

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 28<sup>th</sup> February, 2019

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

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

### PRAYER

### PAPERS LAID

#### REPORT ON ADDENDUM TO THE COUNTY GOVERNMENTS CASH DISBURSEMENT SCHEDULE FOR FY 2018/2019

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 28<sup>th</sup> February, 2019.

The Report of the Standing Committee on Finance and Budget on the Addendum to the County Governments Cash Disbursement Schedule for Financial Year 2018/2019.

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

#### ANNUAL STATUTORY REPORT FOR THE CoG

**The Senate Majority Leader (Sen. Murkomen):** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 28<sup>th</sup> February, 2019.

The 2017/2018 Annual Statutory Report for the Council of Governors (CoG).

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

**NOTICE OF MOTION**

APPROVAL OF REPORT ON ADDENDUM TO THE COUNTY  
GOVERNMENTS CASH DISBURSEMENT SCHEDULE  
FOR FY 2018/2019

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

THAT, pursuant to Section 17(7) of the Public Finance Management Act and provisions of Standing Order 183 (2), the Senate approves the Report of the Standing Committee on Finance and Budget on the Addendum to the County Governments Cash Disbursement Schedule for Financial Year 2018/2019 laid on the Table of the House on Thursday, 28th February, 2019.

**STATEMENT**

IMPLEMENTATION OF ARBOR AND KIMWARER  
MULTIPURPOSE DAM DEVELOPMENT PROJECTS

**The Senate Majority Leader** (Sen. Murkomen): Mr Speaker, Sir, I would like to make a Statement under Standing Order No. 47 (1) on a matter that is of immense importance to this country, devolution and the people of Elgeyo-Marakwet County.

I would like to make a statement on the implementation of the Arbor Multipurpose Dam and Kimwarer Multipurpose Development Dam projects in my capacity as the Senator of Elgeyo Marakwet County and the representative of the interest of both the people and the County Government of Elgeyo Marakwet.

Mr Speaker, Sir, the Government, through Kerio Valley Development Authority (KVDA), is implementing the Arbor Multipurpose Dam and Kimwarer Multipurpose Dam projects, both located in Elgeyo-Marakwet County; using a loan from the Italian Government and the Government of Kenya (GoK) counterpart funds.

First and foremost, let me state that the Arbor and Kimwarer Multipurpose Dam Development Projects are Vision 2030 flagship projects. The immediate objective of this Vision under the Jubilee Government is to achieve food security and enhance manufacturing, among others.

Mr Speaker, Sir, under the Arbor and Kimwarer Projects, it is expected that over 10,000 acres of land in Kerio valley will be irrigated. Through the project, there will be generation of 80 megawatts of hydropower as an enabler to manufacturing, provision of clean water for 80,000 households and livestock; and support to the Arbor and Kimwarer rivers catchments' conservation initiatives.

Mr Speaker, Sir, these projects are meant to address the rampant insecurity problems in the Kerio Valley Triangle of West Pokot, Elgeyo-Marakwet and Baringo Counties. It is a fact that one of the best ways of addressing insecurity is through infrastructure development, job creation and guaranteeing economic activities for the people.

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Mr. Speaker, Sir, the projects are critical in creation of employment for the young people in Elgeyo-Marakwet and Baringo counties, some of whom have been rehabilitated from cattle rustling. It is estimated that the projects will employ over 2000 young people in the five-year implementation period. The projects will also increase direct revenue generation for Elgeyo-Marakwet County through increased tourism, fees and levies, among others. Through acts of corporate social responsibility, it is expected that many people in the county will benefit.

Mr. Speaker, Sir, as the Senator for Elgeyo-Marakwet County, I have been in the forefront in pushing for the implementation of these projects for the above benefits. When the projects were at the initial stages in 2015, all leaders of Elgeyo-Marakwet County were involved, whereby we insisted that there must be thorough public participation, prompt and adequate compensation to locals affected. To this end, the KVDA has facilitated over 80 consultative meetings.

Mr. Speaker, Sir, we understand that the Government has set aside Kshs653 million for compensation which amount is held by the KVDA, to be transferred to the National Land Commission for compensation purposes. It is true that the consultations geared towards land acquisition and compensation has been slow. This is partly because we must protect our people from any form of exploitation. We must all remember that public participation is a mandatory requirement under our Constitution. To that end the leaders will do everything possible to ensure that before the projects commence, there must be prompt and adequate compensation, bearing in mind the significant sacrifice that our people are making for the good of the country and the welfare of the greater population.

Mr. Speaker, Sir, the people of Elgeyo-Marakwet in Arorr, Kipsaya and Kimwarer areas, particularly around HZ area are waiting for compensation and we have insisted that there must be prompt and adequate compensation before these projects can commence.

One of the main reasons why the project has not fully commenced is because of the delayed process of compensation. Unfortunately, even as we push to expedite the process of project implementation, the welfare of the affected population cannot be wished away. No one should take advantage of this noble endeavour to argue for termination of the project. All projects across the Republic have been delayed for the same reasons, but eventually they commenced after local leaders worked with the Government to address the salient issues. I wonder why in our case, a similar approach is being castigated, with attempts to attack the project itself.

Mr. Speaker, Sir, questions have been raised regarding the financial model adopted in this project and whether the model should be applied in the two projects. The loan funds were sourced from the Italian Government through a mechanism that is known as engineering, procurement and construction, plus financing, otherwise, known in the development financing sector as (EPC+F) mode of funding that entailed signing a commercial contract agreement between KVDA and competitively out-sourced Italian construction firm, M/s CMC Di Ravenna Itinera Joint Venture, prior to signing of loan agreement between the national Treasury and the Italian Government.

All EPC+F projects have very important components of either bank guarantee or insurance. Why is this important for projects, especially those funded by EXIM Banks in countries such as US, China, Japan, Britain and, in this case, Italy? These banks guarantee or insure the Government and the people of Kenya from losses occasioned either as a result of non-performance, incompetence, delay or insolvency of the contractor.

Mr. Speaker, Sir, projects funded by Exim banks (concession loans of developed countries like in this case) come with a condition that the contractor must come from the donor country and as much as possible most of the equipment should come from that country as a measure to promote the export of their products. In the case of this project, the contractor is Italian.

Implementation of the two projects will involve utilization of USD277,407,605.50 for the Arorr project and USD224,422,163.92 in the case of Kimwarer Dam. Combined, the projects will cost Kshs63 billion, being the contracts amounts for the Arorr and Kimwarer projects respectively from the loan funds, to be used for the construction of the dams and the downstream development of the power, irrigation and water supplies systems.

On the other hand, the GoK counterpart funds will be required for meeting costs of resettlement and compensation of Project Affected Persons (PAPs) together with project management, supervision and oversight activities. As per the contracts, implementation duration runs from 28<sup>th</sup> December 2017 to 27<sup>th</sup> December, 2022.

Mr. Speaker, Sir, one of the conditions for the contractor to take over is that they must receive advance payment from the project financier, with approval of the receiving government. Advance payments, generally, in such projects range between 10 and 25 per cent of the project value. In this case, it was 15 per cent. So far as per the contracts, the contractor was paid an advance payment of US\$41,611,140 for the Arorr Project in December, 2017; and US\$33,663,324.59 in November, 2018. That amounts to almost Ksh7 billion or thereabouts.

The payment was to enable the contractor to do mobilization and designs, as contained in the conditions of the contract. Advance payment is a loan to the contractor that will be recovered from future certificates when work is done.

Mr. Speaker, Sir, other projects of similar nature that have been implemented by the Government of Kenya and where advance payments were paid include the Karimenu II Dam Water Project, which is a contract sum of US\$235,918,461. The amount of advance payment already paid to Karimenu Water Project is US\$4,718,692, which amounts to almost Ksh5 billion for only one project in Thika. As we speak, this water project has not started because there are still consultations about compensation.

We also have the Itare Dam Water Supply Project, which is a contract worth Ksh28 billion. The advance money paid was 20 per cent, which is Ksh4.3 billion. Similarly, Thwake Multipurpose Dam Water Project in Makueni – for which Sen. Mutula Kilonzo brought many questions on the Floor of this House – is a contract of Ksh36 billion. Before the project commenced, Ksh7.3 billion was paid as advance payment, which is 20 per cent of the contract sum.

Up to now, only the initial works has started and nothing was done from the day it was paid until when it commenced. It is the same situation for the Northern Collector Tunnel Project, which is a contract sum of Ksh6 billion, out of which Ksh1.36 billion was paid as advance payment. The same is true for Kigoro Water Treatment works, Rowan Water Treatment Pipeline in Thika Dam, Kigoro; and Bosto Dam Project.

Mr. Speaker, Sir, even in these other projects, no works have commenced; and in some cases, it took two to three years to commence the work. Similar or even higher amounts have been paid, yet none has attracted the kind of criticism and attack from the DCI or the media like Arror and Kimwarer projects.

Mr. Speaker, Sir, I suspect that this might be a case of giving the dog a bad name so that you can kill it. Is someone building a case for termination of the Kimwarer and Arror projects? Why have Arror and Kimwarer projects attracted this kind of treatment, yet the above stated projects underwent similar processes? Why have criminal investigations – this is a critical question – been commenced on a commercial contract, which has its obligations spelled out in the law and contract, even before the agreed timelines have lapsed or are close to lapsing?

How is this scandal warranting negative attack and publicity? Why is it that every step of investigation is shared with the media, including social media? Is it a plan to ensure that financiers pull out of these very important projects in my county?

In conclusion, Mr. Speaker, Sir, this is a crucial project for Elgeyo Marakwet, Kerio Valley and the country at large. We thank the Italian Government for extending this kind of support. We believe that the project will play a critical role in putting to an end some of the vices, including the cattle rustling menace in Kerio Valley region.

Mr. Speaker, Sir, this project can neither be delayed nor postponed because it is critical and urgent. If there are any reasons to investigate impropriety, we urge that these should not be used as an excuse to undermine the project. We also demand, as people and leadership of Elgeyo-Marakwet County, equal treatment in the investigation of all projects in all sectors, and in all counties.

I opine that the falsehoods being peddled are meant to whip up public emotions and to give excuses to some cartels to terminate the project. There is an African proverb that says, “When a hyena wants to eat its children, it first accuses them of smelling like goats.” Right now, a hyena wants to eat the goats of Elgeyo-Marakwet County. As the father of the county, I cannot allow the negative and selective characterization of development projects in my county.

Mr. Speaker, Sir, I urge the DCI that before he embarks on any investigation of this nature, they should engage experts with the necessary knowledge of these type of contracts and how such projects are implemented. It is unfortunate that the project is being weaponised as a tool for the 2022 political fights. It saddens me when I see the labeling of Kenyan citizens, based on their ethnic identity, as corrupt; and the massive operation being mounted against one individual’s political ambitions.

The kind of fight that is being mounted on this individual is causing collateral damage, not only in one region, but even on the entire economy of the Republic. I urge every servant of this great Republic to desist from using public office and resources to fight political wars. Politics should be done politically by politicians, and such other

matters of the State such as fighting corruption and national development should be done objectively.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot, you had a similar Statement; so I will allow you to ride on that briefly.

**Sen. Cheruiyot:** Thank you Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your intervention, Senator Kajwang’?

**Sen. Kajwang’:** Mr. Speaker, Sir, I want to make a comment on that Statement; and if you allow me to make that after Sen. Cheruiyot, I will be most obliged.

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

**Sen. Cheruiyot:** Actually, Mr. Speaker, Sir, that is the direction that I wanted to take. Having considered that my colleague and Senate Majority Leader has requested for a Statement which is similar to the one that I wanted this House to be furnished with, I decided to shelve mine. However, what I want to do, in accordance to the direction that you have just given to the Senator for Homa Bay, is just to make a brief comment with regards to what the Senate Majority Leader is raising and bringing before this House.

Mr. Speaker, Sir, it is good that we are finally beginning to have light on what was an extremely dark and saddening issue. This country is shuttling down a very dangerous path which, if we are not careful, then we are going to affect the psyche of even the people that we lead. It is unfortunate that as is the case before all of us – and maybe I can speak for myself – I do not support any act of corruption

Secondly, Mr. Speaker, Sir, I support one hundred per cent the war that is being waged, led by the President, on corrupt activities that have been done in this Republic. However, that is not to say that, as a legislator, I am supposed to abrogate my responsibility and just join the cheering group or the rest of Kenyans who are saying that whatever it takes, recover what has been looted.

That ought to be the spirit. However, we must ask of our public officers to do their work with a lot of zeal and goodwill. They must also work in a way that satisfies every common sense of every Kenyan; that whatever they are doing is actually meant to fight corruption and not to achieve any political ends.

Therefore, Mr. Speaker, Sir, the Statement that has been read alongside the confirmations that were given by the Kerio Valley Development Authority (KVDA) in the newspapers today bring up very important issues before us. How could many of our leading investigative agencies continue to sit pretty as the nation was fed with rumours and propaganda about how the government has lost Ksh21 billion? Further, even to support and aid such malicious issues, we saw the DCI leaking information and saying that, “This is what we have confirmed.” What we need to learn, as a country, is the fact that our media needs to be factual and report what is right.

