regional Development.

Fourthly, in regard to Petitions, the Committee considered a petition to the Senate concerning Kibera Internally Displaced Persons (IDPs). The Committee met with the petitioners from Nairobi United IDPs Community Based Organisation (C.B.O), Kibera Branch and sought to have a meeting with their National Coordination and Consultative Committee which they did not honour today.

Regarding the inquiries undertaken by the Committee, during the period under review, the Committee did not receive any inquiries to consider. On the county visits undertaken by the Committee; during the period under review, the Committee had scheduled to undertake county visits to Narok and Nakuru counties but these were postponed to a later date. On scrutiny of the Senate Standing Order 218(4); the

Committee had no Senate resolutions to follow up on their implementation status in various government agencies.

On Public Participation, during the period under review the Committee participated in public hearing organized by the East Africa Legislative Assembly (EALA) on the East African Community Whistle Blowers Bill, 2018 with the other stakeholders invited in Laico Regency hotels to handover its memorandum. The Committee recommends that public hearings be held at the local level where a Bill will affect most if enacted. As many media as may be possible like information technology and local radio stations be used to draw the attention of the public to the dates of public hearings and submission of memoranda. On stakeholder engagements, the Committee met the National Cohesion and Integration Commission (NCIC), EALA and the Nairobi United IDPs.

The challenges and recommendations are as follows. The Committee has had to postpone meetings owing to quorum. Inadequate budgetary allocation to the Committee led to the Committee shelving some of its scheduled activities. The Committee has an enlarged mandate which includes equal opportunity and regional integration. For the Committee to fully fulfil its mandate on regional institutions like the EAC, the Intergovernmental Authority on Development (IGAD) and the Pan-African Parliament (PAP), the Committee requires an enhanced budgetary allocation in the next Financial Year.

To this end, I take this opportunity to thank the Committee's stakeholders specifically the National Cohesion and Integration Commission (NCIC) and the Ministry of East African Community and Regional Development for their commitment to working with the Committee on issues Integration of EAC and operationalization of EAC Institutions. I also urge Ministries which domicile regional integration bodies like IGAD and PAP, specifically, the Ministry of Foreign Affairs to engage the Committee in the affairs of those bodies as a way of establishing collaboration and partnership with the Committee, to facilitate it to fulfil its mandate which the Committee will strive to achieve.

In conclusion, the Committee extends its appreciation to the offices of the Speaker and the Clerk of the Senate for the support rendered to it during execution of its mandate.

I beg to lay this Statement on the Table.

*(Sen. Mpaayei laid the document on the Table)*

## POINT OF ORDER

### FAILURE BY GOV. MWANGI WA IRIA TO HONOUR COMMITTEE SUMMONS

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir, for the opportunity. I was wondering where my good neighbour, the Senator for Kajiado County, has been but I have realised that he was integrating the EAC.

I wanted this opportunity to make a brief comment about the Committee investigating the affairs of maize. I hope that the Members, who will be left here next

week when the rest travel, can get into the details of maize and its effects thereof. I know that Sen. Murkomen has had a run-in with some people about this maize issue. I hope that we can discuss those things.

This morning, I had the privilege of attending one of the Committees and we need to empower our Committees for them to do their work. Some Committees are facing a lot of challenges. There is a Governor who has refused to come to the Senate and he has been summoned but the Inspector General (IG) has refused to bring that Governor. Instead, he says; 'go and get a court order'. We cannot work like that because it is obvious under Article 125 of the Constitution that these Committees are like the High Court of Kenya. We must make it clear that if a Committee issues an order for anybody to appear, they do not need a court order for they are a court.

I was baffled to see that somebody in the office of the IG can write an official note to this Senate saying; 'please bring a court order'. What happens to the people who advise this Senate? This cannot be a negotiation. Otherwise, the Committee like the one investigating maize or the others that we are going to form will face various challenges from these Government functionaries. Let us empower our Committees. Let us give them teeth to bite and let us "bite" one person for the rest to learn a lesson.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order Mr. Speaker, Sir.

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, over and over again, we have insisted in this House that summonses of Parliament are not debatable. You can come and debate the subject matter. You can think of how you will answer the questions for we cannot force you to give an answer that is tailor made for this House but appearing before the Committee of this House is not debatable. We passed that stage a long time ago.

We had the first term governors, and I do not want to mention their names, who gave us lectures on how the Senate was too small for them to appear but we sorted that issue a long time ago. No wonder, many governors are now attending the sessions of the Committee on County Public Accounts and Investments because that was where the contention was.

I was shocked when I was informed that a Governor of a party that I belong to and a man that we have tremendous respect to, for he forms part and parcel of the leadership of this country and the Jubilee party, would even contemplate defying orders of this House when you are seated there as the Speaker of the Republic of Kenya. You must take that thing seriously. When Article 125 of the Constitution says that we have the powers of the High Court, it means that we do not need to resort to the High Court to summon someone.

It also means that violation of those summonses leads directly to a situation where you are arrested and charged. The question of explaining whether the summonses were delivered in good time and whether you were served with the summonses or whether you had the notice will then be canvassed in court and at that point in time, you will be facing criminal charges.

In fact, even a Member of another House including a county assembly can be summoned by this House and a Member of this House can also be summoned by the

National Assembly to answer a question. We have certain responsibilities and we must obey the Constitution. I do not want to go to the other subject matter which includes the maize issues because we will go to the Senate Business Committee on Tuesday and schedule the debate. Hopefully, we will be able to dispense with that Report.

However, at this point in time, your office, must inform this House of what is being done to ensure that this Senate is not put into disrepute and that persons who are required to appear here do so as per the law and aspect of the Constitution. I am not saying that you should provide your ruling right now. That ruling had been provided by your predecessor. We want you to refer to that ruling and enforce it. You should inform this House of what you have done towards its enforcement.

**The Speaker** (Hon. Lusaka): Could we hear from Sen. Wetangula?

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

**The Speaker** (Hon. Lusaka): Okay, before Sen. Wetangula speaks. What is your point of order Sen. Cheruiyot?

**Sen. Cheruiyot**: Mr. Speaker, Sir, would it not have been in order for the Senate Majority Leader, to tell us who this Governor is, now that he went into great lengths to explain to us that he is a senior leader in a party that he belongs to yet he continues to undermine the great work of the Senate, a House that he leads? That is important for future references because anybody reading the Hansard of this House in another 20 years' time will not know who this Governor is. He should be named and shamed for them to know that they are under the very watchful eye of the Senate.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I am reliably informed, and I need the confirmation of your office, that the otherwise good Governor of Murang'a, Governor Mwangi wa Iria, had been invited to come to a Committee of this House to discuss a matter related to water management in this great Republic but he refused. Summons were issued, he defied them. The Inspector General (IG) of Police has written to say he needs a court order before he can arrest the Governor and have him charged in a court of law.

If that is the position, and we are waiting for your correct information on that position, that must be corrected urgently. Even as we do so, the Senator of Murang'a, who is a law-abiding citizen and a lawyer of good standing, was involved in a petition that led to the removal of a senior officer from the Judiciary. Having represented his client, he must also take remedial actions to talk to his Governor and explain to him the gravity of the matter that is before him.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Junior, what is your point of information?

**Sen. Mutula Kilonzo Junior**: Mr. Speaker, Sir, this is not a matter of conjecture. This morning, I saw the letter addressed by the IG, Boinnet to the Committee on Lands, Environment and Natural Resources. We are waiting for your directions from your seat. This is a misconception and misapprehension of the law, where the Senator of this Republic is supposed to go to court to get an order. This could only lead to one thing; that we are subject to the court.

Therefore, Governor Mwangi wa Iria is the assailant; the victim is the Committee on Lands, Environment and Natural Resources, and the Senate, but the perpetrator is IG Boinnet.

**The Speaker** (Hon. Lusaka): Sen. Wetangula was on the Floor.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. In the event Governor Mwangi wa Iria is listening, Article 125(2) of the Constitution, for the purposes of section (1) that gives Parliament the power to summon witnesses, states that a House of Parliament and any of its committees has the same powers as the high court. No qualification, no interpretation. It is as clear and as plain as that.

The Senate Majority Leader should sometimes avoid using unnecessarily flowery language. The Governor of Murang'a was brought here on impeachment and we had his case with gruelling evidence of serial corruption and he escaped under very dubious circumstances.

*(Laughter)*

So to describe him as a good man is a mis-description.

**The Speaker** (Hon. Lusaka); Sen. Wetangula, let us be careful. Observe Standing Order No.96 so that we do not discuss people who cannot defend themselves on the Floor of the House.

**Sen. Wetangula:** It is factual but let me go to the point, Mr. Speaker, Sir.

I join Sen. Mutula Kilonzo Jnr. and Sen. Murkomen in stating that your office should write to the IG and bring to his attention the import of Article 125 of the Constitution. This is not the only case. Last week when your able deputy was in the Chair, we listened rather sympathetically to my distinguished young colleague from Trans Nzoia and a very good friend, Sen. Mbiti, whose father is a great friend of mine.

He told us that they have suffered at the hands of a Cabinet Secretary that they are overlooking.

*(Applause)*

The Cabinet Secretary has routinely ignored them or refused to give them information they want. We have also been guilty as a House in some way. If you remember, Sen. Linturi - I do not see him in the House – told the House that they were pleading and begging a Cabinet Secretary to appear before their Committee. How can a House that has powers of the high court plead and beg for a CS to appear before them?

Therefore, we would want the Legal Department of this House, under the hand and seal of your office to send clear messages to all public offices that we oversight; that are appearing before the Committees of this House is not an option. It is not a choice and choices have consequences.

**The Speaker** (Hon. Lusaka): Sen. Kang'ata.

**Sen. Kang'ata:** Mr. Speaker, Sir, let me say that the authority of this House is being tested. We need to stand up, as a Senate, and demand that the Governor for Murang'a must attend to the business or adhere to the summons of this august House.

Mr. Speaker, Sir, if we do not honour that summons, we are going to create a very negative precedent. We will find ourselves in a situation where other governors or persons who have been summoned by the Senate fail to come. They will cite that case as a precedent. We have seen several other governors, Cabinet Secretaries and other entities agreeing to the summons of the Senate.

Therefore, I would urge you to give a ruling that is going to ensure that what is happening does not recur. It is very dishonourable on the part of a top county official to refuse to honour summons of this Senate. I think the IG was misadvised. We do not have to keep on reverting to courts to get such an authority to compel a governor to appear before this Senate.

Therefore, I concur with the sentiments that have been made by my colleagues.

**The Speaker** (Hon. Lusaka): Sen. Malalah.

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. I want to join my colleagues in supporting the fact that the Senate must be respected but again we need to, first of all, look at ourselves. I have an issue on how we execute Standing Order No.48 on requests for Statements from Senators. You will find that when we ask a question and it is referred to a Committee; the chairperson goes to the respective Cabinet Secretary (CS) to seek for answers. Those answers are directly brought to the House without being interrogated.

This has relegated the Chairpersons of Committees to committee clerks, because we are simply forwarding those statements to the chairpersons of committees. They literally run with those statements to the Cabinet Secretaries who give them answers which are not interrogated, to be presented to this House.

I think we need to relook at the manner in which those statements are interrogated. How I wish we should accumulate the statements and cluster them and ask the CS to come and respond to them and that the answers to those statements be tabled in the House in the form of a Report.

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. When my good friend, the Senator for Murang'a, Sen. Kang'ata, contributes, he is generally very loud, audible and clear but, today, he was whispering. That tells you how vicious his Governor is, and that his Senator fears him even in Parliament.

*(Laughter)*

On a more serious note, the orders that Senators are seeking that you give this afternoon are very important and cardinal to our operations as a House. It will not be the first time that your good office will be stamping the authority of our institution in the Republic of Kenya. I wish to remind you that in the last Parliament, when we were debating the controversial election laws, Senators found Parliament marooned by police officers and we felt that, that was intimidating to us as Members of Parliament.

From that very Chair that you are seated on, your predecessor gave out orders.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Kang'ata?

**Sen. Kang'ata:** Mr. Speaker Sir. These days, I have decided to be a very good boy. It is unfortunate that when I talk nicely, people start casting negative aspersion against me. When I ask for the Order Paper in the Senators' WhatsApp group forum, they start asking me questions. Surely, there are honourable Speakers and also the Chief Whip and also Senators here. Even when I do well, they keep asking me questions. Protect me from hon. Senators here.

**The Speaker** (Hon. Lusaka): Sen. Kang'ata, I think what they are saying is that you need to be consistent in your character and behavior. You must be predictable.

(Laughter)

Continue, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you Mr. Speaker, Sir. As I was saying, the orders that we are seeking you to make are not strange and it will not be the first time. On that fateful day, from the very seat that you are sitting on this afternoon, the then Speaker ordered that there shall be no transaction of any parliamentary business until the police officers who had cordoned off Parliament were asked to move out. Business came to a standstill until they moved away. Therefore, we are pleading with you to protect this institution by telling the Inspector General (IG) ---

I suspect that this letter may be an act of forgery, because there is no properly educated IG who knows his responsibilities that can draft such a letter. This is someone that we vetted in this House; telling us to now be on the lookout for people that we know have gone out of their way to intimidate officers of this House. Therefore, we humbly plead with you that for the sake of this institution, please, give proper direction on what will happen on this extremely grave issue.

In conclusion, I know that you have warned us, in accordance to Standing Order 96, but the truth of matter, as Sen. Wetangula spoke to it earlier, is that when officers of Parliament went to Murang'a County to present the summons from this House, they were chased away and threatened by this very Governor.

Mr. Speaker, Sir, please, stand and make this Senate proud this afternoon.

**The Speaker** (Hon. Lusaka): Sen. Mwangi.

**Sen. Mwangi:** Mr. Speaker, Sir, it is true that we invited Gov. Mwangi wa Iria to the Committee on Lands, Environment and Natural Resources to answer on water supply in Murang'a, because there was a crisis there. He refused to appear before the Committee and we decided to summon him, which he defied. Therefore, we decided to write to the IG, so that he could bring Mwangi wa Iria to the Senate to answer the same questions. Instead of the IG bringing him to the Senate, he wrote a letter and said that he needs a warrant from the court to arrest and bring Gov. Mwangi Wa Iria before the Senate.

Mr. Speaker, Sir, this is arrogance of the highest order. Gov. Mwangi wa Iria should know that we are elected the way he is. In fact, I got more votes than my Governor in my county, and, therefore, we should learn to respect each other. In any case, we are demanding that this same Governor be brought before the Committee, so that he can answer questions pertaining to the shortage and non-supply of water in Murang'a. The IG should also be educated on law, to know that he does not need any document from the court to arrest Gov. Mwangi wa Iria and bring him before the Committee.

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

**Sen. Cherargei:** Thank you Mr. Speaker, Sir. As the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we have had serious issues on some of the invitations to some of the people that we need for the purposes and efficiency of the Committee.

Mr. Speaker, Sir, I know that today you will make the Senate proud, by giving directions that will ensure strict compliance with the law. We are doing this in the interest of protecting devolution and service delivery. I know that Sen. Kang'ata brought the issue of water supply in Murang'a and Nairobi counties, so that we could have a closure



to it. The Governor or any other person that is required should respect the Senate and allow us to do our work efficiently

There are so many people – and I will not name them – who have been invited by Committees and have declined, yet the issues that we discuss will help them to discharge their mandate as a Ministry or county government. I hope that we will be able to dispense with this matter and ensure--- I want to thank Sen. Kang'ata because he has appreciated that he is becoming a good man, but we are also happy because he got married the other day. That could be the reason that has brought his excitement in the House and inconsistency in his behavior.

I thank you, Mr. Speaker, Sir.

### COMMUNICATION FROM THE CHAIR

#### FAILURE BY GOV. MWANGI WA IRIA TO HONOUR COMMITTEE SUMMONS

**The Speaker** (Hon. Lusaka): Thank you, Sen. Cherargei.

Hon. Senators, the issues you have raised this afternoon of summoning witnesses before the Committees are grave. Unfortunately, they are not new. We have had incidences in the past where witnesses have been invited and failed to appear before the Committees.

Under Article 125 of the Constitution, like you have rightly said, it is clear that the Senate has powers to summon any person, including Cabinet Secretaries (CS) and Governors before its Committees. The courts have also had occasion to consider this matter and made it expressly clear that Article 125 bestows this power on the Senate.

I just want to assure the hon. Senators that we shall ensure that the power of the Senate, under Article 125, is respected. Also, tell those who are being summoned that by being summoned, they are not being criminalized. They are just being called to come and clear up certain things that may be in doubt. In my past life, I also used to appear and it was very clear. I want to encourage all those who have been summoned to appear before the Senate to come because it is provided for under Article 125 of the Constitution, and all must respect the Constitution.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, since a letter has been issued by the IG, I expect your office to issue a response, attaching the summons to the Governor for Murang'a County. The direction you have given is general. The response to the IG should be clear, with summons attached, on his misapprehension of the Constitution and bringing Mwangi wa Iria here by hook or crook.

**The Speaker** (Hon. Lusaka): I think I want to be clear.

What is it, Sen. Sakaja?

**Sen. Sakaja:** Mr. Speaker, Sir, in addition to that, I volunteer my Committee of National Security, Defence and Foreign Relations to give the IG and his team a re-orientation on the place of the Senate. Even as we deal with that, it is a matter that we have to take seriously as a Committee, because we oversight the functioning and work of IG. If he can consider what we are saying with so much disdain, because probably it is a

letter that somebody else drafted for him and he signed it without taking the matter seriously, it is a grave matter of concern to the Committee on National Security, Defence and Foreign Relations. We will take it up, in addition to your instructions.

**The Speaker** (Hon. Lusaka): Hon. Senators, let me be clear that the Constitution is the supreme law of the land. No other letter can contradict what the Constitution says and, therefore, the Governor who was summoned must appear before that Committee because it has the powers of the High Court. You do not need any other direction from any other institution. I think that is clear and it is so ordered.

Chairman, Committee on National Security, Defence and Foreign Relations.

## STATEMENTS

### ACTIVITIES OF THE COMMITTEE ON NATIONAL SECURITY, DEFENSE AND FOREIGN RELATIONS

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. This is a statement relating to the activities of the Standing Committee on National Security, Defense and Foreign Relations, pursuant to Standing Order 51 for the period between 9<sup>th</sup> August to 9<sup>th</sup> November, 2018. In the interest of time, I will not introduce the Committee and say the number of Members and how it was formed; that is in the record of the House.

Mr. Speaker, Sir, we have considered a number of Bills during this period as follows-

(1) The Prevention of Terrorism (Amendment) Bill (Senate Bills No.20 of 2018), sponsored by Sen. Waqo. The Bill was referred to the Committee by you on 11<sup>th</sup> September, 2018. We held a meeting with the sponsor of the Bill and we conducted a public hearing on this Bill. We thereafter considered the submissions received. We met with the National Counter-Terrorism Committee and other stakeholders and we are waiting for the adaption of that report.

(2) The County Law Compliance and Enforcement Bill (Senate Bills No.25 of 2018), sponsored by Sen. Khaniri was referred to us as well. We held public hearings on it and considered the views received as well as proposed amendments to the Bill. We have also prepared a report on the same. The Bill is scheduled for Second Reading today.

Mr. Speaker, Sir, we have also processed the following statements-

(1) Border dispute between Isiolo and Garissa counties by Sen. Dullo, who is also a very diligent and ranking member of this Committee. We received a response from the Ministry of Interior and Coordination of National Government and we intend to visit the two counties to assess the situation.

(2) Inventory of land and property belonging to the National Police Service (NPS) by Sen. Farhiya. We received a response from the Ministry of Interior and Coordination of National Government, and we are scheduled to interrogate them with the Committee and further engage Sen. Farhiya.

(3) The Statement on Migingo Island by the Leader of Minority, Sen. Orengo, which was referred to us. We held deliberations with the Cabinet Secretaries (CS) for the Ministry of Defense as well as the Ministry of Foreign Affairs. However, the Committee was not satisfied with the response and the lethargy displayed by the two ministries. We

promise to continue dealing with this matter and report back to both the Senator and the House.

Mr. Speaker Sir, during this time the petitions considered were as follows-

(1) Petition on non-local teachers working in Mandera County. We have interrogated that petition jointly with the Committee on Education, met stake holders and tabled our report.

(2) The Petition on the settlement of awards to ex-Kenya Air Force officers and servicemen by the Courts, which was referred to the Committee on 14<sup>th</sup> June, 2018. We have so far met petitioners, stakeholders, the Ministry of Defense and the National Treasury. When they came to us with a response, we sent them back. We are scheduled to meet them again, together with the Attorney-General (AG), to finalize the petition and file a report.

During this period, Mr. Speaker, Sir, we were unable to do much of the county visits. We had already visited a number of counties as the Committee on National Security, Defence and Foreign Relations; but we intend to continue with that because we still have a long way to go. During this period, we held engagements with citizens' participation in security committees – that is the *Nyumba Kumi* Initiative – on 16<sup>th</sup> October, 2018. The main objective was to understand the mandate, achievements and challenges of the committee in the security sector; to assess collaboration of the Committee and other security agencies and to find out any legislative gaps to ensure success of the committee.

One of the key issues that arose was the lack of synergy between the *Nyumba Kumi* Initiative and other security agencies in the security docket. We have advised them on how to better entrench themselves, including with the National Private Security Workers Union (NPSWU), which has security officers across the country, and of which yours truly is the patron. Therefore, to this end, we resolved to engage all security agencies on this matter.

Finally, Mr. Speaker, Sir, I wish to thank Members of this Committee for the continued support and dedication; and also the Office of the Clerk for the continued facilitation in the course of the committee work. Unlike other committees, we have never had quorum challenges; our members are very diligent, they are on time and they are committed.

Thank you, Mr. Speaker, Sir. I beg to lay this statement on the table of the Senate.

*(Sen. Sakaja laid the document on the Table)*

**The Speaker** (Hon. Lusaka): Thank you Chair, for your brief statement.

Proceed, Chairperson of the Senate Standing Committee on Tourism, Trade and Industrialization.

#### ACTIVITIES OF THE COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION

**Sen. Kibiru:** Mr. Speaker, Sir, Standing Order 51(1)(b) provides that a Committee Chairperson shall, at least once in every three months, on such a day that shall

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be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a Statement relating to activities of the Committee. In fulfillment of this provision, I wish to make a statement regarding the Senate Standing Committee on Tourism Trade and Industrialization for the period commencing 9<sup>th</sup> August, 2018, to 9<sup>th</sup> November, 2018.

Mr. Speaker, Sir, like my friend, Sen. Sakaja, I will not go into the issues of how the committee was established. During the period, we held at least 15 sittings and one retreat with the Kenya Bureau of Standards (KEBS) and The Anti-Counterfeit Agency (ACA). On reporting on the activities of the Committee, I wish to provide the following details of each activity as follows-

(1) Bills considered by the committee: we did not consider any Bill within that period.

(2) Legislative Proposals by the Committee: There were no legislative proposals by the Committee during the period. However, The Hawkers and Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill was referred to the committee from the Speaker's office on 7<sup>th</sup> March, 2018. The Committee met with the sponsor of the Bill – the man who has just been discussed here, Governor Mwangi wa Iria – and received various memoranda from interested stakeholders. The Bill was forwarded to the Senate Legal Services Office for further action and publication and it is still pending in that office.

3. Statements Considered by the Committee: The following statements were forwarded to the Committee in that period-

(a) State of East African Portland Cement, which was committed to the Committee on 20<sup>th</sup> September, 2018. The Committee invited and met the Principal Secretary (PS) for the Ministry of Industry, Trade & Cooperatives, and Sen. Pareno on Tuesday, 28<sup>th</sup> November, 2018. The matter was concluded and the Committee agreed to make a follow up on the human resource and skilled appointment issues.

4. Petitions Considered by the Committee: The following petitions were referred to the Committee-

(a) Petition on counterfeited and contraband goods in Kenya on 11<sup>th</sup> July, 2018. We took the necessary action, the petition was concluded and the report tabled in this House on 17<sup>th</sup> October, 2018. Key among the recommendations was the inclusion of the gazettement of the Kenya Ports Authority (KPA) in the Multi-Agency Team; amending the Kenya Trade Remedies Act, 2014; strengthening the capacity of other anti-counterfeit agencies, review of investment policy to provide for type and size of businesses that foreigners can engage in.

(b) Petition on disruption of retail trade in sugar by Government actions and sanctions. The Senate invited the CS for the Ministry of Agriculture and the CS for the Ministry of Industry, Trade and Cooperatives; and the Kenya Association of Manufacturers (KAM). The process is on-going and the report will be tabled in due course.

(c) Petition on business premises, which was committed to the Committee on 11<sup>th</sup> September, 2018. We invited stakeholders, who included the petitioner, the Law Society of Kenya (LSK), the Chairperson of the Business Premises and Rent Restriction

Tribunal; and the Principal Secretary (PS) for Trade and Housing. The petition due date of reporting is 11<sup>th</sup> December, 2018, and we are committed to report back by then.

5. Inquiries undertaken by the Committee: The Committee has undertaken two inquiries-

(a) The inquiry into the fall of major supermarkets in Kenya; and,

(b) A fact finding mission on the management and operations of the national parks in Taita Taveta, Isiolo and Samburu. Both inquiry reports were tabled on 17<sup>th</sup> October, 2018.

6. County Visits undertaken by the Committee: The Committee undertook three county visits to Taita Taveta, Isiolo and Samburu counties during this period. The key findings, for the record, were negligent and undue raise of compensation by KWS, lack of legal framework on matters of community conservancies and land ownership wrangles.

7. Scrutiny of resolutions of the Senate Standing Order No.218.

The Committee received two scrutiny of House resolutions, namely: Compensation to victims of human-wildlife conflict by Sen. Mwaruma and improvement of Kenya's position in the World Economic Forum Travel and Tourism Competitiveness Index by Sen. Olekina. The Committee is yet to receive a report from the Cabinet Secretary pursuant to Article 15(4) (b) of the Constitution and Senate Standing Order No.215(2).

8. Stakeholders' engagement: The Committee undertook several stakeholder engagements before 9<sup>th</sup> August, 2018, and engagements during the period of August to November with the community conservations and county government officials in Isiolo and Samburu. One of the stakeholders was community conservatives in Taita Taveta, Isiolo and Samburu counties.

9. Public Participation: The Committee, during the county visits, used public *barazas* and engagement of community opinion leaders as strategies for public participation. The Committee noted the need to involve the community at the grassroots level because their opinion mostly varies from the leaders' views with the purpose of enhancing full public participation. It is prudent for the Committee to cater for logistics and expenses for invitees during these engagements at the counties. That could be a recommendation.

The challenges faced by the Committee were as follows-

(1) Delays from frequent postponement of meetings by invitees thus affecting the time as required by the Standing Orders to report on Petitions.

(2) Lack of media publicity and investigative research on issues concerning the Committee and non-response from the Ministry on House resolutions.

I would want to conclude by thanking the Committee Members. We have never lacked a quorum.

With those few remarks, I beg to table the Report.

*(Sen. Kibiru laid the document on the Table)*

**The Speaker** (Sen. Lusaka): Sen. (Dr.) Musuruve, let me give you an opportunity to briefly make your Statement.

## SPECIAL OLYMPICS WORLD SUMMER GAMES

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I want to thank you for this opportunity that you have given me. Pursuant to Standing Order 47(1), I rise to make a Statement on an issue of general topical concern on the Special Olympics World Summer Games.

Hon. Speaker, Sir, the Special Olympics World Summer games are a multi-sport event for athletes with intellectual disabilities in the tradition of the Special Olympics Movement.

The Special Olympics Movement is a global movement of people creating a new world of inclusion and community where every single person is accepted and welcomed regardless of ability or disability. These games are held every two years alternating with summer and winter games. The next Special Olympics World Games are scheduled to happen in March 2019 in Abu Dhabi.

This movement was started to give children and persons with intellectual disabilities an opportunity to participate in athletics and provide year-round training and competitions. This has stirred confidence and joy in children and adults with disabilities who are learning coordination, mastering skills, participating in competitions and preparing themselves for more productive lives.

Further, as the movement continues to grow, the joy is that sports is bringing together people with and without intellectual disabilities from every continent. Kenya has participated in previous editions of the Special Olympics. On each occasion, the players have experienced challenges owing to lack of funding and support locally from the Government.

A notable effort has been made in Kenya to enhance the lives of Persons Living with Disabilities (PWDs). However, more needs to be done, especially in the area of sports and physical activity for PWDs.

Inclusion of PWDs into everyday activities cannot be overstated to enhance their participation in society. It is for this reason that I wish to bring this matter to the attention of the Senate and appeal to the national Government and the relevant Government agencies to support this Special Olympics movement and consider funding participants from Kenya, in terms of training, accommodation, upkeep and insurance.