The surest way of losing out on this war against corruption is for us to introduce politics into it; that so long as a certain issue is seen to be pushing a certain political narrative, then it is good for us. If we want to win this particular war, then let us ensure that whatever accusations are being laid on the table are factual.

In conclusion, Mr. Speaker, Sir, I want to urge the DPP and the DCI; please be as savvy in court as you are with the media.

Do not seek to prosecute your cases in the court of public opinion. Let politicians do that, but for you, because you have been given a salient duty, push your cases in court. Let us see people being tried and let it march with statements that have been recorded. Otherwise, so long as it appears as if it is a certain line and trend of thought that you want to pursue, then we are not going to win this war. It is important that we get answers to the things that are being raised by Senate Majority Leader.

With those very many remarks, I support.

**The Speaker** (Hon. Lusaka): Since there is a lot of interest, we will limit it to three minutes. Proceed, Sen. Wetangula.

**Sen. Wetangula:** Mr. Speaker, Sir, three minutes are too few. I have listened with a lot of interest to the Statement from the Senate Majority Leader who leads Government troops in this House. The investigative agencies that are feeding---

*(Sen. Wetangula Spoke off Record)*

Are Government agencies. We on this side do not run any police station, any criminal investigative arm or any office that investigates anything.

I fully agree that in the process of fighting against corruption, everybody must be committed to it, due regard must be paid to due process, presumption of innocence and all those accolades and tenets of the law.

Mr. Speaker, Sir, more importantly, we want as a House to join together and advise the agencies that are fighting corruption. I heard the Chief Justice advising in some public forum – I agreed with him - that no case, criminal or otherwise, is won through press briefings or public pronouncements. Cases are won by watertight, cogent evidence placed before courts of law.

I encourage the Director of Public Prosecutions (DPP) and the Director of Criminal Investigations (DCI) that you have the goodwill of Kenyans and you are enjoying it immensely so far. Kenyans will soon start asking questions as to how many prosecutions have been taken to the end, how many convictions we have and so on. More importantly, is the whole question of how mega public projects in this country are being run and managed.

Mr. Speaker, Sir, I have always wondered whether constructing a dam is the easiest engineering undertaking – blocking running water, making sure that there is a spillway and that the embankment is not brought down by water like what we had in Nakuru, is all we require to do. The quality of the embankment must be such that it cannot give way to storm water. That is what one needs to do. How can such a dam be costing Kshs50 or Kshs60 billion? These are the big questions. We want fairness in the war against corruption. Above all, the Jubilee Government must now style up because what we are seeing here is Jubilee A, fighting Jubilee B

*(Laughter)*

This is not the way the country should go because that---

*(Loud consultations)*

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

**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, I know the---

**The Speaker** (Hon. Lusaka): Use your cards if you want to make interventions.

**Sen. Sakaja**: Mr. Speaker, Sir, the Senator of Bungoma County started speaking very well. He spoke about how the war on corruption must be won on evidence, which we agree on.

However, this House has Parliamentary parties. For him to come and say that there is infighting within Jubilee cannot stay on the record of the House, unless he is able to substantiate. I know, today he had a meeting in his party trying to expel Sen. (Dr.) Khalwale because there is infighting. Can he withdraw because we have no rebels in Jubilee? We are all one party. We do not have Ford Kenya A and B but are one Jubilee. In this House, we are led by the Senate Majority Leader, Sen. Onesmus Kipchumba Murkomen.

Mr. Speaker, Sir, can he kindly withdraw that Statement?

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

**Sen. Kihika**: Mr. Speaker, Sir, I also rise to ask that the distinguished Senator of Bungoma County either withdraws and apologises or substantiates what he means by there being Jubilee A and B. As the Whip of the Jubilee party in this House, I am not aware that there are Jubilee A and Jubilee B factions.

We need to understand what he exactly means.

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

**Sen. Wetangula**: Mr. Speaker, Sir, fortunately, you and I come from the same community where we have a saying that all you need to do is raise a stick and a thieving dog will start making noise *pwee pwee pwee* and running like hell.

*(Laughter)*

Let me respond to the challenge. I withdraw the use of the words Jubilee A and Jubilee B and replace with the Statement that this is a friction between various factions and interests within the Jubilee set-up.

**The Speaker** (Hon. Lusaka): Proceed Sen. Dullo.

**Sen. Dullo**: Thank you, Mr. Speaker, Sir. I wish to contribute to this Statement. It is unfortunate---

**The Speaker** (Hon. Lusaka): Senators, remember there will be voting after this, so let us stick around.

**Sen. Dullo**: Mr. Speaker, Sir, what we are hearing from the Senate Majority Leader is really unfortunate.

*(Applause)*



It is unfortunate that we are being told that this project once completed will provide employment to the citizens of this country and also security to an area that has been marginalised and affected by cattle rustling for a very long time.

*(Loud Consultations)*

What are you saying?

**The Speaker** (Hon. Lusaka): Proceed, Senator.

**Sen. Dullo:** Mr. Speaker, Sir, it is right for the leaders from Elgeyo Marakwet County to ensure that the communities affected by that particular project are compensated before its commencement.

We have been told here that there are so many projects of a similar kind that are delayed. We ask why this particular project and we must be told. This is like putting food on the table for somebody who has not eaten for a whole week and removing it. It is sad.

Mr. Speaker, Sir, I know I have been given very few minutes. However, we are always singing that we should encourage development and stop politicking, but it looks as if politics is the order of the day in our country. It is unfortunate that we are frustrating and punishing our innocent citizens as a result of politics in this country. This must stop. If these kind of projects are going to be stopped or interfered with, investors are going to run away. This project is not meant for the people of Elgeyo-Marakwet County only; it is for the benefit of this country.

Mr. Speaker, Sir, once this Statement is handed over to the relevant Committee, can they investigate why this is happening to the people of Elgeyo-Marakwet County?

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Musuruve, you wanted some priority because you have something.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I appreciate the opportunity you have given me to add my voice to this particular Statement. I thank the Senate Majority Leader, Sen. Murkomen, for coming up with it.

When you look at the projected benefits of this project, it was going to benefit not only the people of Elgeyo-Marakwet County, but the whole nation. One of the projected benefits was that it was going to deal with food insecurity and unemployment, and these are among the Big Four Agenda that we are working up to. There is need for this issue to be addressed so that the beneficiaries of these projects can benefit from the intended project. As a nation, we need to look for partners – like the Italian Government – that are well meaning and want to come to invest for the purpose of ensuring that the community benefits from their actions.

Mr. Speaker, Sir, Corporate Social Responsibility (CSR) is something that benefits the community. In this Parliament, we have heard of projects that are started in communities, but the communities do not benefit from them. However, this intended project was supposed to benefit the residents of Elgeyo-Marakwet County.

Mr. Speaker, Sir, if there was money to compensate those whose land was taken to pave way for this project, it should be done at market value. If there is money that has

been set aside and has not been utilised for this project, the people responsible should be brought to account.

**Sen. Nyamunga:** On a point of order, Mr. Speaker, Sir. I seem to be at a loss; I do not understand how the debate is going. If I look at the Statement and the direction that the debate is taking, they are two different things. Nobody is against the cooperation; nobody is against the people of Elgeyo-Marakwet County. However, the problem is the corruption around the project. That is what we are not facing here. Therefore, I am not quite sure what we are debating; so, let us face the problem where it is!

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! Let us remain relevant as we contribute.

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, this project was initiated in 2015; and we are now in 2019. Money was put aside for this project to be started and completed, which has not been done. There is need for the Senate to intervene and see how exactly this project can be started and people compensated.

Thank you, Mr. Speaker, Sir.

**Sen. Kihika:** Mr. Speaker, Sir, I also rise to make my comments in support of the Statement that has been brought by the Senate Majority Leader. This issue also affects Nakuru County, considering that Itare Dam is in my County. I am also taken aback by the kind of public relations stunts that we are seeing with the Director of Criminal (DCI), the media and the hype that we are seeing all over the country. I believe and I know that it is time that maybe the Director of Public Prosecutions (DPP) and the DCI understood that they cannot be prosecuting cases in the media. We cannot be waking up to read them giving us facts in the newspapers, while we do not see any convictions in the courts of law.

Looking at the Statement that the Senate Majority Leader has brought to the Senate, it seems as though what we are reading in the media is different from what is really going on, on the ground. It, therefore, seems as if there is no equal treatment of all the projects across the country, and that there is nothing out of sync with what surrounded the happenings around the dams.

I would, therefore, wish to see the DCI doing better investigations; people being taken to court and convictions. We do not just want to wake up to being treated to a media circus by the Kenyan media, which does not seem to have any ethics at some point. They write anything and are not held accountable by anyone or anything; and things just seem to go on from there. You then have us, politicians, shout ourselves hoarse; and without facts, we then have another so called “major scandal” in another two weeks. This does not help anything or go anywhere. Get us convictions, bring the truth out and not just these one-sided, bad intentioned public relations stunts by the agencies that are supposed to be doing the work of fighting corruption.

Mr. Speaker, Sir, we all support the fight against corruption that is led by the President, but we also say that it must be done objectively, without subjecting specific people--- I mean, when you wake up and read a newspaper where, if somebody is

accused of an offence, they are being told it is an aide to so and so. What the hell does that have to do with that person?

*(Loud consultations and laughter)*

I am just wondering. It just seems as though these are political, and there is no evidence that seems to be tabled. If anything, I would expect that the DCI and the DPP would be talking after the convictions have already been achieved in court so that their evidence is not interfered with.

*(Sen. Kihika's microphone went off)*

**The Speaker** (Hon. Lusaka): Order!  
Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. Sometimes I want to sympathise, but I do not; because you used tyranny of numbers to get to power. You are unable to use power; we are ready to lead this country if Jubilee is unable to lead this country. Therefore, do not treat us to drama because the people of Elgeyo-Marakwet County voted to the last man for this Jubilee Government. When the Senate Majority Leader, who leads us, complains about the same Government, what are we, who are seated on this side, supposed to do? Are we supposed to cry, wail and mourn? Therefore, I am going to request---

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. In my Statement from A to Z, I have not complained about the Government. I actually complained about an independent entity that is supposed to investigate anybody – from the Judiciary, to the Legislature and the Executive – which is called the DCI. That must be separated.

**Sen. Mutula Kilonzo Jnr.:** I was going to come to that, as a leader, because I am trying to help you.

*(Laughter)*

When I stood here with Sen. Orengo and Sen. Wako, and we told you about election laws, the fact that revolutions eat their own babies, and you thought that it was a joke. This Government will eat you up!

Mr. Speaker, Sir, I am just going to repeat; the Constitution is very clear that this Senate has power, under Article 254(2), to request for a report from any agency on any particular issue. Senate Majority Leader, you should lead us. When we brought the Report on Ruaraka land here, people took off. When it is about maize, you are not talking.

**An hon. Senator:** Yes!

**Sen. Mutula Kilonzo Jnr.:** What is good for the goose, is good for the gander. When you have prepared a bed, you must lie on it; and I am happy that you are actually lying on it.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. Sakaja, what is your intervention?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. I am getting confused. If I heard Sen. Mutula Kilonzo Jnr. right – before he got very poetic, as he normally does, and which we enjoy – he said that they are ready to lead the country. Is he in order to mislead this House that he is ready to lead the country, yet his own party leader has said two things; one, that he is ready to be *mtu wa mkono* of the President? Two, that he does not want to run for president; he is waiting for a position in the “big new five”, if they come. Therefore, are they still ready to lead the country? If they are, in which kind of formation? Can he just be clear?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, he should not get it twisted. When I say that we are ready, it means that even Sen. Mutula Kilonzo Jnr. is ready. I can be a president. Let us get serious. The point is---

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

**The Speaker** (Hon. Lusaka): What is your point of order? Let us limit it for us to have some flow.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. Is the Senator for Nairobi County in order to drag the name of the Wiper party leader into this matter? When Sen. Mutula Kilonzo Jnr. said ‘we’, he did not say who the ‘we’ are. Therefore, where does the Wiper party leader come in?

**Sen. Sakaja:** Mr. Speaker, Sir, this is a House of rules. Our Standing Orders recognise parliamentary parties and Sen. Mutula Kilonzo Jnr. is the Whip of a party, which has a party leader. Therefore, I am in order to talk about that party as currently composed unless Wiper A has a different opinion from Wiper B on issues of---

**The Speaker** (Hon. Lusaka): Sen. Sakaja, you are out of order. A minute ago, you were sacrificing the Senator for Bungoma County for saying Jubilee A and B.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, when it comes to corruption, investigation of corruption and what the Judiciary is doing, we must speak the same when it comes to an issue touching on your person, county and another county, if we want Kenyans to understand and believe us. Ruaraka was touching on Nairobi and they left this House apart from the Senator of Nairobi County.

**Hon. Senators:** No! No! We did not!

**Sen. Mutula Kilonzo Jnr.:** You left. You voted with your feet. You did not vote with your machines. There is a vote on maize; stay behind and vote on it. Make a statement about corruption. If corruption is not in Elgeyo Marakwet, it will be in another place.