**The Speaker** (Sen. Lusaka): Thank you for your Statement. You have been heard or did you want to add something?

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I am happy that I have been heard. I would wish Senators to comment on this issue. You remember very well just recently when PWDs slept in offices because their issues were not addressed. There is surely need for the Senate to intervene for the purpose of supporting PWDs in sports. Kindly allow Senators to comment for two or three minutes.

**The Speaker** (Sen. Lusaka): I can only allow if there is a request. I have seen one. Sen. Mwaruma, you may proceed.

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity to support the Statement by hon. (Dr.) Musuruve. This issue of inclusivity is something that has been discussed and canvassed in all spheres. Even yesterday we talked about voting for women to be included in Parliament. Today we are talking about Special Olympics World

Games. The hon. Senator talked about the Government sponsoring PWDs, especially those with intellectual disability to participate in these games.

I have mentioned over and over again that we cannot pretend to be moving forward and developing as a nation when we leave a section of the population behind. In this case, we need to support the PWDs to attend sporting activities because they will do well and make us proud. Maybe we have somebody who is intellectually disabled, but they are physically okay. They can run and play different games. As the Senator is putting it clearly, let us prevail upon the Government to support them to attend these Olympic games.

With those few remarks, I support the Senator.

**The Speaker** (Sen. Lusaka): Sen. Mwaruma, you were bordering on irrelevance, but let me let you off the hook.

Senate Majority Leader, you may proceed.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 4<sup>TH</sup> DECEMBER, 2018

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. Hon. Senators, pursuant to Standing Order 52(1), I hereby present to the Senate the business of the House for the week commencing Tuesday, 4<sup>th</sup> December, 2018.

On Tuesday 4<sup>th</sup> December, 2018, the Senate Business Committee will meet to schedule the business of the Senate for the week, subject to further direction by the House Business Committee. The Senate will on Tuesday 4<sup>th</sup> December, 2018, consider Bills scheduled for Second Reading at the Committee of the Whole. The Senate will also continue with consideration of business that will not be concluded in today's Order Paper.

On Wednesday 5<sup>th</sup> and Thursday 6<sup>th</sup> December, 2018, the Senate will consider business that will not be concluded on Tuesday and other business scheduled by the House Business Committee.

Hon. Senators, the following Bills are due for Second Reading stage-

- (1) The Local Content Bill (Senate Bill No. 10 of 2018);
- (2) The County Statutory Instruments Bill (Senate Bill No. 21 of 2018);
- (3) The Statutory Instruments Amendment Bill (Senate Bill No. 25 of 2018);
- (4) The County Compliance and Enforcement Bill (Senate Bill No. 25 of 2018);
- (5) The County Early Childhood Education Bill (Senate Bill No. 26 of 2018);
- (6) The Preservation of the Human Dignity and Enforcement of Economic and Social Bill (Senate Bill No. 27 of 2018);
- (7) The County Oversight and accountability Bill (Senate Bill No. 28 of 2018);
- (8) The County Government Retirement Bill (National Assembly Bill No. 10 of 2018) and,

In addition, there are 19 Bills at the Committee of the Whole stage. These are-

- (1) The County Government Retirement Scheme Bill (Senate Bills No.6 of 2018);

- (2) The Public Participation Bill (Senate Bills No.4 of 2018);
- (3) The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No.2 of 2018);
- (4) The County Government (Amendment) Bill (Senate Bills No.13 of 2018);
- (5) The Irrigation Bill (National Assembly Bills No.46 of 2017);
- (6) The Kenya Roads Bill (National Assembly Bills No.47 of 2017);
- (7) The Energy Bill (National Assembly Bills No.50 of 2017);
- (8) The Fiscal Planning Bill (National Assembly Bills No.34 of 2017);
- (9) The Impeachment Procedure Bill (Senate Bills No.15 of 2018);
- (10) The Petroleum Bill (National Assembly Bills No. 48 of 2017);
- (11) The Care and Protection of Older Members of Society Bill (Senate Bills No. 17 of 2018);
- (12) The Prevention of Terrorism (Amendment) Bill (Senate Bills No.20 of 2018);
- (13) The Petition to County Assemblies Procedure Bill (Senate Bills No.22 of 2018);
- (14) The Data Protection Bill (Senate Bills No.16 of 2018);
- (15) The County Planning (Roads, Pavements and Parking) Bill (Senate Bills No.18 of 2018);
- (16) The County Outdoor Advertising Control Bill (Senate Bill No.19 of 2018);
- (17) The Copyright (Amendment) Bill (National Assembly Bills No.33 of 2017);
- (18) The Land Value Index Laws (Amendment) Bill (National Assembly Bills No.3 of 2018); and,
- (19) The Public Private Partnership (Amendment) Bill (National Assembly Bills No.52 of 2018)

I continue to urge Standing Committees to expedite consideration of all pending Bills referred to them and table the reports in the House. This will facilitate the House to effectively navigate the Committee of the Whole stage on the said Bills. Likewise, I urge Standing Committees to expeditiously consider pending Petitions and table reports on them.

Hon. Senators will notice that the House has only one week left to end the Session on 6<sup>th</sup> December 2018, in accordance with the Senate Calendar. Accordingly, the importance of transacting the aforementioned business within the remaining time cannot be gainsaid.

Mr. Speaker, Sir, I thank you and hereby lay the statement on the Table of the House.

*(Sen. Murkomen laid the document on the Table)*

**The Speaker (Hon. Lusaka):** Next Order.



**BILLS***First Reading*

THE NATURAL RESOURCES (BENEFIT SHARING) BILL  
(SENATE BILLS NO.31 OF 2018)

*(Order for First Reading read-Read the First Time and  
Ordered to be referred to the relevant Senate Committee)*

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

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order!

*Second Reading*

THE COUNTY EARLY CHILDHOOD EDUCATION BILL  
(SENATE BILLS NO. 26 OF 2018)

*(Sen. (Dr.) Langat) on 28.11.2018)*

*(Resumption of Debate interrupted on 28.11.2018)*

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Bill. From the outset, I support this Bill

This Bill was processed by the Senate during the 11<sup>th</sup> Parliament and, unfortunately, it did not become an Act of Parliament. It is a clear Bill that tries to show that there is a framework for Early Childhood Development (ECD) education which is critical. In fact, this is part and parcel of the responsibility of county governments as enshrined in Article 4 of the Constitution. This Bill is very extensive.

For a long time, most stakeholders in education and especially in early childhood education have been waiting anxiously for the passage of this Bill because it stipulates everything; from the right of a child to go into education to management boards, to processes and to details about the classroom.

In the Committee on Education, we visited schools to establish whether some of these centers have been established within the counties as they are meant to do. In some counties, some of the schools have had very good ECD centers. In fact, some of these ECD centers are so good that we were told that some pupils do not want to proceed to primary school when they have graduated from pre-unit. However, there are some schools that have not met the standards, because they are not clear. This Bill sets those standards. It talks about how the classrooms should be, where the curriculum should come from and registration of centers which is very critical.

We know that for a long time, some of the centers have operated without registration. This is important especially where a center is giving education and if it is not controlled, it might not be streamlined. It is important to know that in most of these centers, you can find somebody who is not registered or accredited teaching anything in these centers.

This Bill corrects that by ensuring that there is a curriculum. According to this Bill, that curriculum must also be followed by private institutions, which are allowed to operate ECD centers but must do so within the framework of this Bill.

For a long time, we know that in education, when you are educating a child, you are creating an impression about their education and life. Therefore, the issue of quality of education becomes very critical including the type of education that is offered to this child. This Bill specifies, for example, the sort of desks and furniture which is appropriate for the pupils., and teachers must be diploma holders. Thus, right from the beginning, we are handling the education of our children right and ensuring that they have an enabling environment to learn and enjoy.

The issues of swings and the ability to play is very critical. It is impressive that in some of the schools we have gone to, we have seen these students express themselves and talk about their education experience, recite poems and enjoy themselves in those institutions.

For a long time, the issue of employment for these particular teachers has been handled by various agencies. This Bill specifies that they should be employed by the county. So, it is the one that will coordinate that. We also know that there is a specific role that is critical as well for the Teachers Service Commission (TSC). This has been expounded in this Bill.

Another issue which is critical is that there will be a management committee to ensure that the day-to-day running and rationale of the particular center has been put in place. They can project and find out what sort of education they want to give and how they can streamline that education through the specific curriculum.

It also creates context for a generalization, for example, we do not have private institutions that are religiously run imparting a particular type of education which is different from other institutions. This is very clear.

This Bill is critical in ensuring that the right of the child, from the word “go”, is addressed, and the right of the child is at various levels. One of the key issues in this Bill is with regard to people living with disabilities. They should not be subjected to any form of discrimination within the early childhood centers. It goes on to clarify the various levels of disabilities and put a context for how this should be handled within the education system. Thus, everybody is happy to do that and be there.

There are provisions and clauses in this Bill that ensure that no child is discriminated. In fact, there are clauses that address the fact that if a child should be in school and is not in school, then the parent can be fined. The institute needs to also find out why that child is not in school. The Bill spells out the duties and obligations of the headteacher and guardians at various levels.

One of the other important components of this Bill is that it sets a school board so that there is control about the management of the schools within that board and how it can be gauged and expedited.

It also deals with what to do in cases where the institution does not follow particular rules and where it has also been deregistered. If the process of deregistration is unfair, there is a provision for a tribunal where the institution can appeal to and they will be heard.

There is provision for cancellation of registration altogether and also for mobile schools. We know that this has been a problem in areas where there are pastoralists and students are moving from one place to another. This Bill ensures that there is no excuse why any child should be unable to be in school especially in a system of education and at this early level.

Mr. Deputy Speaker, Sir, it not only touches on the sort of sponsors, but also ties them up within the curriculum that has to be offered in the school and the registration processes for the Early Childhood Development Education (ECDE) centres.

We know of instances where some people have opened ECDE centres in a home and sometimes, in a particular area, maybe where people move up and down. Those areas are not conducive for development and learning of the child. This Bill addresses this at the level of a board, parents and committees within the various boards that are very well established.

Mr. Deputy Speaker, Sir, it also requests for an annual report on governance. The board must give an annual report on governance, raising the various issues that are within the school, including record-keeping and teaching staff. It identifies who the teaching staff are and what the ratio is. It, therefore, addresses all the things, which are very critical and important.

The framework for curriculum is key. The teacher to child ratio as well is very important. Probably the most ingenious part of this Bill is actually in Part VII, which talks about quality assurance. It addresses issues like the safety equipment, for example, ensuring that the type of education that the child receives, right from the outset, will catapult them to a level where they will have an interest in education *per se*, and they will be able to move in a systematic way up to the highest level.

Mr. Deputy Speaker, Sir, on the issue of public participation, Clause 4 is very clear. There is the right to free and compulsory education, but there is also the right to public participation in the processes that actually bring this process into the fore.

In Clause 5, the county governments' responsibility is very clearly stated. The same issues are canvassed to ensure that early childhood is well supervised, and the availability and accessibility of these particular education systems. Each county will make sure that the public education centres that are necessary are also created.

Mr. Deputy Speaker, Sir, for a long time, especially in many of the counties, there is no interest generally from education personnel in terms of the sort of education that is offered in ECDEs. The only difference is that there was no Bill to manage that. In terms of the infrastructure, everything that is given out is very clear now. It enables particular centres to go out of their way and follow the stipulations that have been given in this specific Bill. Therefore, there is no aspect that is left out; be it registration, process, provision, the curriculum or how to appeal for a particular registration process that has been set out. All these have been well canvassed within the Bill.

Mr. Deputy Speaker, Sir, Clause 33 canvasses the issue of Parents, Teachers Associations (PTAs) so that they can send the qualification process and follow through the expectations that are meant to be there.

Part VI is very critical on accreditation, the processes and specific ways that the same will be made. If it needs to be accredited, it has to be looked at, to ensure that the life and the level of education that is being given, can be transferred into an ECDE centre and be promptly and adequately available for the students at that level.

Mr. Deputy Speaker, Sir, I do not want to over-deliberate the importance of this Bill. The necessary clauses have been covered. This Bill seeks to ensure that ECDE centres now have a framework through which they can hinge ECDE education in this country. This is key for us and the children of this country.

I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Dr.) Zani.

Sen. (Eng.) Mahamud, proceed.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, thank you very much for giving me the chance to contribute to this very important Bill. The Bill seeks to---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud. Kindly put the microphone closer to your mouth.

*(Sen. (Eng.) Mahamud moved closer to the microphone)*

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, again, thank you for giving me the opportunity to contribute to this very important Bill. The Bill is set to provide a framework for the implementation of early childhood education, as stipulated in the Fourth Schedule of our Constitution.

Under the Fourth Schedule of the Constitution, county governments are mandated to undertake and implement early childhood programmes in this country. In fact, for the first time, this Bill sets out that framework that lists what needs to be done in terms of implementing the requirement of that Schedule.

Mr. Deputy Speaker, Sir, Article 53 of the Constitution requires that every child must get access to free basic education, which includes early childhood education. This Bill also confers various obligations on the county governments, parents or guardians and teachers in ensuring that the right to early childhood education is realized.

Hitherto, the establishment and running of early childhood programmes or what is called nursery schools has not been very much coordinated in some parts of this country. In fact, in some places, they are not even there. Children go straight to Class One. So, this framework is important because it will ensure that children get access to early childhood education, before they go to primary school.

Mr. Deputy Speaker, Sir, the Bill is very elaborate in the sense that it gives the criteria for registration of early childhood education centres, so that they are not just buildings somewhere. They will have to follow some regulations. They will be properly registered and fulfill the requirements of the law.

In fact, the furniture, equipment, classrooms and sanitary facilities that are supposed to be given are all listed in this Bill. Our early childhood education learners will benefit a lot if this particular Bill is passed.

Mr. Deputy Speaker, Sir, the Bill also provides for the management of Early Childhood Education Centres. It provides for the establishment of boards to manage Early Childhood Centres, in collaboration with the county education boards. It also provides that should anybody who establishes an early childhood programme want to implement foreign curriculum, they must follow a certain process in order to comply. The education board shall maintain a register of all accredited education centres.

The standard and the quality of education that is imparted to the children in those centres is also a requirement, so that quality is ensured. There is a standardized curriculum that is followed by all early childhood learners and once they come out of the centres, they are prepared accordingly.