Regarding the case of Thwake that you have mentioned, Jubilee Government had initially awarded the tender to the highest bidder and not the lowest bidder. It is only after somebody was fired that the contract was awarded to the right person. It stalled because the people of Makeni said ‘do not come until you compensate everybody’. We said so and that is why the project has not commenced. The Government wanted the project to commence before that.

Welcome to the opposition, the Senate Majority Leader.

**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, Sen. Mutula Kilonzo Jnr. has been wandering around but his main point is what he concluded with, which is; 'welcome to the opposition'. I now understand the reason as to why Sen. Mutula Kilonzo Jnr. admires my seat and the reason as to why anybody in opposition would love to have those in Government go to the opposition.

Mr. Speaker, Sir, this is something that you must rule on from your Chair. We serve different political entities in this House and that includes the Senate Majority Leader. Are we trying to say that the people of Elgeyo Marakwet County will not have a voice in this House because of my capacity and position as the Senate Majority Leader? For all my colleagues who are going to respond, I think that the people of Elgeyo Marakwet County deserve a lot of respect and representation because I would never have been the Senate Majority Leader had it not been for them.

It is in this single instance that I have brought an issue on behalf of Elgeyo Marakwet County. I am always on the Floor of this House defending issues. Sen. Mutula Kilonzo Jnr. did not even say that I was among the people who spoke so much about Thwake compensation issues when it was brought to this House and I even talked of Arror and Kamwerer dams.

I want your protection because I have seen that there is a pattern where people come here to attack my position as the Senate Majority Leader. I want you to protect me and the people of Elgeyo Marakwet County.

**The Speaker** (Hon. Lusaka): You are already protected and that is why I approved the Statement, knowing that you are the Senator of Elgeyo Marakwet County.

**Sen. Cherargei**: Thank you, Mr. Speaker, Sir. I rise to support the Statement by the Senate Majority Leader. I do agree that corruption should be done in good faith---

*(Laughter)*

There is a time towards last year----

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

**Sen. Cherargei**: My apologies, Mr. Speaker, Sir. It should be dealt with. There was one Minister who once said that, 'I lead corruption from the front'. I must have borrowed from that but I meant to say that corruption should be dealt with appropriately.

*(Several Senators consulted loudly)*

**Sen. Cherargei**: Mr. Speaker, Sir, kindly protect me.

Towards the end of 2018, when the investigative agencies became emotionally excited about fighting corruption, I warned them that they should not ethnically or politically profile the fight against corruption. Many people went bonkers about that issue. I want to tell the Senate Majority Leader that if that Statement is brought to the Committee on Justice, Legal Affairs and Human Rights, I will deal with it with military

precision. Competition for headlines and trending on twitter every morning will not assist in prosecuting, conviction and building up cases of corruption in this country.

I have heard my good friend, Sen. Mutula Kilonzo Jnr., condemn the people who voted against the Ruaraka land saga. We do have a conscience and we can reason. That is why I am the Senator of Nandi County and I can vote the way I want. You do not need to condemn me because I took a different position from yours which is the essence of democracy. If Wiper A and Wiper B are competing---

**The Speaker** (Hon. Lusaka): Order Senator. Let us not get there.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, one of the most favourite verses that the Senate Majority Leader always quotes comes from the book of Luke 24:18 where Cleopas asks:-

'Are you the only stranger in Jerusalem who does not know the things that have happened there in these days?'

When you listen to the Statement by the Senate Majority Leader, a stranger in Jerusalem would sit down and would believe everything that the Senate Majority Leader has said. He has made a lot of statements of fact and because I did not want to interfere with his logical flow, it will be extremely important that the facts that he has alluded to be Tabled before this House because everyone in this country knows that the fight against corruption is going on and the particular project that the Senate Majority Leader has talked about. I do not have a problem with the people of Elgeyo Marakwet County getting water but I do have a problem if indeed it is true that Kshs6 billion is lying under someone's pillow yet this country has to repay loans that were taken for that particular project.

In his submission, the Senate Majority Leader gave the proverb of a hyena that wants to eat its cubs. Could he tell us who the hyena that wants to eat the children of Elgeyo Marakwet County is? More fundamentally, I wish that we, as a Senate, do not trivialise this important matter because the nation is watching us and the investigative agencies have issued summonses for people to shed light. Therefore, we cannot use parliamentary privilege to attempt to sanitise a matter that seems to have a criminal angle to it.

I want to plead with you that pursuant to Standing Order No. 47(3), this matter be referred to a competent Committee. I do not know if the one chaired by Sen. Cherargei is competent enough considering the statement that he has already made on the matter---

**The Speaker** (Hon. Lusaka): You are out of order, Sen. M. Kajwang'. All Committees are competent. Let us not cast aspersions on any Committee.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I am worried about the position that he has already taken on the Floor on the matter. He has promised to deal with it in a manner that is consistent with his contribution on the Floor of the House.

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

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

**Sen. Cheruiyot**: Mr. Speaker, Sir, Sen. M. Kajwang' is no ordinary Senator. He is the Chairperson of the Committee on County Public Accounts and Investments. One of the biggest struggles of the Senate is on how to hold the governors to account. Therefore, when it comes to the issue of accusing other Committee Chairpersons on their levels of

competence, I do not think that he ranks among the highest. He should not pursue that line.

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

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

**Sen. Cherargei:** Mr. Speaker, Sir, is it in order for the former and the current Chairperson of the Committee on County Public Accounts and Investments to cast aspersions on the decision that the Committee on Justice, Legal Affairs and Human Rights will make? The decisions of that Committee are not those of Sen. Cherargei but they are decisions of the entire Committee. Is he in order to cast aspersions yet the Committee on County Public Accounts and Investments, which he chairs, is the reason as to why governors are cat walking and doing beauty contests because that Committee has failed to hold them to account? He should apologise and withdraw that statement.

**The Speaker** (Hon. Lusaka): Order Members! First, the Speaker has not ruled on which Committee will handle the matter. Secondly, I had already said that we should not cast aspersions on any Committee. I thought that the matter was put to rest. So, proceed, Sen. M. Kajwang’.

**Sen. M. Kajwang’:** Mr. Speaker, Sir, among the Suba Community, we have a saying that “the person who breaks wind in a public gathering is the always the first to start a fight”. I will leave the matter at that point.

Finally, this House will not come to a conclusion that whatever Sen. Murkomen has placed before us is the gospel truth simply because he has stated it. It must be tested through a competent Committee so that it is not reported that the Senate deliberated on the matter and castigated the Director of Criminal Investigation (DCI). I have a lot of faith in the investigative agencies. I believe that they can do more. Let us appreciate the little that they are doing currently.

**The Speaker** (Hon. Lusaka): Hon. Senators, I know that it is a matter that has a lot of interest. However, I will defer it so that we come back to it after voting.

We proceed to Order No.9

**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, you had given my Committee an onerous task and I was to report back on the matter. We had 30 Senators this morning on that issue.

*[The Speaker consulted the Clerks-at-the-Table  
and Sen. Wetangula]*

Mr. Speaker, Sir, I noticed that the Chair is a bit distracted on both sides. Could I kindly get your attention?

**The Speaker** (Hon. Lusaka): What is it, Sen. Sakaja?

**Sen. Sakaja:** Mr. Speaker, Sir, I was to give feedback on the task you had given my Committee---

**The Speaker** (Hon. Lusaka): If it is on a Statement, you will do it under Order No.7. I will give you an opportunity when we reach there.

**Sen. Sakaja:** Mr. Speaker, Sir, but we are at Order No.7. That is why Sen. Murkomen gave his Statement.

**The Speaker** (Hon. Lusaka): We will go back there because there are some Statements that have not been given yet.

We proceed to Order No.8.

## BILL

### *First Reading*

#### THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 2 OF 2019)

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

## MOTION

#### APPROVAL OF REPORT ON THE ADDENDUM TO THE COUNTY GOVERNMENTS CASH DISBURSEMENT SCHEDULE FOR FY 2018/2019

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

THAT, pursuant to Section 17(7) of the Public Finance Management Act and provisions of Standing Order 183 (2), the Senate approves the Report of the Standing Committee on Finance and Budget on the addendum to the County Governments Cash Disbursement Schedule for the Financial Year 2018/2019 laid on the Table of the House on Tuesday, 28<sup>th</sup> February, 2019.

Mr. Speaker, Sir, as I said earlier, the addendum to the cash disbursement Schedule necessitated the amendment to the Division of Revenue Act and County Allocation of Revenue Act 2018/2019 to include some conditional grants that were availed after the enactment of the Division of Revenue Act, 2018 and the County Allocation of Revenue Act, 2018. It is a very simple matter. We have seen the Schedule from the National Treasury and we made a few amendments from what we tabled yesterday. Therefore, the amended version is now available. This is a short matter.

I beg to move and ask Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to second the amendment to the Cash Disbursement Schedule. This is a technical issue. We want to make sure that counties input the three grants in their already existing budget. Therefore, since this is a matter we have debated before in the Division of Revenue Act, I second.

*(Sen. Murkomen consulted loudly)*

**The Speaker** (Hon. Lusaka): Order, Senate Majority Leader.

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*(Question proposed)*

Let us go to Division on Order Nos.9, 10 and 11.  
I direct that the Division Bell be rung for two minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Lusaka): Order! Hon. Senators, I now direct that the Bars be drawn and the doors closed.

*(The doors were closed and Bars drawn)*

Hon. Senators, we have a Supplementary Order Paper, which is on your iPad.  
I will now put the question, which is; That, pursuant to Section 17 (7) of the Public Finance Management Act and provisions of Standing Order 183 (2), the Senate approves the Report of the Standing Committee on Finance and Budget on the Addendum to the County Governments Cash Disbursement Schedule for the Financial Year 2018/2019, laid on the Table of the House on Thursday, 28<sup>th</sup> February, 2019.

We are now ready to vote. Those who need assistance, please, come forward. Sen. Seneta and Sen. (Dr.) Milgo, please, approach the Clerks-at-the-Table.

*(The Senators proceeded to vote)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that pursuant to Section 17(7) of the Public Finance Management Act and provisions of the and Standing Order 183 (2), the Senate approves the Report on the Standing Committee on Finance and Budget on the Addendum to the County Governments Cash Disbursement Schedule for the Financial Year 2018/2019 laid on the Table of the House on Thursday, 28<sup>th</sup> February 2019 put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen.

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(Dr.) Milgo, Bomet County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County ; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; and, Sen. Wetangula, Bungoma County.

**NOES:** Nil.

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the voting are as follows:-

**AYES:** 32

**NOES:** Nil.

**ABSTENTIONS:** Nil.

The "Ayes" have it

*(Question carried by 32 to nil)*

Hon. Senators, we now move to Order No.10

### MOTION

#### ADOPTION OF REPORT OF THE *AD-HOC* COMMITTEE ON THE MAIZE CRISIS IN KENYA

THAT , this House adopts the Report of the Ad-hoc Committee on the Maize crisis in Kenya laid on the Table of the House on Tuesday, 27th November, 2018 subject to the following amendments to the report-

- (a) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The Cabinet Secretary, the National Treasury & Planning and the Cabinet Secretary, MOALF&I" appearing in paragraph 3 on page 11 of the report;
- (b) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The CS National Treasury and CS, MOALF&I" appearing in column 1 of recommendation 7 on page 111 of the report; and
- (c) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "CS, National Treasury, CS, Agriculture" appearing in column 3 of recommendation 7 on page 111 of the report.

*(Sen. (Prof.) Kamar on 19.2.2019)*

*(Resumption of debate interrupted on 27.2.2019)*

**The Speaker** (Hon. Lusaka): Hon. Senators, you can vote now.

*(The Senators proceeded to vote)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that, this House adopts the Report of the ad-hoc Committee on the maize crisis in Kenya laid on the Table of the House on Tuesday, 27th November, 2018 subject to the following amendments to the report-*

*(a) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The Cabinet Secretary, the National Treasury & Planning and the Cabinet Secretary, MOALF&I" appearing in Paragraph 3 on page 11 of the report; (b) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "The CS National Treasury and CS, MOALF&I" appearing in column 1 of recommendation 7 on page 111 of the report; and (c) by inserting the words "and the Inter-Ministerial Committee on Food Security" immediately after the words "CS, National Treasury, CS, Agriculture" appearing in column 3 of recommendation 7 on page 111 of the report, put and the Senate Proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Mandera County; Sen. Seneta, Kajiado County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. (Dr.) Milgo, Bomet County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Nderitu, Laikipia County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Speaker** (Hon. Lusaka): Hon. Senators the results of the voting are as follows:

**AYES:** 32

**NOES:** Nil

**ABSTENTIONS:** Nil

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*(Question carried by 32 votes to nil)*

Next Order!

## MOTION

### ADOPTION OF REPORT ON THE 2019 BUDGET POLICY STATEMENT

THAT, pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order 180 (7) of the Senate, this House adopts the Report of the Standing Committee on Finance and Budget on the 2019 Budget Policy Statement, laid on the Table of the Senate on Tuesday, 26<sup>th</sup> February, 2019.