Mr. Deputy Speaker, Sir, the Bill tries to outline the safety requirements in those centres, since they deal with children. There must be proper safety requirements. Children being what they are, must be given the right environment to play and act as children.

Mr. Deputy Speaker, Sir, this is a very important Bill and the mandate of counties, under the Fourth Schedule is limited to early childhood programmes. So, there is no reason they should not undertake this programme, in terms of making sure that the infrastructure, the staffing and whatever else that is indicated in the Bill, is undertaken. This is a Bill that must be supported and the sooner we pass it the better.

With those many remarks, I beg to support.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. I also wish to lend my support to this important Bill in furtherance of achieving the provisions of the Fourth Schedule of the Constitution.

Under the Constitution, Early Childhood Development Education (ECDE) programmes are domiciled in the counties. Therefore, I thank Sen. (Dr.) Langat for bringing this Bill to the House in such a detailed form that will help in management of these centres.

I have few comments to make on this Bill. First, I would want to make it absolutely mandatory for each primary school to have an ECDE centre so that the process of transition from early childhood education to Standard One is orderly and properly managed. This is because sometimes children go to some ECDE centres in isolated places and when they graduate to Standard One, parents run all over looking for schools and so on. When children in ECDE centres are part of an established school, it orientates them early enough on the culture of school because they are able to see their older colleagues in Standard One, Two up to Seven. The teachers in the ECDE classes should also be part of such a larger family of a school. Therefore, I want to see a clear provision in that regard.

Mr. Deputy Speaker, Sir, education in this country is free and compulsory at every primary level. Clause 7 of the Bill has provided sanctions. However, I urge Sen. (Dr.) Langat to know that many parents in the villages are unlikely to meet the punishment he has provided of Kshs10,000 fine.

We must appreciate that people in this country are extremely poor and as such, many parents with many children are in the category of those who are below the line. Therefore, when parents offend the law by not taking their children to school, we should emphasize community service as a form of punishment rather than fines and

imprisonments. This is because if people in the villages are fined Kshs300, they will not be able to raise it, they will just end up in jail.

Therefore, I propose that Clause 7 be recast so that parents who break the law by not taking their children to ECDE classes are named, shamed and punished through community service. They could, for example, be made to sweep markets or cut grass in schools so that other children can see that they are the offenders and they be brought to order. However, I will not go the route that the Bill proposes of fining or sending somebody to jail for a period of one year.

Mr. Deputy Speaker, Sir, the parent being sent to jail could be the only provider for the family. So, the child will be deprived much more than education by jailing the father or mother for one year. Sometimes, we have single parents. Therefore, if we jail a single parent, who will take care of the child? Therefore, this provision of fines and custodial sentence should be removed altogether.

I say this because being a professor of law yourself, you know the risk of misapplying the law. You will find over-enthusiastic law enforcers dragging parents to court and when they get to court, it has a tendency of imposing the slightest fine but with an alternative custodial sentence to people who cannot afford.

Mr. Deputy Speaker, Sir, I also support the provisions of Clause 8 on the duties of the head teachers in maintaining proper records in school and making sure that children who go to school get the correct facilities. It is very important in terms of standardization. Although ECDE centres are domiciled in the counties, for purposes of shaping our children in a unitary state like we have, to have uniform standards for Mandera, Nairobi, Bungoma, Tharaka-Nithi, Bomet and everywhere else. ECDE teachers must be trained with a common curriculum in those colleges.

I see no mention by the sponsor of the Bill of training curriculum in the school for ECDE teachers. I want the provisions in the Bill to also provide for a standard curriculum for ECDE teachers. Such that an ECDE teacher trained in Turkana is the same as one teacher trained in Murang'a, Nairobi and elsewhere. This will help them start off the foundation of children at the same level. They either get it right early enough or ruin the children forever.

Mr. Deputy Speaker, Sir, you may recall that in the old days - this is also not provided although there is a casual mention of culture and so on -when we were going to school from pre-primary to standard four, we used to be taught in vernacular. Therefore, people are also meant to understand their cultural activities, orientation and language.

Our Constitution recognizes that we are different nationalities in terms of culture. There is no point to deny children in Turkana an opportunity to learn Turkana language at their formative stages or in Bomet to learn Kipsigis language which is a dominant language and so on. We must have uniform standards for teachers.

Mr. Deputy Speaker, Sir, even if the management of these schools is under the counties, they set up boards of management to ensure that facilities are readily available. However, I encourage ECDE teachers to find a way of being part of the Teachers Service Commission (TSC) for purposes of standardization. Such teachers, within the context of the counties, should be transferable from one school to another so that they do not become owners and fixtures in the school once they are employed. This is because I have

seen counties employing teachers and giving them letters designating them to particular schools with no provision that they may be transferred to other ECDE establishments.

Clause 22 mentions that such teachers must be qualified and registered by the TSC but there is little mention of the curriculum standards of training teachers that must also be provided for.

Mr. Deputy Speaker, Sir, in Part IV on the management of these institutions, the Bill is just a cut and paste which is wrong and unhelpful. For example, Clause 29 is lifted to standard Bills about boards of management. When the Bill says that the board of management of an ECDE establishment will have the power to borrow money. What are they borrowing money for?

These are small institutions which are funded by the county and have no pressure to borrow because, for example, the classrooms are built by the counties. Therefore, such innocuous provisions should not find a way in this Bill.

In Clause 29 (2) the Bill states that-

“The board of management shall be a body corporate with perpetual succession and a common seal and shall in its corporate, be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable properties;
- (c) borrowing of money;
- (d) entering into contracts, and,

This is totally misplaced. This is because once teachers are recruited by the county governments or TSC, the board of management will have no business entering into any contracts with them because they are standardized and managed by the public body; the TSC.

- (e) doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate”.

This kind of drafting is borne out of lazy minds; it is just a cut and paste scenario when we are legislating. We should be more innovative in bringing provisions of the law so that the purpose of the law is to create order. Where a law is moribund, it is meaningless to the society.

Mr. Deputy Speaker, Sir, the composition of the boards of management once again lists a person elected from among the parents, which is alright. It also lists a representative of the teaching staff. Two persons with experience in matters of nutrition working in Early Childhood Development Education (ECDE) centres, which is also alright. What has probably been left out by Sen. (Dr.) Langat, who is the sponsor of this Bill, are the trained nurses. This is because these are little children, and you need somebody who has some qualification in matters of looking after the health of children.

You need some people with some basic knowledge of pediatrics because they are not the kind of children who, when they have a problem, look for big hospitals. You need somebody who will constantly tell these teachers that when you see a child with these kinds of symptoms, you deal with it this way. In fact, I dare say that going to the future,

availability of resources allowing, each ECDE establishment should have a nurse to take care of these children.

Mr. Deputy Speaker, Sir, there is one school in my County which has now been elevated to a national school – a CBM school that takes care of children living with the challenges of disabilities. We started this school and I continuously thank the British Government's Department for International Development (DFID), which has pumped a lot of money into it. They have built a first class, health centre in the school and equipped it properly with equipment for physiotherapy for the children with limb challenges, *et cetera*. They have employed four full time nurses for us who look after the children. They are checked every morning to see that they are okay.

Mr. Deputy Speaker, Sir, I salute Sen. (Dr.) Musuruve for being on the frontline of championing these issues. I want to assure her that she is not the only one. We also live with people with challenges. We represent people living with challenges and we also feel the way she feels in making sure that wherever they are, they must be made part of the society.

We should provide in this Bill, that as far as is practically possible, ECDE establishments should have a basic nurse to help look after these children. Where counties have an endowment of resources – like Nairobi, Narok or Mombasa, the counties with big, attractive and alternative sources of raising resources can do it. Gradually, this Senate can actually obligate the national Government to give conditional grants to counties to take care of this kind of requirement. This is so that when children go to school, like I said earlier, you start it early, you get it right and you have good children going to school.

This is because when a child at the age of four or five goes to school, it must find the school better than home for them to like the school. However, if you take a child to school and it gets there and the school looks horrible and unacceptable, that child will rebel himself or herself from school forever.

Mr. Deputy Speaker, Sir, what is also not provided for is that we have some teachers with propensity for cruelty and they never care whether these are little children or not. They just enjoy punishing children. I believe in discipline, like we all do, but there could be a provision given which outlaws ill treatment of children. Ill treatment is not necessarily physical; if the children are supposed to have a cup of milk, they must have it. You may have situations – I have seen it – where some teachers have even been prosecuted, where milk meant for the little children in school is ferried home by the teachers at the expense of the children. That is a criminal offence of theft.

Therefore, we should have provision where discipline for the management and discipline for the children is also the same discipline for the teachers. In fact, for the teachers, you should then put proper sanctions of law where a teacher carries away materials meant for teaching aids in school or where a teacher carries away provisions of milk or water for the children.

There are many people with criminal minds out there who we need to check. Not everybody is a criminal, but out of every ten, you will find one crooked character who thinks that what is available for the children is better available in his or her home. We, therefore, need to deal with such people as well.



Mr. Deputy Speaker, Sir, the orderly running of these institutions is very critical. With regards to the process of transition, we need to have a provision for the curriculum that helps children's transition. Of late, I have heard very dangerous statements coming from the Ministry of Education. For example, the Cabinet Secretary (CS) saying that every child who sat for the Kenya Certificate of Primary Education (KCPE) will go to Form One. What then is the purpose of examinations? There are some who may not qualify to go to Form One, and you have to help them to find another level to exploit their talents. However, when you say that you are going to do an examination, and regardless of your results, you will just move on, then what is the purpose of examinations?

When you go to comparable jurisdictions – whether it is in the United Kingdom (UK), Australia and even the whole of the European Union (EU) – examinations grade children and students, and that is why you have lawyers, doctors and engineers. You cannot say that whether you get “E” or “D,” you must decide what you want. It then defeats the whole purpose of examinations. Therefore, these dangerous statements coming from the Ministry are very disheartening and worrying.

Mr. Deputy Speaker, Sir, now that we are talking about education, I want to join those who have condemned the militarization of examinations in this country. How can you go to an examination where children are sitting papers, for example, in civics and a President, Deputy President or a CS walks in? At the same time, helicopters are hovering all over the skies, distracting the children from sitting those very exams. This is an indictment of terrible failure in our management of public affairs; that when we get to examinations, the country comes to a standstill. It is like a war situation, because we have invisible examination thieves hovering everywhere, ready to do the mischief in our examination system.

I am very worried about this because you did examinations in your early days and you never even saw a policeman in your school during your examination days. It was a somber day. The rest of non-examinable students were told to keep away and stay at home; in the examination room, there was just you and the invigilator. You are given your papers, you finish and go away.

Mr. Deputy Speaker, Sir, how do you allow children who are going to do an examination arrive at the examination centre only to find ten heavily armed men in dark glasses standing at the gate? The direction we are taking is wrong and dangerous. The Ministry of Education should be telling Kenyans how they are protecting the integrity of examinations by keeping away people who pilfer papers and sell them, instead of using crude force; the police and the Administration Police (APs).

In fact, during examination time, criminals have been having a field day because all the law enforcement agencies are deployed to go and police examination centres while criminals are molesting people in the villages, slums and all manner of places.

Mr. Deputy Speaker, Sir, we want to bring better morals to our society. Better morals mean that it is the duty of parents to tell their children to go to school and work hard. And that there will be examinations at the end and they have to pass to go to the next level. It is not for a policeman to come and stand there with a Kalashnikov as they sit examinations. This must be stopped. I urge the President to find alternative ways of

instilling public probity, morality and behaviour that takes away this militarization of anything that we do in public, more so, examinations.

I would like to hear from the Ministry of Education what the Minister means by saying that one moves on regardless of their examination results. Why have examinations then?

With those remarks, I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula for very interesting remarks. I hope the Mover is noting some of the input.

Sen. Wetangula, in your usual manner, the graphic nature of militarization phenomena is quite intriguing. I want to, perhaps, ask you to consider the recommendation you have made about transition. This is because we, as a House, the recommendations we make must be in tandem with the overall structure of our Constitution. Basic education under Article 53(1) (c) of the Constitution is free and compulsory. Basic education is defined as studies up to secondary education. I think the Minister could have been using that imperative to force every child to have basic education. However, that is food for thought.

Very well. I thank you, Sen. Wetangula.

Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity to contribute to this very important Bill.

From the outset, I commend the Chairperson of the Senate Committee on Education and his team for coming up with this Bill. This is important to all Kenyans.

The Early Childhood Development Education (ECDE) forms the basis of a child's lifelong journey into the world of learning that eventually transits into the world of work, or absorption of a child to the wider society.

Mr. Deputy Speaker, Sir, many children leave home to go for ECDE when they are still egocentric. They do not have proper mannerisms, for instance, sharing and interacting with each other. It is during the ECDE years that a child learns to accept others, share and make friends.

ECDE helps in developing an all-round child. It ensures that the child has holistic development. The etiquette that a child acquires at early childhood moulds him to be a responsible adult in future. For example, a child learns to respect other people at an early age. This is a virtue that will make him or her easily interact with other people, be appreciated and acceptable in the society.

It is important for us to instill discipline in children at a very early age. This is what ECDE does. At an early age, children learn to respect the grown-ups, share with others, love and play with their peers. Play is very important for children as they grow up. It is during this time of playing together that they learn to concentrate even in class work.

If a child is not groomed in proper mannerism at an early age, it becomes very difficult for him or her to become an upright citizen. A child that does not have good ECDE background, can easily become deviant in a society. When we plant a tree and we do not take care of it at an early stage, it might bend. Once it matures, it will be difficult to put it upright. We must get it right at an early age if we want to have well behaved children in our society. Our children acquire good values if they are exposed to ECDE.

We do this knowing very well that one day we will hand over the mantle to them. Our children are our future and we must nurture them properly.

Early childhood education can prevent far reaching consequences at an early age. For instance, we will avoid having deviant behaviour in our society if we instill discipline in our children at an early age. We will not have children misbehaving because they will learn values and other virtues from their parents and teachers. At the end of the day, they will grow up to be productive and respected adults in society.

ECDE inculcates the culture of reading in our children. It motivates them from an early age to love books, learning and going to schools. If we do not take them to school at an early age, it will be difficult for them to cope and enjoy learning. That transition from early childhood to grade one is very important in a child's life. If ECDE is appropriately done at early childhood, then at grade one, the children will not have difficulties.