*(Sen. (Eng.) Mahamud on 27.2.2019)*

*(Resumption of Debate interrupted on 27.2.2019)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that, pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order 180 (7) of the Senate, this House adopts the Report of the Standing Committee on Finance and Budget on the 2019 Budget Policy Statement, laid on the Table of the Senate on Tuesday, 26<sup>th</sup> February, 2019, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen.(Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. (Dr.) Milgo, Bomet County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Nderitu, Kirinyaga County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County, and Sen. Wetangula, Bungoma County.

**NOES:** Nil

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**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the voting are as follows:

**AYES:** 32

**NOES:** Nil.

**ABSTENTIONS:** Nil

The 'Ayes' have it.

*(Question carried by 32votes to nil)*

**The Speaker** (Hon. Lusaka):Hon. Senators, I now direct that the Doors be unlocked and the Bars withdrawn.

*(The doors were opened and the Bar drawn)*

Next Order

*(Resumption of Debate on Statements)*

### STATEMENTS

**The Speaker** (Hon. Lusaka): Hon. Senators, we are going back to the Statements but the time had already expired for the Majority Leader Statement. Pursuant to Standing Order No.47 (3), I refer the Statement to the Standing Committee on Land, Environment and Natural Resources for further consideration.

Next Statement, Sen. Millicent Omanga.

#### COMPULSORY MANAGEMENT OF COPYRIGHT AND OTHER RELATED RIGHTS

**Sen. Omanga:** Mr. Speaker, Sir, Pursuant to Standing Order 48(1) I rise to seek a Statement---

*(Loud consultations)*

Mr. Speaker, there is so much noise.

**The Speaker** (Hon. Lusaka): Proceed.

**Sen. Omanga:** I would like to seek a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights on compulsory management of copyright and other related rights.

In the Statement, the Committee should:-

- (a) Explain why rights holders are forced to associate with collective management organization and not to associate directly with the users through contracts.

- (b) Explain what regulatory framework is in place to avoid exploitation of the rights holders by the collective management organization.
- (c) Explain the distribution framework for royalties, how rights holders are to be identified and paid and how much to be paid.
- (d) State what is being done to educate the public on copyright and related rights to help in better understanding by both holders and users.

**Sen. Sakaja:** Mr. Speaker, Sir, kindly allow me to add on to that request for a statement by Sen. Omanga because it is a very important issue in this country. We have a lot of talented young people who are involved in arts. These are musicians, producers, and performers.

Mr. Speaker, Sir, this category of Kenyans who are hugely talented have been taken for a ride, for a long time. Can the Chairperson, in his response, tell us which stations are paying and those that are not paying royalties to musicians? Our radio and television (TV) stations are playing this music every day. However, a certain category are not paying royalties to our artists and musicians.

Secondly, can he tell us if the Government, through the Copyright Board, has instituted a monitoring mechanism, so that each and every artist on his own can tell how many times his or her song has been played and by who? They need to know at the end of the month what money is owed to them out of their music.

Thirdly, can he also tell us from the *sikiza* platform which transacts billions monthly, what percentage of the revenue of *sikiza* tunes are going to our musicians?

The last time I checked, out of Kshs1, the musician gets less than 10 per cent for his song. The 90 per cent is being shared in taxes and by Poverty Reduction Strategy Papers (PRSP) which are the companies and the CMOs. What can he do to make sure that we know the rate that the musicians are getting?

From that, how can we improve it so that the person who benefits the most from music is the actual performer who has gone to studio, has a talent and who has produced music?

**Speaker** (Sen. Lusaka): Sen. Dullo, please, present your statement.

#### PENDING BILLS IN ISIOLO COUNTY

**Sen. Dullo:** Thank you Mr. Speaker, Sir.

pursuant to Standing Order 48 (1), I rise to seek a statement from the Standing Committee on Finance and Budget on the pending bills of Isiolo County.

In the statement, the Committee should:-

- (1) Establish or state how much pending bills are outstanding to date.
- (2) Explain the circumstances under which the pending bills keep on accruing.
- (3) Explain why the County Government has failed to clear pending bills.
- (4) Explain when the County Government plans to clear the pending bills.

(5) Explain why our counties continue accruing pending bills while the law is very clear.

(6) What actions is the Ministry of Finance and National Treasury going to take against such counties?

**The Speaker** (Sen. Lusaka): Sen. (Eng.) Mahamud, what is your intervention?

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I am just wondering whether it will be in order for the Senate to be asking questions on county pending bills because we are dealing with the national Government here. I do not know what mechanism I will use to get that information unless she brings it in the form of a petition to this House. I stand guided.

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

**The Speaker** (Sen. Lusaka): Sen. Cherargei, do you have an intervention?

**Sen. Cherargei:** Mr. Speaker, Sir, you had not committed the first statement by Sen. Omanga on the issue of copyright issues and payments. I need guidance so that we can see how to get seized of the matter because entertainment is one of the biggest revenue earners for the youth in this country.

Mr. Speaker, Sir, I stand guided because Sen. Sakaja had raised monumental issues that need the attention of the Committee. The entertainment industry in this country is one of the biggest employer of young people. The issue of skiza tunes and payment to musicians, not only the secular and gospel musicians, but also the local ones from the various communities--- royalties must be paid. This is a thorny issue that we would want to address so that we can ensure the young people get justice for what they are working for, outside the formal employment.

**The Speaker** (Sen. Lusaka): Under the new Standing Orders, the Chairperson needs to note and take action. Since you have noted, we hope you will take action appropriately.

For Sen. Dullo's statement, the statement was approved. Therefore, it will go to the Committee on Finance and Budget, which can even bring a report saying it is outside their mandate to deal with that.

What is your intervention, Sen. Omanga?

**Sen. Omanga:** Mr. Speaker, Sir, I needed the Chair also to give timelines. We cannot just leave it open. The Chair can even respond after one year and our actors and musicians in the entertainment industry are suffering. We need timelines as to when the Chairperson should come back with the responses.

**The Speaker** (Sen. Lusaka): Sen. Omanga, I do not know whether you have read the new Standing Orders. If you read the new Standing Order, it has an answer there.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I rise to comment on the statement by Sen. Dullo. However, before I do so, I am a bit confused by the intervention from the Chairman of the Committee on Finance and Budget on whether or not his Committee should deal with the matter of pending bills.

*(The Speaker (Sen. Lusaka) left the Chair)*

*(The Temporary Speaker (Sen. Nyamunga) took the Chair)*

Madam Temporary Speaker, if this Senate cannot deal with pending bills, especially from counties, then who will? I raise this concern because towards the end of the last session, I brought a petition on the Floor of this House from business people and contractors in Kitui County, direction was given from the Chair on how the matter was going to be handled.

The first meeting between the Committee on Finance and Budget and the contractors took place. The contractors were promised by the same Committee that at the beginning of this Session, the Committee was going to ask the governor to appear, so that he could explain how the bills were accumulated and plans for payment. Now, the Chairman of the Committee on Finance and Budget expresses doubts as to whether his Committee should be dealing with pending bills.

Madam Temporary Speaker, we need guidance from the Chair because if contractors cannot bring these issues before the Senate, I do not know where else they can take them.

**The Temporary Speaker (Sen. Nyamunga):** Yes Chairman of the Committee on Finance and Budget.

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, let me not be misunderstood. I have not said that we cannot deal with pending bills of the counties. However, it is the method which Sen. Dullo requested which I had difficulty with. The Petition, and I want Sen. Sen. Wambua to listen, was brought to the Senate and was referred to this Committee, and it is being dealt with. We will do that because there is a petition before us on people complaining of pending bills. In fact, we have started the process. It is a part of a programme we are undertaking in this Session.

What the good Senator for Isiolo County was asking was how much is the pending bills of Isiolo County. Maybe what will be difficult will be how we will be able to ascertain how much pending bills the county has. One, there is no Ministry that I can write to here to ask about the pending bills in Isiolo, because they are not under any Ministry.

**An hon. Senator:** Write to the Governor!

**Sen. (Eng.) Mahamud:** Please, wait. If there is a petition that is before us, we can grill the governor on the questions before us. To initiate how much the pending bill is, I think it is a new area that we are venturing into and I need guidance from the Speaker.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker (Sen. Nyamunga):** Senator, are you satisfied with that response?

**Sen. Wambua:** Madam Temporary Speaker, I am fully satisfied. I think the contractors from Kitui are happy. As to whether the Senate Committee on Finance and Budget should be determining the pending bills, I will leave that for the Committee and the Senator to deal with. However, on the matter of Kitui County, I am happy to learn that the Committee is seized of the matter and they are dealing with it.

Thank you, Madam Temporary Speaker.



**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, one thing we must realise is that the issue of pending bills is a big problem in the whole country. All counties are going through a lot of problems with that. Most of the people who took over as new governors are still struggling with the previous pending bills.

In my view, the issue of pending bills should be given a very serious thought because if it is not done, most of our counties will lag behind and not move forward. The Committee, which I am part of, is on top of it.

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Madam Temporary Speaker, you almost sounded as if you were assisting the Chairperson to answer. If we look at the Senate Standing Orders, the Second Schedule lists the different roles of our Committees. The Senate Committee on Finance and Budget, which is the fifth, has its main role as to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine the budget Policy Statement presented to the Senate, *et cetera*.

Part (b) says:-

“Pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on implementation of the budgets of county governments.”

Madam Temporary Speaker, before the Controller of Budget approves any disbursement to the counties, she needs to be satisfied that it is within the budget that the county assembly itself has passed that budget.

The first charge on any budget of a county government must be any pending bills. That is what brings back these issues squarely to the Senate and the Committee on Finance and Budget. In fact, it might as well just write to the Controller of Budget to establish the level of pending bills and what will be done, such that the first charge on all the monies drawn from the Exchequer will sort out the pending bills.

Madam Temporary Speaker, when we got into this Senate, Nairobi City County, for instance, had Kshs50 billion pending bills. That is of concern to me. As the Senator I need to be told. They can bring us an omnibus report of what is being done to deal with it. These are the suppliers, contractors and young people who got the 30 per cent procurement opportunities, but are not being paid.

Could the Chairperson commit to even deal with the Controller of Budget on our counties and tell us what the strategy is? We agreed during the Leadership Retreat that every month the Controller of Budget will be sending to specific Senators the County Exchequer Release Report. Since the day we met and agreed, we have never seen it.

Madam Temporary Speaker, I want to know when Nairobi City County has requested a particular amount of money for specific purposes. If we say that we cannot do it, we might as well close the Senate *na twende nyumbani*.

**The Temporary Speaker** (Sen. Nyamunga): Chairperson, do you have something to add?

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, on the Controller of Budget, this discussion was made at the Leadership retreat at Windsor Hotel about two weeks ago. The Controller of Budget said - and they were not speaking the truth - that they were sending to every Senator Exchequer releases through the mail. None of us here has

received that. We were to receive that information every month. In terms of the approved budget for every county, they did not give us a copy. That was the request that was made there.

Since we are discussing pending bills, as raised by Sen. Dullo, the Controller of Budget indicated that Kshs108 billion was outstanding in terms of pending for all the counties as of 30<sup>th</sup> June, 2018. This is being audited now by the Auditor General. Once the authenticity of those bills is established, then how to pay and what to charge will be a discussion that has to be taken between the National Treasury, the Senate and the Controller of Budget.

Madam Temporary Speaker, the question before us from my good sister, Sen. Dullo, is how much the pending bills of Isiolo County are. It will be better if there is a schedule of all the bills which emanate from some quarter, which we have as a Committee in form of a petition. We can then sit with the governor and ask why they are outstanding, the way we did for Kitui County.

I am only querying the method which the Member is using. Yes, we can write and they can give us one line to say what is outstanding. If there was a petition, the way we have people from Kitui complaining, that would be a matter before the Committee.

To initiate it ourselves is what I am finding a bit difficult and asking for guidance.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Dullo, would it not be in order for you to make a formal request to the Senate Committee on Finance and Budget, so that you get the information you need from the county?

**Sen. Dullo:** Madam Temporary Speaker, I do not see why the Chair of the Committee is insisting that I should come with a petition. This is because a statement is also a way that Members can request for information. I do not think it is right for him to say that he cannot write to the National Treasury or any other Ministry to obtain information. He can write to the Controller of Budget and ask for the Statement I have requested for, because they should be having the pending bills for all the counties in this country.

If we say that we should watch counties incurring pending bills and do not take action, as the Senate, as Sen. Sakaja said, we should close this Senate and go home.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Our Standing Order No.48 3(b) gives an opportunity for any Member who feels that they need further information to ask for it. You can refer to it. It says:-

“The Committee may invite the Senator who requested a Statement, the relevant Cabinet Secretary or any other person the Committee may consider necessary during deliberations on the Statement and may prepare and table a report on the matter.”

I think that rests the case. Let us move forward.

Proceed, Sen. Mwaruma.

Just a minute, Senator. Sen. Pareno, did you have an intervention?

**Sen. Pareno:** Madam Temporary Speaker, I had an intervention that I wanted to make on the same issue.

*(Sen. Mwaruma stood in his place)*

**The Temporary Speaker** (Sen. Nyamunga): Just a minute, Sen. Mwaruma.

**Sen. Pareno:** Madam Temporary Speaker, when we had the Leadership retreat at Windsor Hotel, we were informed that there is data on the pending bills by the Office of the Controller of Budget. They even told us that they have a list of counties that have been told to verify those bills before they are paid. They said that they have a list of the counties that have verified and those that have not. That data is available; all we need is for that Chairperson to ensure that the request is made.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Dullo, are you satisfied with that? I think it is one thing that can be picked up between yourself and the Committee on Finance and Budget.

**Sen. Dullo:** Madam Temporary Speaker, I think I have brought the Statement to the Floor of the House---

**The Temporary Speaker** (Sen. Nyamunga): Is the Statement already on the Floor of the House?

**Sen. Dullo:** Yes, Madam Temporary Speaker. This is a matter for the House and not between me and the Chairperson.

**The Temporary Speaker** (Sen. Nyamunga): Chairperson, do you have something to say on it? We need to move forward and I think ---

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, we will attempt to have a go at it. We will invite the Senator to also help us on the way forward. So, commit it to our Committee.

**The Temporary Speaker** (Sen. Nyamunga): I think that is okay.

**Sen. Mwaruma:** Madam Temporary Speaker, it is funny because I had requested a long time ago to speak and all the time you kept saying: "Sen. Mwaruma, Sen. So-and-so." I do not really know what was happening and because now you have already closed the chapter, I think I will just sit down.

However, I think it borders on ---

**The Temporary Speaker** (Sen. Nyamunga): Senator, I am very sorry. I thought you were on a totally different matter. I did not know it was still on the same.

**Sen. Mwaruma:** No, Madam Temporary Speaker. We were still canvassing the issue of Sen. Dullo and my good friend, Sen. Pareno, just pressed the intervention button. I know she had a go before me. I think it is a question of leadership and who is who in the House.

**The Temporary Speaker** (Sen. Nyamunga): No, Senator. Sen. Pareno was on intervention and you are on a request. You know the two are different, and you attend to the intervention first. So, there is nothing bad against it. I am sorry about that.

**Sen. Mwaruma:** Madam Temporary Speaker, what is the position of that?

**The Temporary Speaker** (Sen. Nyamunga): it has been referred to the Committee on Finance and Budget and the Chairperson will work on it. I think that is the last that we said about it.

Let us move forward ---

**Sen. Dullo:** On a point of order, Madam Temporary Speaker. The Speaker on the Chair yesterday ruled the Petition of Isiolo County should be reported today as well as intervention by Members. If I may look at where the Chair was seated, he is nowhere. What is the direction? It is on the Order Paper and it is a matter that is important for Isiolo County.

**The Temporary Speaker** (Sen. Nyamunga): Yes, Sen. Pareno.

**Sen. Pareno:** Madam Temporary Speaker, we were still on Statements. Before we move to the next item. I had a Statement which was not on the Order Paper but had been approved by the Speaker for me to be able to address the House.

**The Temporary Speaker** (Sen. Nyamunga): There are other statements even before yours. So, we will move to that.

**Sen. Pareno:** Madam Temporary Speaker, I stand guided.

*(The Temporary Speaker (Sen. Nyamunga)  
consulted the Clerk-at-the-Table)*

**The Temporary Speaker** (Sen. Nyamunga): Sen. Dullo, I think just before you came in, the Speaker had deferred that Statement of yours to a later date.

**Sen. Dullo:** Madam Temporary Speaker, petition?

**The Temporary Speaker** (Sen. Nyamunga): Yes, it was deferred.

Now, the next ---

**Sen. Dullo:** On a point of order, Madam Temporary Speaker. If I remember very well, I was among the first people in the Chamber and the Senate Majority Leader requested for permission to read a Statement, and the Order on Petition was skipped. When I spoke to the Speaker, he said that we will come back to it. So, to when are we deferring it? Kindly give us direction.

*(The Temporary Speaker (Sen. Nyamunga)  
consulted the Clerk-at-the-Table)*

**The Temporary Speaker** (Sen. Nyamunga): Sen. Pareno, can you continue with your Statement? Sen. Dullo, we will come back to your point in a short while.

BRUTAL INVASION AND EVICTION OF MAASAI  
COMMUNITY FROM EM-PAKASI, SOUTH C WARD

**Sen. Pareno:** Thank you, Madam Temporary Speaker. I rise to make a Statement pursuant to Standing Order No.48(1), from the Committee on National Security, Defence and Foreign Relations on the brutal invasion and eviction of people from the Maasai community from an area that they fondly call Em-pakasi in South C Ward, Langata Constituency.

In the Statement, the Committee should:-

- (1) Explain the circumstances and the reasons that prompted the brutal invasion which was carried out by over 45 police officers and 200 youth

who came armed with crude weapons and stole everything that was on site. These people were evicted from the Em-pakasi area of South C Ward, Langata Constituency on 26<sup>th</sup> February, 2019.

(2) State the fate of the affected persons who have been rendered homeless after over 400 homes were destroyed and after living in the area for over 38 years.

(3) State the urgent measures being taken to ensure that the children whose school was destroyed are back to school and what measures have been taken to ensure that they have food and shelter. As we speak, they were evicted on 26<sup>th</sup> February, 2019, the school was flattened and we do not know their fate and what is happening to their education.

(4) State the actions that are being taken to bring the perpetrators to book and ensure that justice prevails for the affected people.

Thank you.

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker. I rise to support the Statement by sen. Pareno. I wish to say that it is quite absurd to realise that such a large number of police men and youth was sent to evict people at Em-pakasi.

I am sure if we could even go further, we would realise that there is more to the eviction of these people because, normally, when such a large number of police officers and youth evict people, they even cause other harm. You can visualise what is happening in that particular area because from the Statement, I think we ought to still ask ourselves what actually prompted the eviction of the Maasai Community from the particular area which has been their home for many years.

Issues of eviction in this country have become very rampant. I think this one here is comparable to the eviction that has been taking place in the Mau Forest, particularly in areas where people have been living for a long time. Normally, we are told that there is a policy to resettle them. In any case, this one is normally affected by issues of corruption.

Madam Temporary Speaker, normally when people are evicted, they are evicted in a very inhumane manner and exposed to cold. We can imagine that they are old people, expectant mothers and young kids that were evicted. In this particular case, we are told that a school was flattened. Right now, schools are going on and the children of those particular people who were evicted are losing on learning or education which is a basic need. In addition to that, when people are evicted, their property is destroyed and they go without food, stay in the cold and in the final analysis, they are supposed to seek medication and yet they may not have the financial ability.

It is high time that a proper policy is put in place to ensure that those people who are going to be evicted have to be provided with an alternative area for settlement because it is the right of every citizen in this country to be provided with a safe home as well a safe environment together with food. I think it is in the public domain that those people have been provided for in terms of plans for an alternative home and maybe land, while those ones of the Mau Forest have suffered for many years and still, nobody has ever looked into their plight critically.

We ought to relook at the idea of eviction. We need to have a policy and a proper framework for evicting people as well as settling them for the citizens of this country not

to suffer. Otherwise, I think that it is the mandate of our Government and this country to take care of its citizens.

I support that Statement.

**Sen. Olekina:** Thank you, Madam Temporary Speaker. I rise to support the Statement by Sen. Pareno. The issue of land ownership in this country is something that must be resolved once and for all. I went to Embakasi and I want to thank Governor Sonko for going there and giving the Maasais something that they could spend for a couple of days. Were it not for the rule of law, I would have called all the Maasais there and have them fight for their rights.

There is something that we call *ewoshi emouwo* and when you blow that trumpet, you call for war. We, the Maasais, have been so gentle and welcoming. Nairobi once belonged to the Maasais but we have now been overtaken. During the constitutional amendment, when the counties were being created, Narok and Kajiado were referred to as the Maasai counties.

However, due to the cosmopolitan nonsense, people who have lived in an area for over 38 years and have called it their home, including nine months and one day old children, were forced to leave or to spend the night in the cold because of special interests. We have got the law on adverse possession which is only 12 years old. The reason as to why our people were evicted from that place is because of land compensation that we were talking of earlier on today.

There is something that is called spatial awareness which is the ability for you to know your surroundings. One thing that saddens me is that when we were young, and I am sure that you will agree with me, most of us were carried by our mothers and the only thing that we could see was their back. We were not aware of our surroundings. No wonder, when you are forced to put a picture on the wall in your home, you can never put it in a straight way. It is always bending backwards. However, we are now aware of our surroundings. It is time that this Government takes issues to do with the marginalised communities seriously especially when it comes to places where they call their home.

With all due respect to the distinguished Senator from Bomet County, the issue of Mau forest cannot be compared with the issue of those people who were evicted there. There is an issue to do with the environment versus the issue to do with why you have occupied that place. These people have been living there. What we know is that there is the issue of compensation because of the Standard Gauge Railway (SGR) and that is the reason as to why those people were moved out of there.

*(Sen. Omanga spoke off record)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, if you are on a point of order, you know that you are supposed to press the intervention and not shout from where you are sitting.

**Sen. Olekina:** Madam Temporary Speaker, it is wrong and I once again thank Governor Sonko because he went there. He said that those people are known cartels who are using magistrates to get court orders. How on earth does a magistrate issue a court

order for a property which is over Kshs10 billion? These are things which are left for other entities.

**Sen. (Dr.) Milgo:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): What is your point of order? Please use the right button.

*(Sen. Omanga stood up in her place)*

**The Temporary Speaker** (Sen. Nyamunga): I am still on Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Madam Temporary Speaker, is the Senator of Narok County in order when he says that we cannot compare the people of Bomet and Kericho to the people of Embakasi? They are all human beings. In fact, the dust has not settled on what he recently said. He said that the women of Bomet and Kericho were yelling in a very unbecoming manner. I think that human beings are the same and all of them require similar treatment. Eviction in Embakasi is the same as eviction in Mau forest. What we require is a lasting policy.

**The Temporary Speaker** (Sen. Nyamunga): We have gotten the point. Senator of Narok County, what did you say?

**Sen. Olekina:** Madam Temporary Speaker, I come from a school of thought that believes that facts are very stubborn. At no point did I say that the people who had encroached into Mau forest were not human. The only thing that I said---

**The Temporary Speaker** (Sen. Nyamunga): Just say the exact thing that you said.

**Sen. Olekina:** Madam Temporary Speaker, with all due respect to the nominated Senator from Bomet, I said that you cannot compare the situation in Mau forest with what happened in Embakasi and I laid proper background as to what happened there. These are people who have lived there for 38 years; the land is not occupied by anyone else apart from them.

**Sen. Omanga:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): What is your intervention, Sen. Omanga?

**Sen. Omanga:** Madam Temporary Speaker, I wanted to ask if the Senator of Narok County is in order when he refers to the word cosmopolitan as nonsense? I come from a cosmopolitan County and his County is also cosmopolitan. I find his comments to be inciting because you cannot call other communities living in your County as nonsense.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina, please substantiate that.

**Sen. Olekina:** Madam Temporary Speaker, I stand by what I said earlier on. Right now, there is something called---

**Sen. Cherargei:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Cherargei, what is your intervention?

**Sen. Olekina:** Madam Temporary Speaker, you have asked me to substantiate and even before I do that, there is another intervention.

**The Temporary Speaker** (Sen. Nyamunga): There is another intervention. We will go back to that.

**Sen. Cherargei:** Madam Temporary Speaker, I want to ask the distinguished Senator of Narok County not to be emotional. Let us debate with reason. Is it in order for you to be demanding or requesting?

**The Temporary Speaker** (Sen. Nyamunga): Senator, please address the Chair. Do not address a Member.

**Sen. Cherargei:** My apologies, Madam Temporary Speaker. Is it in order for the person requesting for a Statement to debate his own Statement? What we said is that there is no difference between the issues that he is raising about Embakasi and what we had raised about Mau. Why is he taking double standards?

**The Temporary Speaker** (Sen. Nyamunga): Continue, Sen. Olekina.

**Sen. Olekina:** Madam Temporary Speaker, one of our biggest undoing is that we do not sit in this House to listen so as to know the person who requested for a Statement. The distinguished Senator is now saying that I am the one who requested for the Statement when I am only riding on it. The Statement was requested by Sen. Pareno. It is important to listen to the background instead of jumping on it. My point is very clear and it is factual that Nairobi used to belong to the Maasai but we have now been swallowed.

What happened there is inhumane and we are now aware of our surrounding and we know where we are heading to. We can no longer agree to be carried in our backs when the only thing we can see is darkness. The Committee that you will direct to look into that matter should go further and find out why these cartels are allowed to continue grabbing every property where there is the issue of compensation.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina, it is important for us to be civil in the language that we use.

**Sen. Seneta:** Thank you, Madam Temporary Speaker, for giving me a chance to add my voice on Sen. Pareno's Statement. I want to condemn in the highest and strongest terms possible the act of evicting people, destroying their properties and failing to give them notice on time. People should be treated in a humane manner when they are evicted in whatever part of Kenya, whether it is in Kajiado, Nairobi, Bomet or any other county. They should also be given notice.