Mr. Deputy Speaker, Sir, ECDE is also a constitutional right as stated in Article 43 of the Constitution. A right to education is a right for every child in this country. This Bill ensures that the county government plays a key role in ensuring that ECDE is implemented at an early age to the letter and at the right time. The county governments ensure promotion and protection of ECDE and make sure children access it in their respective counties.

The Bill also calls upon parents to ensure that their children are in schools. The parental role of ensuring children access early education is very critical. There are some parents who are not very keen about taking their children to school. However, this Bill is now compelling them to ensure that their children go to school without failure. In a situation where parents are not keen about their children going to school, they will be fined. They will be taken to task so that they ensure that their children are in school.

Apart from parents, the Bill is also speaking to head teachers. Headteachers must make sure that children remain in schools. If parents and headteachers insist on children learning at an early age, then children will have no alternative, but to love education.

Mr. Deputy Speaker, Sir, a good relationship between parents, teachers and children is important. It will make a child also love to read and always want to be in school. The Bill also speaks about issues of infrastructure. There are some ECDE centres where education is being conducted under a tree. There are no classrooms and the infrastructure is not appropriate even for the boarding facilities. This Bill compels county governments to ensure that they provide infrastructure for ECDE so that learning is not conducted under trees. If we have learning being conducted under trees, it defeats the purpose of us promoting ECDE.

We, as Senate, are here to protect the counties and their interests. ECDE is one of the important issues in a county. This Bill is good because it is touching on issues that are pertinent in our counties.

I also like the fact that this Bill is talking about provision of resources. It is important to talk about the provision of infrastructure but infrastructure alone cannot make a child perform well. We need infrastructure and resources and this is an issue that the Senate must intervene by interrogating the counties so as to ensure that there are enough and appropriate resources in Early Childhood Development (ECD) schools. We have to help the child to eventually have life skills which will help him as he transits from early childhood school to primary one and primary two.

This is a good Bill for it is also speaking on the issue of disability. Sen. Wetangula has mentioned that the issue of disability is an issue that is important. He has mentioned that he has significant others who have disabilities. I am happy because this Bill is speaking on issues of disability and children with disabilities. However, I want to bring it to the Floor of this House that there is need for the Senate, through the Committee on Education, to interrogate this issue. The Committee should go to the ground and see what is happening there regarding the children with disability who are in ECD schools.

As we speak, there are some issues in the curriculum and the syllabus that are not clear on children with disabilities. There is need for the Senate Committee on Education to interrogate and ensure that we have a proper curriculum for children with disabilities because they are always forgotten. Recently, when the results were announced, the media talked of how the children had performed well and the whole nation was happy but nothing in the media spoke of the performance of children with disabilities.

I want this Senate to know that the performance of children with disabilities was dismal. Something needs to be done in this country so as to help them right from early childhood, in order for them to get the right papers so as to transit to proper secondary schools and the working world. I decided to interrogate and see how the children with disabilities performed in the just concluded Class Eight examinations. It was painful to find out that the highest child in special schools did not have more than 270 marks, especially those in the schools for the deaf.

As we talk about the ECD schools and early childhood, can we interrogate the system so as to see where we have gone wrong as Kenyans and when we interrogate, we do so because we are well meaning. We want to ensure that we leave a legacy as a Senate such that we can later say that, this was the situation on issues of disability in ECD, there was a mismatch or the curriculum was not there or it had not been developed but as Senate, we pressed on and worked with the right stakeholders and ensured that there was a curriculum.

As I speak right now, we have the competency-based curriculum but the ECD children with disability have been neglected to date. There is no direction for teachers. They do not know how to approach teaching ECD and there is no direction for the children, hence the competency-based curriculum is competency based for the regular children. There is a gap that needs to be addressed.

I support this Bill but it should be inclusive so as to ensure that our children get the education that will eventually help them at an early age and it should be the same for children with disability. When that is done, we will avoid having a few people with disabilities dotting the colleges and universities. There should be a reasonable number of children with disabilities at college and university level and that can only happen when it starts right from early childhood.

Thank you, for giving me this opportunity. I support this Bill and I insist that it should interrogate further on issues of disability.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity. From the onset, I want to congratulate the Chairperson of the Committee on Education, Sen. (Dr.) Langat, the Senator of the great County of Bomet. This is long overdue.

One of the key functions that forms the basis of our lives and that of our children is basic education and this is there in Article 53(b) of the Constitution. Apart from the right to nationality, name and recognition and family, one of the key aspects is the right to basic education. Article 53 has been well captured and it has been given some breadth of life by the County Early Childhood Education Bill (Senate Bills No. 26 of 2018).

I know that most counties have enacted, in their own way at county assemblies, various legislations that regulate how ECD's operate. ECD has been a serious issue at the grass root level. I want to agree with most of my colleagues that the foundation of any child in his education life is key to the success of both primary and secondary education which also includes higher learning or college education. Any child who has had a proper foundation in terms of basic education will always have a better understanding of anything that they encounter either at primary or secondary level and that is key.

In this country, ECD has been taken very seriously. When I was growing up, the only thing that you could do at ECD was mould using clay. In those days, they used one's height to clear them to move to the next class and one needed to touch their ears to qualify class one. Unfortunately, because of my stature, I almost stayed in nursery school for five years.

Therefore, I think that this is the right law for us not to have, so as not to ask our children to hold their hands across their head to touch their ears for them to be cleared to move to the next class. I did not know that education was about the mind and the capacity of understanding. I used to think that it was mechanical but I now agree that it is good for us to have the law in place. I support.

The Bill is to provide a framework for establishment of development, culturally and linguistically. I know that there was a Petition that was brought by the great people of Homa Bay, where Sen. M. Kajwang' hails from, on the issue of linguistic. I remember my parents telling me that they used to be taught in their local dialect. As a country, when we lose our identity, we no longer have a signature of who we are. I want to commend the Chairperson because by including this aspect of culture, we will be able to understand where we are coming from and where we are going. It will also help us to understand the reason as to why we are different. We will understand the reason as to why I come from a certain part of the country and why you and Sen. Mwaruma come from a different part of the country. As a Senate, we are giving meaning to our identity and we should respect the diversity that we have as a country, going forward.

Mr. Deputy Speaker, Sir, Clause 4 is very important, and I had seen Sen. Kang'ata, because it is the right to free and compulsory basic education---. Under the Bill of Rights, this is very key because it is the basic. I know some of the Senators have closed the business of siring children, but those people who are still siring like yours truly, should be very conversant with the law. Sen. Kang'ata is here and he was blessed the other day when he solemnized his marriage in church. I know he is in the process of baby making. So, we should pass this very important law that will assist most of our children to get everything right.

On the aspect of public participation, if there is anything that is a blessing in this Constitution, it is public participation, where the public is given priority based on need assessment. Even as we discuss about the Public Participation Bill, which is before this House and come up with how it should be conducted, this is very key. I hope it will be

implemented because when you look at Article 10 of the Constitution on national values and principles of good governance, it is very critical in implementation, monitoring and evaluation of policies. I know parents and guardians will have an opportunity to do that.

Mr. Deputy Speaker, Sir, Clause 4(c) speaks on the holistic approach towards meeting education and other development needs. I think Sen. (Dr.) Musuruve and most Senators have canvassed that our children need to grow up in a less toxic environment. When we say holistic, it means that apart from ensuring that they develop mentally, they should also develop in terms of capacity of understanding, knowledge and ability. That is what this Bill is trying to bring out.

Where I come from, we used to wonder why my brothers from the region Sen. M. Kajwang' represents were brilliant than all of us, there was a perception that fish has a unique component that makes them more learned than where I come from. We did not know that until the other day, when we learnt in biology in high school. Most of the learned people in this country, courtesy of Sen. M. Kajwang', come from his region. However, we did not understand that it involves a holistic approach on the development, ability and understanding of the child.

The recognition of parents and family of the child as the primary caregivers is important. It is so sad in this country when you walk around, you will find children that have been abandoned, and are doing child enslavement. Yours truly will be part of the process on enactment with my Committee on Justice, Legal Affairs and Human Rights, on the issue of servitude or modern slavery. You find the biggest victims of modern slavery are young children. It means that the primary caregivers; that is, the parents and guardians, have abandoned their responsibility.

The school holidays are on now, and as you walk across anywhere and you find people who are in traffic jams or where you park your vehicle, asking for Kshs10 and Kshs20 are young children. Which means that we are denying those children the opportunity to grow up in the right environment. The recognition of the parents is very critical. That is why there was the thorny issue of early teenage pregnancies. It is because there is an abdication of the role by the primary caregivers.

I agree that parents and guardians should play a critical role. I know there are amendments being proposed by the National Assembly on adoption of children. I hope some of those proposed amendments will address the issue of modern slavery and servitude, so that our children are not exposed, but given primary care.

When we were growing up, where I come from in my small village called Kapkeben in Mosoriot, Nandi County, if you messed up while herding cattle, anybody could beat you up. This meant that it was a communal issue and role to ensure that children grow up as mature, disciplined and responsible persons. If we, as parents and guardians could take care of our roles as parents, we could have less of early childhood pregnancies.

If you visit our prisons, you will find juveniles who have been convicted because of crime. We need them to be more responsible citizens. In addition, we could have a less free corrupt society in this country. However, because we are as corrupt as early as childhood, that is why by the time you grow up, people become gurus of corruption, because we are stealing sugar, doing small mistakes as children and no one is preventing us.

I agree that the recognition of parents is very key in ensuring that interventions are based on objective information and methods that monitoring mechanisms and regular evaluations are established, thus ensuring transparency in public management, social ethics and taking into account the needs of the population. Social audit is a very key word there even in issues of learning. Apart from the audit that we normally do in the traditional way, social audit is key. We have had instances where parents complain that money has not been properly utilized in these ECDs.

When you go to Clause 5, every child has the right to free and compulsory early childhood education in a public education center. It has been specific because, with the inception of 2003 Free Primary Education (FPE), early childhood should be in a public education center. There is a perception in this county that any public institution is full of inefficiency, lethargy and moribund.

As county governments take over this role, the public ECD centers---. I hope the mover of this Motion, Sen. (Dr.) Langat, will ensure that they follow up on the quality education that they offer at public ECD centers so that the signature of public institutions that has been captured in this country; that it is lethargic, inefficient, moribund and cannot give something good, can be disapproved.

On the issue of discrimination, no one should be discriminated under the Bill of Rights. I agree with my very good, Sen. (Dr.) Musuruve, that we should not discriminate children living with disabilities, which is very key. I agree there should be a raft of amendments to ensure that we provide a disability friendly environment for them. I have read through the Bill and there is nowhere we have in ECD centers provided that it should be disability friendly under the Disability Act. This will help children with disabilities or are challenged can access those ECD centers.

Even as our county governments construct ECD centers, they should ensure that they are disability-friendly for our children. I join Sen. (Dr.) Musuruve in emphasizing that key aspect.

Mr. Deputy Speaker, Sir, maybe to run through, the right to early childhood education, the county government shall---. I hope the county respects, promotes, monitors, supervises and refrains from actions that undermine access to early childhood education. I hope they will ensure that the early childhood centers are children friendly, meet the standards of curriculum and the standards of public health which are provided through maybe other bodies that are relevant in the running of education sector through the Teachers Service Commission (TSC), Ministry of Education at the national level and the Ministry of Education at the county level. The governors across the country must rise up to this occasion and ensure that the basic education that our children get at early childhood education centers is of good quality and has the foundation that can turn them into good citizens.

Clause 6 provides that each county government shall, in promoting the right to early childhood education, provide for free and compulsory early childhood education in public education centers within the county. The county governments across the 47 counties should ensure that they construct early childhood development (ECD) centers within the reach of many children. We should not have children travelling for long distances to get education.

The county governments shall also formulate programmes and plans, and implement policies for the realization of the right to early childhood education.

*(Sen. Kang'ata consulted while standing)*

Sen. Kang'ata said earlier that he is a good 'boy' today. I do not know what has changed again because he looks like he is going back to his former self. I hope he is just working as the Deputy Majority Whip.

Since I have not gotten the full understanding, my concern is that we need a standardized---

*(Sen. Kang'ata consulted loudly)*

Mr. Deputy Speaker, Sir, can you kindly protect me?

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Sen. Kang'ata! Order! Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, in that spirit, I hope that you will add me a few more minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order!

**Sen. Cherargei:** I will proceed with your guidance, Mr. Deputy Speaker, Sir.

As I have said, early childhood education centres are key.

Clause 6 goes further to say that county governments shall provide development of education centers for administration of childhood education within the counties. It also deals with issues provided for under the bill of rights, including marginalization and public awareness. The Bill also deals with the duty of parents and guardians, which I have elaborated.

There is the thorny issue of hiring of early childhood education teachers. There is a tussle between the Teachers Service Commission (TSC) and county governments. I hope we will get a standardized way of employing early childhood education teachers across the country, so that we do not employ teachers who teach DICECE or Montessori. We should have a standard.

Mr. Deputy Speaker, Sir, I hope that Sen. (Dr.) Langat is taking notes. We should factor in the issue of curriculum. Which curriculum will we follow? Will Nandi County, for example, have a different curriculum from Tharaka-Nithi County or Nakuru County?

On the code of ethics, we should be guided by the TSC, which already has a code of ethics. If we standardize the way we employ teachers, we can agree on the code of ethics.

Mr. Deputy Speaker, Sir, when we register education centers it will be easy for the Cabinet Secretary (CS) for Education, in collaboration with the county governments, to monitor the transition rate from early childhood education centers that we have across the country to Class One. This was a brilliant idea. Of course, the sponsor of this Bill is a former don and so, he understands these things.

On the issue of private early childhood education centers, there should be tougher requirements. This is because you will find some early childhood education centres



operating near bars, where people drink and are merry-make. You will find a bar on the first floor of a building and an early childhood education centre on the second floor.

Finally, on the punitive measures, I think the drafter is too lenient. We only have suspension and cancellation. I would propose that anybody who violates this Act should, apart from cancellation and suspension, be imprisoned.

In the interest of time and the fact that most of my colleagues would want to give their Solomonic wisdom on this agenda, I beg to support. When the time comes, we will assist Sen. (Dr.) Langat to move a few amendments, so that we fine-tune the Bill. This will ensure that our children are guaranteed their rights under Article 53 of the Constitution, which include the right to a name, basic education *et cetera*. This will ensure that they grow up into responsible, hardworking, disciplined and focused citizens of this country.

Thank you.

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity to contribute to this important Bill that is sponsored by Chairperson of the Committee on Education, Sen. (Dr.) Langat.