Madam Temporary Speaker, people should not be allowed to build or invest on road reserves, public land or water catchment areas so that they avoid unfair eviction. We call upon Government institutions who are supposed to guard these public areas---

**Sen. Pareno:** On a point of information, Madam Temporary Speaker. I want to inform my sister, Sen. Seneta for purposes of record that this land is not on any water catchment area and people have not encroached on anybody's land. It is land that has been delineated and demarcated for them and they have been settled there for 38 years. It has schools, churches and is developed for them.

*(Sen. Cherargei consulted loudly)*

**The Temporary Speaker** (Sen. Nyamunga): Sen. Cherargei, do you have an intervention?



**Sen. Cherargei:** No, Madam Temporary Speaker. I have spoken to it.

**Sen. Seneta:** Madam Temporary Speaker, I am not particularly concerned with Nairobi County or this particular case of Embakasi which we are really condemning. All over the country, people should not be allowed to settle on somebody else's property, a road reserve or water catchment area so that they are not evicted later on. It is time to put a law in place to allow people to move and resettle elsewhere in case of eviction. It was wrong to evict the people of Embakasi in Nairobi County. The first thing we need to do is to resettle the children in schools so that they do not waste time outside their classes.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Pareno, kindly approach the Chair.

*(The Temporary Speaker (Sen. Nyamunga) consulted Sen. Pareno)*

We will refer that Statement to the Committee on National Security, Defence and Foreign Relations.

**Sen. Sakaja:** Madam Temporary Speaker, in addition to being the Vice Chairperson of the Committee on National Security, Defence and Foreign Relations, I am the Senator of Nairobi. I know this issue very well; it is a land issue where people claim that part of that land is theirs. In fact, I have just spoken to the Member of County Assembly (MCA) called Mr. Osman and confirmed it.

So, kindly give that Statement to the Committee on Lands, Environment and Natural Resources to deal with it. This is because they are claiming ownership of some of the title certificates, not for the entire piece but just a part of it. I, greatly, suspect that it is a land grab scheme and not a security issue. They have just used security here and there as all land grabbers normally do. However, that does not make it a security issue; it is a land issue.

**The Temporary Speaker** (Sen. Nyamunga): I refer that Statement to two Committees for ease of dealing with it. That is the Committee on National Security, Defence and Foreign Relations and the Committee on Lands, Environment and Natural Resources. This is because the Statement has the issue of eviction and land.

**Sen. Sakaja:** Madam Temporary Speaker, if that is the case, I would rather you give it to the Committee on National Security, Defence and Foreign Relations. This is because as a Chairperson of a Committee, I know that joint Committees do not work. You can have nine Members of one Committee and only two from another. Therefore, you lack quorum and so the meeting cannot start. It is either you give it to the Committee on Lands, Environment and Natural Resources or the Committee on National Security, Defence and Foreign Relations. I have always been very hesitant about joint committees because I am a victim.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen. Sakaja. I will refer it to the Committee on National Security, Defence and Foreign Relations. I hope that you will collaborate with any other relevant Committee.

*(The Statement was referred to the Committee on National Security, Defence and Foreign Relations)*

Let us move on to the next Statement.

#### CONCERNS ABOUT THE NIIMS

**Sen. Sakaja:** Thank you, Madam Temporary Speaker. Pursuant to Standing Order No. 51(a), I rise to make a Statement on a matter that concerns this House and the Committee on National Security, Defence and Foreign Relations.

Madam Temporary Speaker, on 21<sup>st</sup> February, 2019, Sen. Aaron Cheruiyot, the Senator for Kericho County, requested for a Statement on the National Integrated Identity Management System, popularly known as NIIMS and commonly referred to as Huduma number.

In the ruling of the Chair and considering the interest Members had in this matter, you directed that this matter is discussed in the Committee of the Whole. Communication was sent out inviting the Ministry of Interior and Coordination of National Government, the Ministry of Information, Communication Technology and the Office of the Attorney-General to a meeting on Thursday, 28<sup>th</sup> February, 2019 which is today.

Madam Temporary Speaker, we are still establishing that the communication was sent out on the 22<sup>nd</sup> February, 2019. We have asked for the delivery books because some of the excuses we are hearing are that the communication could have gone out late. So, we are establishing that.

Madam Temporary Speaker, during the deliberations in the Committee of the Whole this morning 28<sup>th</sup> February, 2019, in which only the Chief Administrative Secretary (CAS) in the Ministry of Interior and Coordination of National Government appeared, more than 30 Senators of Republic of Kenya were not satisfied with the reasons given for nonattendance of the invited persons, some of whom we knew were also in other public engagements that are not of the same prominence as the Senate of the Republic of Kenya. Therefore, the Members unanimously directed as follows-

First, that the Committee of the Whole will not receive any response from the CAS pursuant to Article 153 (3) of the Constitution that says that Cabinet Secretaries (CS) are directly accountable and responsible to Parliament. That is where they report to whenever required.

Secondly, the Committee resolved that the Cabinet Secretaries; Ministry of Interior and Coordination of National Government, the Ministry of Information Communication and Technology and the Attorney-General, appear in person before the Committee of the Whole on Monday, 11<sup>th</sup> March, 2019 at 8.00 a.m.

Thirdly, the Committee also resolved that until there is a hearing that the pilot process of the National Integrated Identity Management System, (NEMIS) that is going in ten counties be suspended forthwith, until the Senate, the two Cabinet Secretaries and the Attorney General meet.

Madam Temporary Speaker, that is the communication from the Committee as ordered by the Chair. On top of that, we will wait for further directions from the Chairperson on this matter that had been certified as urgent by the Speaker of the Senate.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we can allow one or two comments. Sen. Olekina.

**Sen. Olekina:** Thank you, Madam Temporary Speaker for this opportunity. This is a very serious matter because I woke up early in the morning to come here after having stayed here last night up to 10.30 p.m.

**The Temporary Speaker** (Sen. Nyamunga): Kindly, let the comments be brief as much as possible.

**Sen. Olekina:** Madam Temporary Speaker, what made me come here is because of a letter from the Speaker inviting all Senators to this very important matter. Earlier on, I was listening to my colleagues talking about the importance of this Senate. Article 96 is very clear on the role that we play in terms of enacting legislation that affects counties.

This is a serious matter and I thought the CSs would come here and explain to us why this process is ongoing, yet the Senate of this Republic was not involved when an amendment to a law that affects counties was made by the National Assembly.

Madam Temporary Speaker, we ought to be vigilant. I am holding here the Statutes Law Miscellaneous (Amendment) Act of 2018, which makes this issue of NIIMS very serious. The matter at hand affects counties. However, the National Assembly gave themselves power, amended the Act and initiated the issue of registration of persons on this thing called NIIMS, or Huduma Number without bringing it to the Senate and making it law.

Madam Temporary Speaker, with the Committee and the powers given to us by our Standing Orders, we can stop the implementation of that until that law can be brought back to this House for us to consider whether it is something which is good for this nation or it is not. This is because the more we allow these CSs to, first of all, snub the invitation of the Senate and implement laws which they know are illegal because the Senate was not involved, we will be not be playing our rightful role. They think they are legal because they were enacted by the National Assembly.

The Chair can direct the Committee on National Security to stop the implementation of this Act until the Senate looks at these amendments. Last Session, this Senate stood firm and went to court to defend its position. This is the time that we should not only allow Omutatah to go to court, but we seize of the matter and take the necessary action. We all know that the principal Act is brought here. However, when it comes to its amendments, it is done to the National Assembly and then sent to the President for the assent.

I urge CS Matiang'i to take these matters seriously so that we know how to proceed.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Cherargei. Please, make the comments very brief.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. I will. Today morning according to the communication from the Speaker yesterday, that the CSs in charge of Interior and Coordination of National Government, Information, Communication and Technology and the Attorney-General were to appear before the Senate. The Chairperson, Sen. Sakaja was magnanimous enough to invite all of us and we did show

up in good time. Unfortunately, they did not show up. I want to thank Sen. Sakaja and his Committee for issuing summons that they need to appear.

Secondly, the issue of NIIMS is so critical because the proposed changes that they need in terms of registration of persons will affect over 50 legislations in this country. It is also likely to infringe on the right to privacy. We appreciate that the Government is interested in making sure that national security is given priority considering the many acts of terrorism in this country. However, it is not a justification to threaten our rights. Our rights are not granted by the State or anybody, but it is inherent.

I urge the Chairperson that we should proceed with this matter expeditiously. We have agreed and the Chairperson needs to pronounce himself very clearly that this issue of NIIMS in the pilot counties and the planned exercise of March and April, should be suspended until further notice. We need to bring all stakeholders on board.

Finally, Madam Temporary Speaker, in the spirit of Article 10 on the issue of public participation which is a cornerstone – I do not know whether the Ministry of Interior and Coordination of National Government has found it convenient to use radios and televisions to do public participation, or engaging the stakeholders that are representatives of the people.

**Sen. Sakaja:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Pareno. Sen. Sakaja, What do you want to inform the House about?

**Sen. Sakaja:** Madam Temporary Speaker, this House needs to be respected. I do not know if the Senators are aware, that even after the Senate has sat this morning; news coming in is that the Senate has been told off by the CS of Interior and Coordination of National Government, saying that, “we will stop nothing.” He said that in Embu today while inspecting projects.

The same day the President of the Republic of Kenya has said that nobody in this country is above the law. Who does he think he is to tell us off? These are Senators of the Republic of Kenya. Who does Matiang’i think he is? If the CS is used to telling off his Cabinet – where he is now like the head boy – making them run upstairs, he should know that this is the Senate of the Republic of Kenya!

*(Applause)*

Madam Temporary Speaker, we cannot take this lying down as a Senate. We have invited them through the law. The Constitution says that he is accountable to Parliament. Whatever that he is saying out there let him come and say in the Senate or let him say that he will not attend any invitation, or summon of the Senate because he is above the law; if he thinks he is.

It is completely unfortunate. I do not know what has happened since that new Executive Order. Normally, he is a very rational person in my opinion. However, he cannot just say the Senate or Parliament cannot stop anything. We must put our foot down.

**The Temporary Speaker** (Sen. Nyamunga): Your point is clear, Sen. Sakaja.

**Sen. Sakaja:** No, Madam Temporary Speaker. We cannot allow that to happen. They cannot intimidate us. Since morning, the number of phone calls coming trying to intimidate us are many. We will do our work according to the Constitution. We have been given a mandate by the people of Kenya to do our work and to ask questions on any matter on their behalf. We will move on as a Senate.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Pareno, you can continue.

**Sen. Pareno:** Thank you, Madam Temporary Speaker. I fully support the comments that have been made by Vice Chairperson of the Committee on National Security, Defence and Foreign Relations. We are receiving concerns from citizens. We are concerned as citizens about this NIIMS that they are talking about. If CS Matiang'i does not listen to the concerns of the citizens, who is he representing if not them? We represent them. We sit in this Senate; you will need laws to operationalize what you are putting into place. Where will you pass those laws if you do not want to talk to the Senate?

Madam Temporary Speaker, I want to say that CSs are not law unto themselves. They are there to serve citizens and implement what is directed by both the Executive and Parliament. If they think we will keep quiet about the concerns on this NIIMS which touches on the very core of privacy of every citizen in this country, including somebody's DNA, we are not going to keep quiet. We will shout and ensure that it will not pass until we are heard.

I thank the Committee for the decision to summon the Cabinet Secretary, Ministry of Interior and Coordination of National Government, Dr. Matiang'i. Let us see him refuse to come to this Senate.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Wetangula.

**Sen. Wetangula:** Thank you, Madam Temporary Speaker. I thank the Vice Chairperson of my Committee for being so efficient and bringing this interim Statement this afternoon. Many things are going wrong with regard to this National Integrated Identity Management System (NIIMS) registration process.

First, it has been directed that they will register even children. Children will get Identity Cards (IDs). Given the low levels of confidence in one another in this country, from where we sit, anyone of us cannot resist to think that this, in fact, is a pre-rigging of future elections. This is because there is every possibility that the registration will be flawed in favour of certain regions and communities against others.

Secondly, none of us is averse to peace and security in the country. The duty of the Government, under the social contract doctrine, as elucidated in the sages of the law - Rusaw and others - is that you surrender part of your freedom and authority to the state to protect you. We have no difficulty with the Government giving us security, but in so doing fundamental rights of every individual must be protected.

I have been in this Parliament since 1993 and never seen a far-reaching amendment to the law coming through a miscellaneous amendment Bill in the National Assembly. I have looked at the law on data protection in Germany, United Kingdom (UK) and America and it is thick because of the complexity of the matter.

In one phrase in the miscellaneous amendment, a law was passed in the National Assembly to collect Kenyans' personal bio-data, including DNA, without any safeguard,

protection and caution whatsoever. The people from whom the DNA's will be collected live in the counties. So, you cannot say that this is not a law that affects counties. We must, as we receive with joy this efficient Interim Statement from the Vice Chairperson of our Committee, encourage that; one, now the Senate is not inviting, but must summon under Article 125 of the Constitution, with attendant consequences, including but not limited to, penal consequences as High courts do.

Two, I know that we may not be here the whole of next week because of the Conference in Kirinyaga, but by the following week, on Tuesday, I urge you to direct that the Chairperson of the Committee brings a progress report, particularly, on the order of this House that the pilot process be suspended. He should confirm that, indeed, it has been suspended. Otherwise, this process of sneaking legislation through the National Assembly that has far-reaching consequences on the future of this country and the safety and protection of the rights of individuals, without bringing to this Senate, is flawed *ab initio* and cannot hold.

I want to urge that the Speaker of this House, like his predecessor where such issues arise, should also rise to the occasion and lead this House to the Supreme Court to challenge these illegalities.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Kindly, make the comments very brief because we are taking too much time on Statements. We need to move forward.

Sen. (Dr.) Milgo

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker, for giving me this chance again to add my voice. I am in the Committee on Information Communication and Technology where we have been dealing with The Data Protection Bill.

I wish to thank the Committee of the Whole for what they did this morning. It is the high time that the Senate should stamp its authority and show to the whole world that we are here to protect our people.

My senior, Sen. Wetangula, has already spoken about how data protection is handled in other countries. We are asking Dr. Fred Matiang'i what legal law he used. We are complaining about the amendments that were sneaked in to ensure this process of registration. Was public participation done? Even in research circles, when you want to take any information about someone, you need their consent. We are talking about taking the DNA of the people of this country and we know that there are issues of insecurity. It is, therefore, not right to take such data from people without following the legal procedure.

There should be proper and legal amendments and public participation. Whenever we go back to the counties, we are asked what this registration is all about. We are asked whether new identity cards will be issued and they wonder how it will be done. That is a pointer that all the people are ignorant about this process. If we, in this House, are not sure how this process was arrived at, what about our people in the counties?

We are sending a very strong message to the Cabinet Secretary, Dr. Fred Matiang'i, that he should appear in this House and explain to us, specifically, the reason data will be collected from people without their consent.

Thank you, madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Cherargei, please, keep it brief.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker, for that indulgence. I made my comments when the new development came up, but I also note that the Cabinet Secretary, Ministry of Interior and Coordination of National Government has dismissed the Senate with contempt. I think this is total disregard to the independence of the three Arms of Government. He should respect the Senate and Parliament as a whole because he needs us to assist him in passing this law.

The Cabinet Secretary, Dr. Matiang'i, must know that he is being summoned by the Senate in the interest of Kenyans and must appear. It is no longer an option. We did invite him, but we are now summoning him. We expect him to be here in person and not through any other person, including the Principal Secretary. We want to get the hard facts before we proceed with this matter.

This disregard of the Senate by Government officers should come to a stop. They must respect the Senate. We will not sit back and allow such Government officials to take us for a ride. We are here on behalf of many Kenyans and to assist in oversight and legislation.

Finally, I attended the State of the Judiciary and Administration of Justice address today. The President was very clear that no one is above the law. He said that we should inter-depend constructively. He must tell that also to his Cabinet, so that some of these things can be respected.

I thank you, Madam Temporary Speaker, for that indulgence.

**The Temporary Speaker** (Sen. Nyamunga): Finally, Senator for Kericho, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker. The revelations that have come to the Floor of this House are extremely shocking, that a Cabinet Secretary (CS), an officer appointed and paid by the taxpayers of this country, can have such blatant disregard for the proceedings of this House, is not only unprecedented but also completely unheard of.

Madam Temporary Speaker, the Cabinet Secretary for Interior and Coordination of National Government can run but cannot hide. Whatever he does, eventually, he will appear before this Committee before long and answer to the questions that Senators have about the National Integrated Identity Management System (NIIMS). I did not ask these questions out of child's play or ignorance. It is because I am tired of going to public functions and members of the public are asking me, "Senator, we have given you a platform in Parliament to find out the things that the Government is doing and you cannot come back to us and feign ignorance before us about issues of such extreme magnitude as registration of persons".

We are talking of collection of DNA and storage of data of Kenyans. How difficult was it for him – today, if you look at the photos of the function that the Cabinet Secretary had in Embu, amongst the officers who are accompanying him is the Chief Administrative Secretary (CAS) who sat here. So, that tells you that this is just utter contempt. First of all, he needs to be embarrassed because, whatever he is doing is against the spirit of what the President has urged us to do as a country. This morning, the President while addressing the nation, urged all the three arms of Government to

interdependently engage and co-exist with each other. When Parliament summons you, it is the people of Kenya that have called you to give an explanation.

Madam Temporary Speaker, part of the reasons why Kenyans are also asking very difficult questions about this whole exercise, is that one of the companies that is alleged to have been contracted to carry out this exercise, is a company formerly known as OT Morpho, the notorious OT Morpho that has now changed names. You will recall that our sister House has been trying to get them to come and explain how they secured Government tenders at Independent Electoral and Boundaries Commission (IEBC) and they have not showed up.

**Hon. Senators:** Shame! Shame!

**Sen. Cheruiyot:** While we are still at it, somebody has gone ahead and awarded another contract. When you call a Cabinet Secretary to come and explain, he goes and addresses us from Embu. I want to tell the Cabinet Secretary for Interior and Coordination of National Government, Dr. Fred Matiangi, that he must appear before this House to answer all these questions, whether he likes it or not. We are not his contemporaries. These are elected people, we were not appointed like him.

**Hon. Senators:** Yes!

**Sen. Cheruiyot:** So, when he comes here, he will give a proper explanation to the people of Kenya.

Madam Temporary Speaker, we must be sincere. That is why earlier on today, we said that we have to be sincere in this war on corruption. You cannot pretend to be a saint yet when questions are raised about mysterious tenders that are being awarded in your Ministry, you want to chicken out and run away, and then tomorrow you call a press conference at the stairs of Harambee House and pontificate about how you are fighting corruption. It is a shame. We are tired of hypocrites. Therefore, we are waiting for him.

Madam Temporary Speaker, when you finally give directions, let the letter that will leave Parliament leave today by close of business and let him know that on 11<sup>th</sup> March, 2019, we are waiting for him, failure to which this House will make very far reaching and painful decisions that he will live to regret.

Thank you.

*(Applause)*

**The Temporary Speaker** (Sen. Nyamunga): Finally, Sen. Linturi. We are now finalizing on the statements.

**Sen. Linturi:** Thank you, Madam Temporary Speaker, for giving me this opportunity to also give my views on the manner in which this House has been treated by the Cabinet Secretary for Interior and Coordination of National Government.

Madam Temporary Speaker, this Cabinet Secretary probably has not understood what it means to be the people's representative. When the Senate of Kenya speaks, the people of Kenya have spoken.

*(Applause)*



All the Senators seated here represent a delegation. If you look at what is provided for under Article 96 of the Constitution of Kenya, Senators represent the interests of the people of Kenya and those of the counties. These people that he is trying to register with that system are living in counties. So, we must be involved and heard. When Senators speak about and say that we have reservations in a manner this exercise is being done, a reasonable or careful Government official has to listen.

Secondly, Madam Temporary Speaker, the Cabinet Secretary who does not want to appear before this Committee or House is behaving like an elephant that once has taken the Amarula tree will go round the bush clearing any tree that it finds on its way because it is drunk. Recently, I heard that the Cabinet Secretary was given additional duties by the appointing authority and for that matter, the Cabinet Secretary may have those ideas that he is a super minister, who cannot appear before Parliament. This Cabinet Secretary is paid by taxpayer's money; he has a duty to be accountable. Some of the instruments for accountability to the people of Kenya is by appearing before Parliament to answer questions. Article 125 of the Constitution of Kenya gives Committees powers to summon everyone.

I thank, Sen. Sakaja and the Chairperson of the Committee on National Security, Defence, and Foreign Relations. We will be behind you, whatever it takes, let us do it. If we do not stand firm to defend the position that the Senate has taken, the Senate will continually be demeaned, the authority of Parliament will continually be demeaned and we will become the laughing stock of this country. Kenyans are frustrated. When they are, they vent their frustrations through their leaders. When leaders speak here, and then a Cabinet Secretary is so busy or does not even care and runs away, it is unacceptable.

I want to plead with the Committee that is handling this matter to move with speed and summon the Cabinet Secretary to appear before it. Even before they give him the hearing, they must get sufficient reasons as to why he did not appear and invoke the powers conferred to the chairs and speakers of the Committee under the Powers and Privileges Act because it is operational and we have to protect Parliament.

Madam Temporary Speaker, let us not entertain state officers who behave just like children who have been breastfed by the mothers, and other than saying thank you, continue to bite the breast that feeds them.

Thank you, Madam Temporary Speaker.

*(Laughter)*

**The Temporary Speaker** (Sen. Nyamunga): Your very strong sentiments must have been recorded.

Hon. Senators, I know you want me to give a direction, but I think the sentiments are very clear. I further request the Committee in charge to make sure that the CS, Matiang'i tells Kenyans exactly what they would want to hear. They should follow it to the proper conclusion so that Kenyans are satisfied in all the issues that they are raising.

We, therefore, refer it back to the Committee for proper conclusion. Proceed, Deputy Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 12<sup>TH</sup> MARCH, 2019

**Sen. Dullo:** Thank you, Madam Temporary Speaker. Hon. Senators, pursuant to Standing Order No. 52(1), I hereby present to the Senate, the Business of the House for the week commencing Tuesday, 12<sup>th</sup> March, 2019.

Hon. Senators, on Tuesday, 12<sup>th</sup> March, 2019, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week. Subject to further direction by SBC, the Senate will on the same day consider Bills scheduled for the second reading and those at the Committee of the Whole. The Senate will also continue with consideration of the business that will not be concluded in today's Order Paper.

On Wednesday, 13<sup>th</sup> March and Thursday, 14<sup>th</sup> March, 2019, the Senate will consider business that will not have been concluded on Tuesday, and any other business scheduled by the SBC.

Hon. Senators, I wish to commend you for the commitment you have shown so far. However, there are several Bills before the House at Second Reading and Committee of the Whole stage. I urge Senators to continue with the same vigour and unity of purpose demonstrated in the last two weeks while considering the remaining bills.

I also urge chairpersons to expedite consideration of the Statements and Petitions pending before their respective Committees and table reports in the House.

Finally, Hon. Senators as you are aware, the Senate will today 28<sup>th</sup> February, 2019 break for a short recess to participate at the 6<sup>th</sup> Annual Devolution Conference. In accordance with the Senate Calendar, I wish all the Senators well as they plan to travel to Kirinyaga County for this important Conference.

Madam Temporary Speaker, I thank you and hereby lay the Statement on the Table of the House.

I thank you.

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

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we are now through with the Order on Statements. We had earlier considered the Petitions. However, we would like to visit the Petition by Sen. Dullo because it was deferred by the Speaker. We were to revisit it after the Statements.

Proceed, Sen. Dullo.

## PETITION

### AGREEMENT BETWEEN ISIOLO COUNTY GOVERNMENT AND LIVING GOODS LIMITED

**Sen. Dullo:** Thank you, for this opportunity. It is very clear that yesterday we deliberated on this matter at length and more specifically the behaviour of the Chairperson and the Committee.

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This afternoon, the Chairperson came in for five minutes and disappeared and yet there was a ruling in this House. This matter is really dear to the people of Isiolo County. This is because there is about Kshs1 billion at stake if this matter proceeds the way it is.

Madam Temporary Speaker, I think this Committee needs to take this matter seriously. If the Chairperson does not take up his responsibility, he should relinquish his position. We should not take Kenyans for granted. This was a Petition that was presented by the people of Isiolo County. Today, they were waiting for the deliberation and reporting on the Petition.

I will kindly request you that when we resume from recess, we could give this Petition priority.

**The Temporary Speaker** (Sen. Nyamunga): That request I think is a fair one and should be noted for consideration when we resume from recess.

Sen. Olekina, did you have something to say on the same?

**Sen. Olekina:** Yes, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Okay, Proceed.

**Sen. Olekina:** Madam Temporary Speaker, we have been talking about the importance of us doing our job diligently. I sat here yesterday when the Speaker gave a ruling for the Chairperson of the Senate Committee on Health to be here. It is the first time in the history of the Senate for the Speaker to give direction to the Serjeant-at-Arms to bring the Chairperson here and nothing happens. It is high time we dissolved that Committee and bring people who can give Kenyans what they want to hear.

Madam Temporary Speaker, there are many issues in the healthcare sector. I am tired of hearing this Isiolo business on a daily basis. We either complete it fully or we say we are no longer able to do our job. The last day we had a Committee of the Whole Chaired by the Senate Majority Leader on the same issue of the healthcare mess.

I know the Senate Minority Leader has requested that the Report by the Committee be circulated to the Members so that when we comment on it we do so from a point of knowledge. The Speaker directed that enough copies be made available to Senators.