First and foremost, it is good that we have a regulating law on early childhood education, which is one of the most important parts of education for our children. Initially, when counties started employing teachers, they ran into problems with the TSC and the Kenya National Union of Teachers (KNUT) because Article 237 of the Constitution stipulates that it is the TSC that supposed to register, employ and pay teachers.

The only body according to Article 237 of the Constitution mandated to employ and register teachers is the TSC. I, therefore, wonder if we will not run into problems again with the unions and the TSC if we use the word ‘teachers’ in this Bill - and I hope Sen. (Dr.) Langat is listening. Maybe if we get a window of changing the Constitution, we can change Article 237---

*(Sen. Kang’ata consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Kang’ata! What have you been engaged in this Chamber the whole afternoon?

Proceed, Sen. Mwaruma.

**Sen. Mwaruma:** Thank you Mr. Deputy Speaker Sir, I was saying that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it Senate Majority Whip?

**Sen. Kihika:** On a point of order, Mr. Deputy Speaker Sir. In the interest of time and given the many Bills that have not found their way to the Floor, including The Transportation Bill, Energy Bill, Petroleum Bill and all other Bills that have not had debate time--- Also aware that we will go on recess next week, on 6<sup>th</sup> December, 2018, I ask for your guidance whether it will be in order to reduce the speaking time, so that we can complete the work for today and dispose of the other important Bills remaining next week.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Majority Whip, your boss, the Senate Majority Leader sits in the Senate Business Committee (SBC). This issue has been

addressed in the Speaker's Panel, but I believe it is an issue that can be dealt with at that level. It is true that we have so many Bills which have been lying with us. We have occasionally heard very nasty sentiments coming from the 'lower' House.

*(Sen. Murkomen and Sen. Orengo consulted loudly while gesturing at each other)*

Order, Senate Majority Leader! Order, Senate Minority Leader! I am trying to assist your work and you are busy sabotaging the umpire.

Hon. Senators, it is true that we are looking very bad in terms of processing Bills. We have three more speakers left. Instead of the technicalities of reducing time, I would just ask you to be brief so that we conclude and see whether we can process one or two other items. I am afraid because I can even see some Motions which the Speaker has deferred. An example is the Motion by Sen. M. Kajwang'. I am not trying to interfere with the ruling given by the Speaker earlier, but if the performance of this House on Bills and Motions will be like this, where in 2019 we will still be looking at the accounts for the Financial Year 2013/2014, we will become irrelevant and obsolete in this country. That is how we lose face in the eyes of the public.

Having said so, I will use Standing Order No.1 and direct that the three Members who have not spoken, after Sen. Mwaruma concludes his remarks –Sen. M. Kajwang', Sen. Wambua and Sen. Mutula Kilonzo Jnr. – will each have about three or four minutes. We will thereafter conclude and see whether we can do a few other items. Next week, a significant number of this House will be away, meaning that there is very little that we can do. However, if we can push a few more Bills and Motions and, at least, be left with Divisions, the situation will not be as aggravated as it is now. That is the order of the Speaker.

Sen. Mwaruma, you may conclude; Sen. M. Kajwang', Sen. Wambua and Sen. Mutula Kilonzo Jnr. will have a few minutes each, and that will be it. I will not allow any other interventions.

**Sen. Mwaruma:** Mr. Deputy Speaker, Sir, I had just started, but it is okay; I will use the three minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sure.

**Sen. Mwaruma:** First, this Bill is likely to be unconstitutional, because the only body that is mandated to employ, register and pay teachers is the Teachers Service Commission (TSC). My county employed Early Childhood Development Education (ECDE) teachers, but they call them 'caregivers.' Therefore, it is likely that we might have to change this and say that these are not teachers but caregivers, so that it does not run in contravention with Article 237 of the Constitution that forms the TSC.

Secondly, Clause 36(1)(a) of the County Early Childhood Education Bill 2018 states that-

“A person is qualified for employment as an early childhood education teacher if such person —

(a) holds at least a diploma in early childhood development and education from an institution recognized in Kenya;”

There are very many qualified teachers who have certificates; where will they go? If you look at the transitional clauses, there is nothing that shows how they would transit so that we can have the certificates and also give them an opportunity to earn their diplomas.

Clause 36(2)(b) states that-

“A person is qualified for employment as an early childhood education teacher if such person —

(b) has at least two years' experience in matters of early childhood education.”

I do not know where the newly graduated teachers from college will get the two years to allow them to be employed as ECDE teachers.

Clause 38(2) states that-

“The county government shall pay to early childhood education teachers employed in public education centres within the county, such remuneration as it shall, in consultation with the Salaries and Remuneration Commission, determine.”

This is a good one, because it talks about harmonisation of salaries; if you are teaching in Bomet or Garissa or Taita Taveta, you earn the same salary.

Clause 39(1) of the Bill talks about free admission, which is good because there are very many instances where we have young children staying at home because of lack of fees, yet when they go to primary level, education is free. This is, therefore, a very good Clause so that we have our children accessing free ECDE.

Clause 63(1) talks about quality, assurance and standards. It is true that the devolved functions do not have performance management structures. The ECDEs also do not have a way of ensuring quality assurance. This, therefore, comes to me as a very good Clause because whatever is taught in Garissa or Lamu is taught the same way across the board.

Mr. Deputy Speaker, Sir, I would like to hear about a clear scheme of service which shows the growth of a teacher from the time they joined service to the time they gain experience, 15 or 20 years later.

With those few remarks, Mr. Deputy Speaker, Sir, I beg to support this Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Mwaruma. I hope the mover is taking note of those very useful suggestions.

Proceed, Sen. Moses Kajwang.’

**Sen. M. Kajwang’**: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill on County Early Childhood Education. We discussed this Bill in the last Parliament, but we were unable to conclude it. I, therefore, congratulate the Chair of the Committee on Education for salvaging it and bring it before the House.

Mr. Deputy Speaker, Sir, this Bill reiterates the right to early ECDE, and says it should be free and compulsory. Many of us went through the 8-4-4 system of education, and the fact that it was 8-4-4, meant that ECDE was not considered to be part of curriculum; otherwise, it ought to have been 3-8-4-4. I never attended the ECDE and, as a result to date, I have problems trying to differentiate certain colours, particularly things like violet and indigo. This is because the children who went to nursery schools are the ones with that capacity.

Mr. Deputy Speaker, Sir, we need to ensure that the obligations of county governments, as stated in this Bill, are faithfully and firmly implemented. These obligations are to provide free, compulsory and quality education; and to provide the infrastructure.

Mr. Deputy Speaker, Sir, this Bill also talks of the duty of parents and guardians. Interestingly, it says that any parent who does not take their children to free primary school shall, upon conviction, be given a fine of Kshs10,000 or shall be subjected to one year in prison or to community service as the judicial officer might determine. However, there is a contradiction because in Clause 6 of the Bill that spells out the fines, jail terms and community service, Clause 8 says when a head teacher establishes that a parent has not brought a child to school without any good reason, that parent shall be subjected, upon conviction, to a fine of Kshs10,000 or to a jail time of one year. That Clause does not provide the option for community service.

Mr. Deputy Speaker, Sir, our prisons, correctional institutions and facilities are bursting the seams with all sorts of offenders; like sexual offenders, chicken and land thieves and the corrupt. It would be sad when a parent or a pastoralist parent who, for reasons of illiteracy and ignorance, has not been able to send the child to school and is taken to Kodiaga or Kamiti Prison to sit there with all sorts of offenders. We need to emphasize on community service as an alternative punishment for parents who do not take their children to school.

The other question that this Bill has not addressed is this: What if a county fails to fulfil its obligations? There is a penalty for parents who fail to fulfil their obligations; but what if the county does not provide the infrastructure and facilities and, as a result, the nearest school could be 10 kilometres away? What happens to the county? We need to say that the County Executive Committee (CEC) Member in charge of Education must be held responsible if the county fails to fulfil its obligation---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Conclude, Sen. M. Kajwang’.

**Sen. M. Kajwang’**: Thank you, Mr. Deputy Speaker, Sir. I was trying to wrap it up within the five minutes that you gave me, and I see that I have done two minutes.

Finally, Mr. Deputy Speaker, Sir, I wish that the Mover of this Bill would also add a schedule and provide a model ECDE centre, because some counties are building *mabati* structures.

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

**Sen. Wambua**: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to contribute to this very important Bill on ECDE. I congratulate the Chairman of the Committee on Education for bringing up this Bill for two reasons. One, ECDE is a mess in our counties because almost every person that has no job to do would find employment as a teacher in an ECDE centre. So important is ECDE and like a seed, if properly planted, it germinates and produces quality citizens to serve this nation.

Mr. Deputy Speaker, Sir, I have perused the Bill and one of the important Clauses in this Bill is Clause 36, which sets the standards for---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wambua, do you know you have a time limit? I have already given some directions. You have two minutes or thereabout left.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for guiding me. I will just make that point on Clause 36 of the proposed Bill. That Bill sets the standards for recruitment of teachers for ECDE.

The Clause also mandates the institutions to ensure that people recruited as teachers in ECDE centers obtain certificates of good conduct. I urge the promoter of the Bill to provide for continuous training and assessment of these teachers in order to ensure that they are in sync with global standards. Our children should not only have access to education, but quality education. If we get it right with ECDE, we will get it right with primary and secondary education.

As I conclude, at some point, this country was doing well on global standards on education for all. However, at some other point, we dropped the ball on enrolment, retention and transition. This Bill takes us back on track on ensuring quality education for all.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Finally, Sen. Mutula Kilonzo Jr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, is it four minutes?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Hon. Senator, you have three minutes to make your contribution.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, you have reduced mine. I will do so in one minute.

In my view, other than the function of health, this function is one of those things that this Senate must leave a mark in history that we have supported. I am a little disappointed with us. This afternoon, we have tabled a report here about governor's houses of Kshs45 million, speaker's houses of Kshs35 million and deputy governor's houses of Kshs35 million too.

The other time we passed a Motion for construction of county headquarters. Some have a budget of Kshs800 million and Kshs1 billion. We have been in this House with you, Chair, for the last six years. However, there is no one time we requested for a conditional grant that would enable counties uplift this sort of education. These are the formative years of these children and we are not doing enough.

We must do something tangible because counties are paying lip service to ECDE. My county, for example, has a budget Kshs3 million to do an ECDE class. It is the biggest joke on earth. They are providing plastic seats for those children. The worst thing you can ever imagine. The schools you see in Nairobi when Sen. Sakaja and I frequent are simple ECDE classes. They are very expensive, but very simple structures. This Senate must set a standard. Every county must have a model ECDE class. If I was to sit in Makueni County, I would make sure that we have a modern model ECDE class that would cost little, that would inform these children on the value of education. Otherwise, we are concentrating on brick and mortar. We are not promoting this very important aspect.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I call upon the Mover to reply in summary.

**Sen. (Dr.) Langat:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I want to immensely thank the Members for all their contributions.

Yesterday, Sen. (Prof.) Ongeru contributed a lot on matters related to the fields of health and nutrition. I also want to thank Sen. Wetangula for his legal contribution. He contributed a lot on offences and penalties which we had not taken very seriously. We will take his contribution on board to enrich this piece of legislation.

All the contributions that the Members have made will be considered by the Committee.

With those remarks, I beg to reply.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You beg to move.

**Sen. (Dr.) Langat**: Mr. Deputy Speaker, Sir, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is the reply.

Hon. Senator, would you like to make a request on deferment of Division?

**Sen. (Dr.) Langat**: Yes, Mr. Deputy Speaker, Sir. In the interest of time, I request for the deferment of Division.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! It is not in the interest of time, but it is in the interest of requisite numbers.

**Sen. (Dr.) Langat**: Yes, Mr. Deputy Speaker, Sir, it is in the interest of requisite numbers.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We do not have the threshold. We do not want the Bill to collapse on technicalities. Therefore, I direct that Division be done on Tuesday, next week.

*(Putting of the Question on the Bill deferred)*

### *Second Reading*

#### THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Senate Majority Leader, the Senate waits for no man.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I was not too ready for this Bill. However, I beg to move that The County Governments Retirement Scheme Bill (National Assembly Bills No.10 of 2018) be read a Second Time.

Mr. Deputy Speaker, Sir, I thank you for this opportunity. I had a lot of hesitation in moving this Bill before we have more extensive consultations. In the last five years that I have been in this House, we have had a similar Bill and two others. You were in my shoes or the Senate Majority Leader then was in my shoes---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Do not introduce the history of the Chair while I am presiding. You can do so, while I sit elsewhere.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, there was a Senate Majority Leader who had to grapple with this issue. It was not easy for him to manage the expectations of different stakeholders.

From the onset, I can disclose this here because it is on public record that in the Senate Business Committee, I made it succinctly clear that I am not yet satisfied with the

level of public participation. The Chairperson of the Committee is here. I requested that further consultation takes place. That is the understanding I am moving this Bill.

Secondly, I will be making a request to you as we did with the Energy Bill, the County Planning Roads, Pavements and Parking Bill, the Land Value Index Laws (Amendment) Bill, other Land Bills and the Petroleum Bill - I have full support of the Senate Minority Leader and, possibly many Senators. We should organize a breakfast on this issue. During this breakfast, all Senators will be taken through and explained why it was important to have a Bill in this form and not in any other form suggested by many different stakeholders. That will help because it is one thing to move a Bill and another to get it passed.

We must have the collective decision of the House and the best interest of counties bearing in mind that this Bill, as proposed, will collapse existing pension schemes. This is the Local Authorities Provident Fund (LAP Fund) and the Local Authorities Pensions Trust (LAPTRUST) into one big pension scheme. However, there is a challenge to that.

Mr. Deputy Speaker, Sir, one of the challenges is the transferability of interest of members to the new scheme. It should be done in an orderly manner. I will be referring to the Bill. It talks about the fact that if you are five years to retirement, there is no need to transfer to the new scheme and so forth. These issues must be thrashed out.

Secondly, is the amount of debt that is owed to the existing schemes is estimated by different studies to be about Kshs30 billion. That issue must be dealt with so that we do not have situations where the new entity inherits a debt collection assignment without having the history and the responsibility of who will pay. If you are collapsing two institutions to one, definitely, there will be consequences in so far as the staff and the management are concerned because the latter will change. The law here is proposing that you have a new board and so forth. Therefore, that responsibility will require careful consideration of this House, to ensure that we do not find ourselves in a situation where we will have to regret decisions we make.

Mr. Deputy Speaker, Sir, I am saying this because the lower House – a good House and it is our partner House, the Standing Orders say that we must always intend good positive things about the Lower House - their consideration and focus has always been on the national Government institutions. However, we have a unique responsibility in the Constitution to protect the interests of counties and their governments. Therefore, if there is anything that is going to disadvantage public officers who are going to be managed under this scheme, then that disadvantage that will accrue; the greatest responsibility will be borne by us. Many citizens and people of this country will be asking why the Senate did not do proper consultations.

Mr. Deputy Speaker, Sir, I am also aware that the Chairperson and the Committee are working further on public consultation but the commitment of the Council of Governors (COG) --- I want to say this on my own behalf; I speak for myself because they wrote a letter to the Senate to say that this House should not proceed with this Bill and so forth.

Their commitment to the questions they have on the Bill must be demonstrated, so that later they do not lament that we passed a law, they are the ones who are managing at the county level and they were not available to provide their issues.

Therefore, one of the reasons for moving this Bill is to open doors for consultation for them to know that time waits no man and prepare themselves to appear before the Committee, present the issues they wanted to raise before the Committee, so that this House when it is ready, to do the voting in Second Reading and thereafter go to the Committee stage and Third Reading. We will not have anyone who we are not carrying along.

Mr. Deputy Speaker, Sir, having said that, this is a Government Bill generated from the relevant ministry; the Ministry of Labour and Social Protection and moved in the National Assembly and now it is with this House.

First, this Bill creates a unique entity that has never been in the country, which is the County Government Retirement Scheme. This retirement scheme is new and is an institution that will be managed in the manner that is provided for in this Bill for purposes of protecting pension and retirement benefits. Pensions are extremely important. All of us pray that we live between 80 and 120 years as much as possible, so that we continue fulfilling God's intention and purpose in our lives, country, generation and in the world.

Mr. Deputy Speaker, Sir, there comes a time that this energy that we have to dispense and serve people, may not be there after we have retired. Now, the retirement age is 60. Already in other parts of the world, they are moving the retirement age to 70 years, because they are afraid that they do not want people--- People live up to 100 or 120 years. I look forward to a country where in future the average life expectancy should be about 80 years like in Japan and so forth; who now do not wish to retire their experienced staff because they feel even when they are 70 years, they are still energetic enough to serve. With the advent of technology, you do not have to use force but your brains. As long as the brain still works, you can make great contributions.

I have been here before, and when we had a Bill that was dealing with elderly people, I said the Constitution protects everybody. Age is not is not a factor for you to refuse to enjoy rights under the Constitution and contribute to the benefits of this Country.

This law creates a board of trustees of the scheme. This is an area that I want to request the Chairperson that they re-look at in the Committee of the Whole; the composition of the board and the persons who are sitting in this board. The Bill says that there will be a Chairperson who is appointed by the Cabinet Secretary from among people. This is unique, important and it is useful; that he is not just going to appoint someone from outside there to become the Chairperson. It recognizes the fact that representatives of counties must provide the chairperson and to make it easy; get a person that has already been appointed by the members. Once a particular person has been appointed under the same provision, then the Cabinet Secretary has very minimal discretion to appoint one of those people, who have already been appointed by the county leadership that sits in as a trustee.

Secondly, we will have a principal secretary responsible for matters relating to finance and his representative and the principal secretary responsible for matters relating to devolution and his representative. I want to persuade the Chairperson, that perhaps it might be necessary to also have someone, who is responsible for matters of labour from the relevant Ministry of Labour and Social Protection because of policy issues. As I said, even though we are here and we are advocating for counties, we must also appreciate that



the policy is still done by the national Government and the implementation is done by counties. So, in this provision, a thought should be put on the Ministry of Labour and Social Protection.

Thirdly, Mr. Deputy Speaker Sir, is a representative of the Council of Governors (CoG). I would rather this is re-worded to say, a representative of counties as nominated or appointed by the CoG, so that CoG do not just sit there to get their own representatives. It is basically to emphasize the fact that when the person is sitting there; it is not to the Council or the people, who are sitting in the Council all the time, he or she has the responsibility to represent county executives. That point is to say, the county executive as appointed by governors. Again, the question of whether one or two are enough is necessary, and, it must be sorted out by the Committee.

Fourth, Mr. Deputy Speaker Sir is a representative of the county public service boards across the country. When you look at the appointment of the representative of the county public service boards, it says that the COG shall convene a meeting of the respective nominated bodies for the purpose of nominating the representative. County public service boards are supposed to be independent across the country. We are even thinking about independent and not so independent but at least exercised at the level of independence from the county executive. Perhaps, we should allow the chairs of the county public service boards to come together, nominate one person and vote in a process that involves them, unlike a situation where CoG will convene. However, I have no hard position on this. If the wisdom is to have that alternative, then let it be.

Mr. Deputy Speaker Sir, we also have three representatives of the County Assembly Service Boards (CASBs). This is where there is an anomaly. We all support county assemblies but there are few staff and you give them three nominees; then you get the county public service board which has five times the number of staff while in the counties you get one person. Again, that should be corrected so that at the Committee stage, we can have equality of representation, so that if you will have to distribute two in each body, it remains to be so in all the bodies and then there is a representative of a trade union and so forth.

Generally, the administrative structure that is provided here is just the normal one for all boards across the country. I do not want to overemphasize how the board will manage its meetings and so forth.

Mr. Deputy Speaker Sir, I want to persuade the Chairperson, that Clause 18 cannot go as it is in terms of the chief executive officer of the scheme. It has very good provisions about qualifications and so forth, but there is one provision that must be inserted here. It must provide for provisions on the term of the chief executive officer. In other words, he or she will serve for a term of how many years and how many times, so that we do not have people perpetuating themselves in management forever. You have someone entrenching themselves to manage the entity forever. If it is a five year term, we say five year term eligible for one more appointment. If it is three years, we say eligible for one more appointment.

Mr. Deputy Speaker, Sir, we must be careful because pension involves a lot of money. It is the reason why people are fighting in the National Social Security Fund (NSSF). It is not just in Kenya, it is all over the world. Therefore, let us not create monsters in the administrative structure. They must be people who are accountable. The

term for people who are appointed to the board of trustees must be clearly defined. There is also one provision in the board of trustees on persons representing trade unions. It is not possible to have one representative of trade unions in a pension scheme like this one who also nominates themselves internally to become 'Mugabes' of pension schemes.

Mr. Deputy Speaker, Sir, at least, there is a provision that limits them in this law. I hope that the NSSF and the National Hospital Insurance Fund (NHIF) will do the same. There are people who lecture us about good governance structures and management of public affair but they have never left their offices for about 30 years. The dictatorship that is in these entities is like what we see in trade unions, which is a contradiction. This is because the movement of trade unions in this country as started by Tom Mboya, Harry Thuku and others was meant to fight for independence, good governance and democracy. They were fighting for the right to work and freedom of the country. Therefore, we cannot now have people who run trade unions and perpetuate themselves eternally. This behaviour must come to an end.

Mr. Deputy Speaker, Sir, if we can limit the time for a person who seeks votes from people and the whole universal adult suffrage, we must limit for these other people. I am happy the Bill says so. We must also limit the term for the Chief Executive Officer (CEO).

Mr. Deputy Speaker, Sir, the Bill talks about appointment of an administrator who is a public officer to be appointed by the board. There are suggestions that people are concerned about the existing schemes at the moment which had room for appointing private administrators to perform these functions. That must be analyzed and an explanation given to those who think that private administrators must be put.

Mr. Deputy Speaker, Sir, the reason why many people started to lose faith in public institutions is because of absence of accountability, transparency, corruption and so forth. As a matter of fact, there is no corruption in Government that is not perpetuated by the private sector. For every corruption in Government, the first accomplices are the private sector, for example, the Goldenberg and Anglo Leasing scandals. Therefore, we cannot say that the private sector is better in fighting corruption than the public sector. We must say that corruption, whether by the public or the private sector must be dealt with. This is because the names of all the scandals that we have in this country are attached to a company that is private because they are the ones who perpetuate that kind of thing. Therefore, we must be careful.

Mr. Deputy Speaker, Sir, when the Chair makes his contribution he will deal with the technical issues which includes the amount of contribution which the law says will be 7.5 per cent. Remember, this law is about the second tier of contribution. The primary tier of contribution in the country is NSSF. Those who are practitioners in pension law and in practice will have more explanations that are empirical and calculated for purposes of deductions and provisions of pensions.

This law also has provisions which I want to emphasize but I do not want to take more time. The Chairperson has told me that he would love to respond to this Bill and the Senate Minority Leader would like to spend an hour making jurisprudential contributions to this Bill. Probably, that will be for him next week. I want to ensure that I give some of the time to the Chairperson to respond.

Mr. Deputy Speaker, Sir, there are things that I want to mention here on the transition, because the other provisions about the management of the scheme are just similar to existing scheme management like the National Social Security Fund (NSSF). This is about the role of the administrator, the trustees and their responsibility; the fiduciary duties they have and the ultimate responsibility if they fail to abide by those duties.

I want to request the Chairperson - because I have no monopoly of ideas and that is why we must have that breakfast - to continuously think through what the problem is with NSSF and how we can ensure that there is no replication of those problems in the scheme in terms of accountability. To be an NSSF official is one the most feared jobs in this country after the Independent Electoral and Boundaries Commission (IEBC). I do not know if there will be any other young person who would want to be the Chief Executive Officer (CEO) of IEBC after Mr. Chiloba. It is a terrible place where people grow gray hair very fast. I thought that politics was complicated, but to be an IEBC official is terrible and an NSSF official in worse because you manage money. We have had people being threatened and all those kinds of issues because of big money.

The law also allows this pension scheme to ensure that they invest in certain properties that will assist pensioners earn interest on their money and to protect their resources. This is because if you leave it in cash, it is bound to be misused. The provision that I just want to mention is the transition. This law provides that all the eligible employees, if the Act applies, which is--- I should have said that this law is about all staff of county assemblies and county executives. They will now remit money to this entity. Some of the counties are not doing properly in remittance because they say that there is no legal obligation on counties to do so. If we pass this law, there will be a legal obligation for the counties to ensure that, that law is properly passed.

Mr. Deputy Speaker, Sir, there is a suggestion that I want to put on record. I am saying this because of the transition. The transition says that we collapse the Local Authority Pension Fund (LAPFUND) and the Local Authorities Pensions Trust (LAPTRUST) to one pension scheme. Others are suggesting that we can retain both pension schemes under one law. Under the law itself, we can have two different schemes that manage resources for county assemblies and county executives, so that you retain the unique identity that is there between LAPTRUST and LAPFUND. That will be trashed by the Committee. We will be given what the positives and negatives in that issue are, so that by the time we are sitting--- I am saying this and being very candid because the day we will sit together, we do not want these controversies to divide this House to the extent that we will not be able to get---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, do not anticipate debate. Just prosecute your Bill; it is your Bill by the way. You cannot spend a lot of time critiquing your Bill. Make your points within those boundaries.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it is my Bill, but not in the way I would wish it to be. It is my Bill because the law says so. It is through me that the law is introduced and I have no---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Absolutely. That makes it your Bill. The Bill is from your office.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, even if it your own Bill, you can come and tell the House: “I have this Bill, but during the Committee Stage, I will come with amendments to capture one, two, three and four.”

It is through my office that you can only transact business that comes from the National Assembly. I agree with you entirely, but it is important to raise these issues because I will benefit from the debate. The reason it is subjected to debate is so that this Bill can benefit from the debate, and so that we can accommodate the views that come from various Members.

Mr. Deputy Speaker, Sir, the transition mechanisms then collapse both the Local Authority Provident Fund (LAPFUND) and the Local Authority Pension Trust (LAPTRUST) into one entity, which is going to be managed. It gives five years as a transition period, which is going to ensure that we deal with all incidental matters that are related to pension in the two schemes. This is so that by the time we completely wind up the two entities under this Bill, we would have dealt with the debts, liabilities and pensions for various members under the law.

Mr. Deputy Speaker, Sir, I beg to move this Bill and request Members to continue in the spirit they have had; to critique, to make many contributions and amend it. I have already mentioned the areas that must be amended to ensure that this Bill is in consonance with the constitutional tenets and best practices in the management of pension schemes. Therefore, when we ultimately come back to this House to vote in the time that I do not want to anticipate, but after extensive consultations that my office will facilitate, we will say that: “As a Senate, we are glad that we sat here and became part and parcel of the first generation of elected leaders that have had a role to ensure that there is a well-managed scheme in this great Republic.”

I beg to move and I request Sen. Sakaja, the Chair of the Committee, to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairman, I hope you will look at the clock. You must constrain your remarks to give the Speaker time to propose the question at the minimum.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I will not take a long time on this. I beg to second this Bill. Just as the Leader of the Majority has said very clearly and eloquently, this is a very important piece of legislation that is needed. It has taken us a very long journey for us to get here. There were several attempts in the last Senate to legislate on this. A similar version of this Bill was passed just before the closing of the Eleventh Parliament. However, it was too late for onward transmission, deliberation and consideration by the National Assembly and as such, it lapsed.

Mr. Deputy Speaker, Sir, as soon as we got into the Twelfth Parliament and I got elected as the Chairperson to the Committee on Labour and Social Welfare, the issue of the pension retirement scheme and retirement benefits of our county government workers was the first item in my in-tray to deal with. My Committee put together a Bill by the same name; the County Government Retirement Scheme Bill (National Assembly Bills No.10 of 2018), which is very similar. In fact, it is similar just until the spelling errors, which are the only point of departure with this Bill. There are also just some amendments of the titles and the different headings in the chapters. However, in terms of content, it is more or less the same Bill that this House has already passed at Second

Reading. That, in fact, for me raises a question which the Leader of the Majority, Leader of the Minority and the Speaker need to address.

Mr. Deputy Speaker, Sir, the national Government has this habit of sending Bills to the National Assembly as opposed to the Senate, even if it is a Bill whose title is 'County Government Retirement Scheme Bill.' In the memorandum of the Bill, it says that it is not a money Bill, it concerns counties and, therefore, it should have come directly to the Senate. They did that knowing fully well that the Senate had already published and, at that point, we were debating the exact same Bill. If there is anything else that can be better proof of disdain to this House, I do not know what that would be.

This House needs to take its rightful place but because of our pragmatic nature, we decided to hold our Bill which is like this and has already passed through Second Reading. In fact, it is exactly the same in terms of content. We did a serious process of public participation and listened to everybody.

Despite the tensions in the last Parliament between the conflicting interests, they were able to get to a middle ground. That middle ground is still part of the record of this House because it has the signature of everybody. I would like the Senate Majority Leader and the Whip to hear me. The Council of Governors(CoG), the National Treasury, the County Pension Fund (CPF), the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund(LAPFUND), who seemed to have conflicting interest, signed a memorandum saying that: "we agree". This was after spending about a week in Naivasha and this is the version of the Bill that they all signed back then. Things might have changed and no one is prevented from changing their mind but on the fundamental issues, this is the most representative Bill.

Secondly, I want to respond to what the Senate Majority Leader has said. This Committee engaged more than 15 different institutions and members of the public on the same Bill in these premises. In the interest of public participation we again advertised asking for a memorandum on this Bill because that is the tradition of the Senate. The Senate is known for public participation and we listen to the members of the public. The institutions sent their memorandum. We repeatedly invited the CoG who did not appear the first time and sent a junior officer the second time with a one page document. More recently, they said they did not agree with the Bill.

In the interest of public participation, we have now gone a step further to invite every stakeholder on Monday in this very premises as from 9.00a.m. We will sit here up to whatever time it takes. We will sit in this House this coming Monday. They sent written memorandum but we have now requested for a face to face discussion because some of the things that they are asking for have already been provided for.

Therefore, just to make sure that there is understanding and that there is no misinformation out there, we have invited the County Public Service Boards (CPSBs), the Council of Governors (CoG), the County Government Workers Unions (CGWUs), the State Corporation Advisory Committee (SCAC), the Public Service Commission (PSC), the National Social Security Fund(NSSF), the Retirement Benefits Authority (RBA), the Ministry of Labour and Social Protection, the Ministry of Devolution and Arid and Semi-Arid Lands, the National Treasury and the general public to come for us to have this discussion.

Our Committee has conducted several tours across the country. All the county government workers unions that we met had one complaint. They said that many of their counterparts, who have retired, cannot access their pension and many have died before accessing their pensions. Many of them are busy in the streets of Nairobi struggling to get an audience for them to get their hard earned money. They are people who have worked for years and served our municipal councils, town councils and county governments. The excuse that the governors have been using in many cases for not paying and not remitting is that there is no legal framework.

When we went to the coast counties; Kwale, Kilifi, Tana River and Mombasa, they said that they have been told that the only impediment to them having a legislative framework is the Senate. The Senate exists to protect the interests of county governments, counties and to a large extent the staff who are within the counties. It is true that many counties owe these institutions money. In fact, some counties are doing bet swaps. In Nairobi, Mariakani Estate has been swapped with some of the amounts owed to LAPFUND and all other estates are being swapped in a process.

We, as Senate, want to audit that process and understand it. We want to know whether those swaps are per the real value of the debt and assets being swapped. In many cases, the residents are not happy with that new arrangement and new landlords.

Mr. Deputy Speaker, Sir, some of the issues in our deliberations, as alluded to by the Senate Majority Leader, include the issue of an internal versus corporate administrator. One of the versions of the Bill that had been dealt with had provided for a corporate administrator that is a private entity; a limited company that this House and the Auditor-General cannot audit. May be the Snr. Counsel and the Senate Minority Leader, Sen. Orenge can give me some advice on this where the certificate number of a private company is provided and the company is known, how can we legislate for it to be in charge of public funds and yet it cannot be audited by the Auditor-General and this House?

Mr. Deputy Speaker, Sir, on top of it, the provision is that three percent of the total fund - right now we are talking about more than Kshs60 billion - shall be for administration. Three percent of Kshs60 billion is close to Kshs2 billion. That amount is what will be used for administration. This is such that if less is spent, the rest becomes profit to a private entity. The Committee did not agree with that. We hold a very strong view against that. That was the previous Certified Permanent Secretaries (CPS) Bill. That is what some of the stakeholders were pushing for, that, that private company be the one that manages this on behalf of the county government workers. That would be irresponsible for us, as a House, to allow. We want accountability. That is why there are several levels of accountability provided for within this law.

In addition to that, what we want to do is to bring these schemes that are competing together. Today, when you hold a function with county governments, you will see a tent of LAPTRUST and LAPFUND. It is like they are hawking retirement benefits arrangements. They are competing to get this and that. Some say they have more people and others say they have more than Kshs20 billion or Kshs32 billion, that they have a certain number of counties with them and so on. It has become a market. We want to bring stability and order into the pensions sector by creating one institution and bringing them together.

There are two types of pension schemes; that is, the Defined Benefits (DB) and the Defined Contributions (DC) schemes. You cannot mix a DB and DC scheme. However, what we have agreed to do is the two DC schemes will come together. The DB were actually closed by a circular of the Treasury a few years ago. In fact, the world over, the DB schemes are being phased out because of the complexity and actuarial evaluations you have to keep doing. The process is very complex. Therefore, we are moving away from that to a more stable and clear scheme where you know what you are going to get at the end of it.

Mr. Deputy Speaker, Sir, the one DB scheme that exists will not have any new members. It will be phased out until the last member has received his contribution. There were concerns by some of the county government workers who are in these schemes on whether they are protected. Some allude to the fact that we are moving the money, but not the membership. That must be provided for clearly. I agree that some of these amendments that the Senate Majority Leader is talking about are things that we need to look at within the context of the process of legislation. Once we do that, then we have to go back to mediation and agree with the National Assembly. However, that should not hold us back from looking at what we must critically address.

One of the issues the Senate Majority Leader talked about in the composition of the board, with respect to the representatives, is an error. When the velum was being processed in the National Assembly, we noted that error. If you look at the HANSARD, from the original Bill to the amendments, that was not amended. The Secretariat cannot amend what the House has not done. So, we will make sure that, that is corrected technically.

Mr. Deputy Speaker, Sir, I will move on to wind up because this is a Bill whose content we have debated in this House, but not the Bill itself. Some of the concerns was that, we have said that the minimum amount that shall be sent in terms of contribution because this is a DC scheme, is 7.5 per cent from the workers contribution and 15 per cent from the employer. Some of the county government workers were concerned, that this goes against their Collective Bargaining Agreements (CBA's) which talks about a higher contribution from themselves.

I would like to assure them that this talks about a minimum amount. So, if you have a CBA where you have set the amount with your respective employers- and this is why I have kept insisting that county governments must recognize the unions that have the simple majority of the staff- once you have a CBA that has set an amount for that contribution, that is what is going to hold. I want to affirm it for avoidance of doubt and in the abundance of caution; we will make sure that it exists in the regulations that will accompany this Bill.

So, I would like to urge all the stakeholders for us to be able to come together. Initially, there was the fear that one side will get 100 per cent, another side will get zero and that there will be a winner and a loser. I want to confirm and to really implore upon them to see beyond themselves and see what is best for this country. What is best is stability, a scheme where we reward- and it is not even a reward, it is not a favor we are doing these people who have worked- it is actually their right. They have worked all these years and have contributed. We also want pension.

The proposal by some of these players that let us have one scheme for the executive and another one for the county assemblies goes against the entire spirit of this Bill. They are all staff within the county governments.

Two, if you look at Assembly staff, they are very few. Right now, we have two schemes with almost equal numbers of people. County assemblies have about 100 to 200 staff while big counties like the City County of Nairobi has 200 staff yet we have the tens of thousands of people working in the executive. So, it will be unfair to move the staff who are already in one scheme to another because you have given one the executive and another one to the assemblies. There will be no loser if you bring them together. The staff of these different institutions; the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND), will find their way into these organizations based on considerations such as efficiency, *et cetera*. We cannot create a law that will harm them negatively.

Mr. Deputy Speaker Sir, because of time, I can see the light is going on, I do not know how many minutes I have but I am seeing the clock, they are only 15 more. I would like the Leader of the Minority and the Majority Whip to contribute.

I second and urge my colleagues to support this Bill because this House has already pronounced itself on the content and the meat on the matter within this Bill,

Thank you.

*(Question proposed)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Dr.) Musuruve

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this very important Bill.

It specifically addresses our roles as Senators. We have a role to represent the counties and their interests. It directly speaks to the counties. I listened to the Senate Majority Leader as he spoke, because I wanted to interact, engage and understand the Bill because I am also in that Committee.

I want to say, yes, there is need for intensive public participation. The fact that governors want to come and interact more with the Bill, this is important because when you are talking of counties, you cannot talk about issues happening in counties without governors coming on board. They have to interact with the Bill, give their views and thoughts so that when they go back to the counties, there is going to be harmony regarding engagement of this Bill. Engagement is important for this Bill because it directly affects the counties, county assemblies and the executives. So, there is need for good engagement.

There is also the issue of transition. Someone even mentioned that issues of money can be drastic. When transition is not proper, I want to say you never know what will happen. The Senate needs to ensure that there is harmony regarding transition from one fund to another. There is need for an objective way of looking at this Bill. We should not be in a hurry to pass this Bill because it will be the law of the land. When it becomes the law of the land, it will be followed. The law of the land should advantage everyone.



Everyone should feel comfortable about the law that we, as the Senate, are making. The issue of composition has just up. There is need for inclusive composition, one that ensures that people are represented in a way that they are happy.

It is important that public participation is done. Even when the meeting has been set - and we mentioned this within the Committee in the Monday meeting - there is need for an intensive follow up and advertisement. This will ensure that someone does not say they never saw the advert. The advert can be in all newspapers or through a phone call, so that people get the message and blame themselves if they do not come.

I had not even seen that the term of the Chief Executive Officer (CEO) had not been spelt out. There is need for the term to be spelt out. For example, if it is three years, is it three years continuously? If the Bill is passed the way it is and there are issues that we have not resolved as the Senate, we will be blamed.

We have to ensure that whatever legislation we pass in this House, we can look back and say: “Yes, the legislations we passed were very okay.’ People will agree that this Senate has done a commendable job. We should not be in a hurry to pass this Bill because, eventually, it will be the law of the land that will always be followed.

Thank you, Mr. Deputy Speaker, Sir, for the opportunity.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kang’ata, you may proceed.

**Sen. Kang’ata:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill for several reasons. First, this is a Bill that was moved by the Cabinet and the Government experts have gone through it. The Bill has also gone through the National Assembly, which has considered it. Therefore, I belong to a school of thought that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! If the Cabinet has approved a Bill, must it be passed by this House? Is that your argument?

**Sen. Kang’ata:** No, Mr. Deputy Speaker, Sir. Maybe you could just---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You also have to respect the institution of the Senate and our independence. Business that comes here from whatever quarters is business.

**Sen. Kang’ata:** Mr. Deputy Speaker, Sir, I apologise. Allow me to finalise my point; I will clarify what I was saying.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay, you may proceed.

**Sen. Kang’ata:** Mr. Deputy Speaker, Sir, the point I am trying to ventilate is that this Bill has undergone a lot of scrutiny in terms of expert input. I would urge the Members of this honourable House to consider the input that has been done by those other institutions. They may be erroneous; I am not saying that they bind this House. However, I am trying to convince Members that, indeed, there was a lot of stakeholder involvement in the processing of this Bill. Therefore, we need to take that into account.

Most importantly, we need to know the history of these two institutions, that is, the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND). The LAPTRUST was created way back in 1926 or thereabout. Upon Kenya gaining Independence, it was created through a legal notice in 1963. Since that time there has never been an enabling statute which created the entity called the LAPTRUST.

Secondly, it has also been a fund that pays workers periodically, which is positive, but on the other hand, it has tended to look at the upper cadre of employees of the local

authorities. Compare that with the LAPFUND, which is an entity that is created by a statute and pays people in lump sum. This in essence may be positive, particularly, taking into account that it looks more into the lower cadre of people who work in the local authorities.

Of course, they have the option to get periodical payments. However, taking into account that they save very little money through the fund and, therefore, if you were to pay them on a monthly basis, you are talking of paying an employee for instance about Kshs1,000 on average. Therefore, when you pay in lump sum, you find that person getting more money which they can invest in something that can give them good returns on retirement.

Most importantly, it is not in the public interest for us to have a fund that is managing pensions on behalf of workers, which is quasi private and which is not audited by the Auditor-General. There are instances where the LAPTRUST money is audited by a private entity and is not accountable to Parliament. Any state corporation reports to the Public Investments Committee (PIC) of the National Assembly or to the Committee on County Public Accounts and Investments (CPAIC) of this House---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kang'ata, are you debating the Bill or are you debating LAPFUND and LAPTRUST?

**Sen. Kang'ata:** Mr. Deputy Speaker, Sir, these are material points because one of the key proposal, which is a contentious point, is that this Bill proposes to collapse the two into one. Therefore, I must try to convince Members why we need to do that. This is because from where I sit, LAPTRUST takes money from county workers but is a private entity. Therefore, there is a danger of allowing those two entities remaining as they are. We need to collapse them, which is the rationale. That is the point I am trying to drive to Members. If we allow LAPTRUST to continue to exist and is not audited by the Auditor-General; and it is not accountable to either the Senate or the National Assembly, it is then a misnomer.

Therefore, Mr. Deputy Speaker, Sir---

**Sen. Cheruiyot:** On a point of order, Mr. Deputy Speaker, Sir. You have tried to guide Sen. Kang'ata under our Standing Orders on the role of generally being within the confines of what is the content of debate in the House.

Earlier on today, there was a serious debate on the official Senate WhatsApp group, where Sen. Kang'ata, for the first time since he joined this House, asked for the Order Paper. I have been sitting here curiously; and I wanted to know what is this matter that he had great knowledge in and which he wanted to share with the House. Unfortunately, if he wants to pursue the direction that he is taking, I do not find him to be within the confines of what will be in---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order, in your view, Sen. Cheruiyot?

**Sen. Cheruiyot:** The fact that despite your earlier warning or caution to Sen. Kang'ata to remain within the contents of what is within the Bill, there is this continuous move to speak about a particular institution, which is not clear to me. Maybe he can help me to understand why the interest in that institution.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order, Senator! We have heard you, Sen. Cheruiyot. The Standing Orders do not allow you to impute any improper

motives. Likewise, Sen. Kang'ata, be careful so that you do not expose this House to wrong perceptions. I will be very strict on that. I have said it before. If you remember, I had already noticed that you were engaged the whole afternoon in some mysterious activities. From where the Speaker sits, he is able to see many things.

*(Laughter)*

Order Senators. Sen. Kanga'ta, you will have a balance of 13 minutes when debate on this Bill resumes.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until Tuesday, 4<sup>th</sup> December, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.