*(Sen. Ndwiga walked into the Chamber  
without bowing to the Chair)*

**The Temporary Speaker** (Sen. Nyamunga): Just a minute. Sen. Ndwiga, kindly go back to the Bar.

*(Sen. Ndwiga walked to the Bar and bowed to the Chair)*

**Sen. Olekina:** Thank you, Madam Temporary Speaker; it would be good for us to know what is holding this issue. Give us the Report so that we can look at it. If the Committee has done its work and the Chairpersons not able to come and report here, then the responsibility is either given to the Senate Majority Leader so that we can have an end to this Isiolo healthcare business.

**Sen. Pareno:** Thank you, Madam Temporary Speaker. It is disappointing to have such a hardworking Senator from Isiolo having to keep reminding the Chairperson of this Committee through the Speaker that the people of Isiolo are suffering and waiting for the Senate to pronounce itself on this Petition. We are not even sure that the Committee has done any work on what was presented.

It would be in order to do what Sen. Dullo has asked; that we get a report. What has been done so far? Has the Committee sat? Has it even considered the issue? Do we even have a report in place?

Madam Temporary Speaker, it is also another thing for a Chairperson of a Committee to always be missing when their business is being handled. I remember last time the Deputy Speaker had to make a ruling that any Member who is not here when their matter is listed will end up having the matter either lapsing or being put aside. However, we cannot put aside a matter that concerns the people because of a Chairperson who is not taking his work seriously.

We cannot condemn all the Committee Members because we do not know what is holding them. It is time they spoke out. If it is changes to be made in this Committee, so be it.

Madam Temporary Speaker, could we have a quick intervention on this one.

**Sen. Were:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): just a minute Sen. Cherargei. What is the information?

**Sen. Were:** Thank you, Madam Temporary Speaker. The Report on the Isiolo Petition concerning the agreement between Living Goods Limited and the County Government of Isiolo was tabled and debate was pushed to today. That is where we are. Otherwise, the Report is here, the copies are there. Members can pick and familiarise themselves.

The other issue on whether or not the Chairperson should be here to start the debate is a matter that this House should decide. If one wants a copy they can pick from the Clerks-at-the-Table.

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Deputy Senate Majority Leader.

**Sen. Dullo:** Madam Temporary Speaker, I think the copies of this Report are not even circulated or even available. We should be told whether there could be some conspiracy somewhere. Some people do not want this Report made public. Could we have copies of that Report, please?

**The Temporary Speaker** (Sen. Nyamunga): Are the copies with the Clerk? If they are not, the Member who spoke about it has also walked out. So we do not know the exact position. The Report is not yet with the Clerk.

The information I am getting is that the Report is are ready; it is just a matter of circulation and the debate can be listed in the next Sitting.

Sen. Cherargei.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. Health is very critical and is one of the basic human rights. Sen. Dullo has worked hard to shed light on the issue of Medical Equipment Supplies (MES), and the same issue has come up on various

occasions. We have had a Committee of the Whole chaired by the Senate Majority Leader on the issue of the MES and how it is affecting our counties.

I am happy that from the debate on the Budget Policy Statement yesterday, this programme has been excluded. We should treat health with the critical attention that it deserves. We are not saying that the Committee on Health does not have capacity. However, we are telling them to do their work.

Madam Temporary Speaker, from your guidance and the pronouncements that you will make, you need to give adequate directions that the Committee on Health must give the necessary report that the House requested for. They must work hard so that Kenyans can know what really happened; not only in Isiolo County, but across the 47 county governments. If you go to hospitals that were earmarked for upgrading or getting Medical Equipment Supplies in this Republic, be it in Kapsabet Sub-County Hospital or Nandi Hills Sub-County Hospital, you find those machines lying idle.

Madam Temporary Speaker, we want to know why it was necessary to buy needles, gloves and bed sheets. The machines were procured using Kenyans' hard-earned money. When the programme started in the Financial Year 2014/2015, each county was paying Kshs94 million. This amount has now skyrocketed to Kshs200 million that is being deducted directly from the National Treasury. We need to defend health.

Finally, there is a conversation going round the country that health should be brought back to the national Government, devolving the function has not worked for Kenyans. The right to health for every Kenyan has not been ensured. A healthy nation is a wealthy nation. Therefore, we demand answers and need this Report to be ventilated upon. We need to know the truth and ensure that our counties offer health services to every Kenyan.

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

*[The Temporary Speaker (Sen. Pareno) took the Chair]*

Madam Temporary Speaker, we expect you to give far-reaching directions that will change how Committees will ensure that their reports are presented to this House. As a Chairperson of a Committee, I know that it is not easy, but we try our best to work hard on the reports, Statements or Petitions that come to our Committee or even going through Bills that are proposed by Members and other stakeholders in this country.

I support Sen. Dullo that this matter has taken too long. We need to move fast and conclude this issue so that Kenyans can know the truth about this programme that we have in this country.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Sen. Were, do you have an intervention?

**Sen. Were:** Madam Temporary Speaker, I want to correct Sen. Cherargei; that the issue that we are discussing is the Petition regarding the agreement and not the Medical Equipment Supplies.

**Sen. Olekina:** Madam Temporary Speaker, I just want to point out that the Report is actually here; I have seen a copy of it. If it can be circulated here, we can find a way to dispense it.

**The Temporary Speaker** (Sen. Pareno): Sen. Dullo, you have the Floor.

**Sen. Dullo:** Madam Temporary Speaker, when we come back from recess, I might be out of the country until 24<sup>th</sup> March, 2019. I kindly request that this matter be deferred until I come back so that I can interrogate it properly.

**The Temporary Speaker** (Sen. Pareno): I want to bring to your attention, Standing Order No.232 and was trying to check if this was a report arising out of a petition or a statement. I now see that it is a petition. In regards to petitions, I wish to read Standing Order 232(2). It says-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to this report shall be allowed, but the Speaker may allow comments or observations in relation to the Petition for not more than thirty minutes.”

The word is “may.” Now that the Report on the Petition has been submitted to this House, I think we can allow comments on it, as per Standing Order 232(2), but in the next sitting, because of the workload that we have. However, it will also have to wait until Sen. Dullo is back.

I direct that the short debate that is allowed on this Petition be done and given priority in the next sitting.

**Sen. Dullo:** Madam Temporary Speaker, I may not be around in the next Sitting. If we can be allowed when I come back, I will appreciate.

**The Temporary Speaker** (Sen. Pareno): I can make a clarification to that. It should be the next sitting, when will be are available.

*(The Temporary Speaker (Sen. Pareno) consulted  
with the Clerk-at-the-Table)*

Hon. Senators, upon consultation, the Movers, Sen. (Dr.) Musuruve and Sen. (Rev.) Waqo are not present. I, therefore, defer Order Nos.12 and 13.

## MOTIONS

### CREATION OF DISABILITY INCLUSIVE SCHOOL CLUBS IN ALL PUBLIC SCHOOLS

THAT, WHEREAS Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) affirms the equal right of all persons with disabilities to live in a community, with choices equal to others, equal access to services and facilities that are responsive to their needs;

AWARE THAT societal perception of disability is negative, mainly due to lack of socialization and integration during the formative years;

COGNIZANT THAT participation in school clubs provides important life skills that prepare children holistically for their future and plays a major role in transforming students' lives as they transit to various professions in adulthood;

CONCERNED THAT no policy exists addressing inclusivity in school clubs for persons with disability in the public school system;

NOW THEREFORE the Senate calls upon the coordinated effort of the National Government through the Ministry of Education, and the County Governments through the Council of Governors to develop policy that would ensure inclusiveness of special needs learners in school clubs in public schools beginning at the Early Childhood Development (ECD) level up to and including Secondary School level.

*(Motion deferred)*

REALIZATION OF GENDER EQUITY IN ELECTIVE  
AND APPOINTIVE POSITIONS IN KENYA

AWARE THAT, the Constitution of Kenya recognizes dignity, economic, social and cultural rights, education, housing and the right to health including reproductive health; and that the principle of equality and non-discrimination is established as a core value of leadership and the national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of marginalized groups, among others;

FURTHER AWARE THAT, the Constitution of Kenya has very progressive articles that indicate commitment to the international and regional obligations arising from treaties and conventions and other Commitments signed or ratified;

COGNIZANT that Kenya has ratified the Convention on Elimination of all forms of discrimination against Women and the Protocol to the African Charter on Human and People's Rights of the Right of Women which are international instruments that are key to promoting women's rights;

RECALLING that policy framework to enhance gender equality has also been developed, and includes the National Gender and Development Policy 2000, the Kenya Vision 2030, Sessional paper No. 2, of 2006, the National Land Policy, the National Policy for Response to Gender Based Violence, and the National Policy for the Abandonment of Female Genital Mutilation;

NOTING THAT, despite there being sound constitutional provisions and elaborate policy framework to realise gender equity, both national government and county governments have not done enough to realise the achievement of gender equality;

CONCERNED that women in Kenya experience hardships when it comes to elective offices, and are underrated by society with most opportunities for elective and appointive offices being awarded to men;

NOW THEREFORE, THE SENATE RESOLVES

- (1) That Parliament fast track the enactment of the law that shall give effect to the one third gender rule; and,
- (2) That pursuant to Article 81 of the Constitution both the National and County governments observe the principle of equality, and empowers the female gender by increasing the appointive position to at least fifty per cent.

*(Motion deferred)*

**The Temporary Speaker** (Sen. Pareno): Sen. Were, proceed.

ADOPTION OF REPORT OF THE 49TH  
CPA - AFRICA REGION CONFERENCE

**Sen. Were:** Madam Temporary Speaker, I beg to move the following Motion-

THAT this House notes the Report of the Parliament of Kenya delegation to the 49<sup>th</sup> Commonwealth Parliamentary Association (CPA) Africa Region Conference held in Gaborone, Botswana, 13<sup>th</sup> to 22<sup>nd</sup> August, 2018 laid on the Table of the House on Wednesday, 20<sup>th</sup> February, 2019.

Madam Temporary Speaker, the CPA is an association of Commonwealth Parliamentarians; an active network of over 17,000 Parliamentarians from 180 national, state, provincial and territorial Parliaments and legislatures around the world. The CPA branches are grouped geographically into nine Commonwealth regions, that is, Africa, Asia, Australia, British Islands and the Mediterranean, Canada, Caribbean, Americas, the Atlantic, India and South Asia.

The Commonwealth Parliamentary Association (CPA) Africa Region Conference that took place in Gaborone was made up of national parliaments both at the provincial, state or territorial legislatures of member countries of the Commonwealth in Africa. The CPA branch of Botswana hosted the 49<sup>th</sup> CPA Africa Region Conference and the Annual General Meeting (AGM) from 13<sup>th</sup> to 22<sup>nd</sup> August, 2018, bringing together about 400 participants from across the member states of the African region in pursuit of the ideals of democracy and good governance. Zimbabwe, which has been out of the CPA for a long time, honoured the invitation of the executive committee and was in attendance and the members were glad to welcome them back.



Five major topics were discussed during the 2018, CPA Africa Region Conference. One was on gender and the title was Parliamentary Agenda for Combating Human Trafficking and Modern Day Slavery in Africa and the Promotion of Human Rights. It was placed under gender because modern slavery that is experienced in Africa is on human trafficking of women and girls who are taken to work in the domestic sector.

The other major topic that was discussed was under social health, education and environment under the theme ‘Understanding the Nexus between Climate Change and the Incidences of Farmers or Herdsmen Conflicts in Africa’. There was also a topic on the political aspects in Africa whose theme was: ‘A Legislative Framework for the Regulation of Vigilante Groups, Private Security and Military Companies in Africa and Country Experiences’. Various countries came forward and presented their experiences on the issues that concern vigilante group, private security and the military companies in their countries.

There was also a side conference by young Members of Parliament who passed resolutions that young parliamentarians and youth representatives in parliament were encouraged to work and participate in the CPA youth activities but most importantly, represent the resolutions they passed in parliament through requisite legislation for the implementation at the national level. Some of the resolutions passed by the youth conference were that countries need to tackle rampant youth unemployment in Africa by thinking outside the box. There was also a Motion on teenage pregnancy and HIV Aids epidemic and the mitigation measures to be taken. Alcohol and drug abuse were pointed out as major deterrent to the development of youth and they looked at the reason as to why many young people in Africa resort to alcoholism and drug abuse and how it can be reversed.

The economy was also a topic that was discussed under the theme: ‘Food Security and Sustainable Growth: The Role of Agricultural Revolution in Triggering Economic Development in Africa’. It was noted that agriculture is still the backbone of the economies in Africa and that there has to be a major technological, cultural and environmental revolution to ensure that there is food security in the countries within Africa. It was noted that following years of mismanagement of this sector, civil wars and natural disasters, the agricultural sector is facing many challenges, turning most African nations into net importers or recipients of food aid. Measures were discussed on how to curb this and improve food security and the reliance of Africa on agriculture.

At the AGM, there was consideration and adoption of various reports of the meetings and activities of CPA during the year and for the coming year including the proposed budget for the year ending 31<sup>st</sup> December, 2019. The Chairperson of the Executive Committee is usually elected during the AGM of the association for a term of three years. The term of the then Chairperson, the Hon. Lindiwe Maseko, a Member of Parliament in South Africa, was coming to an end during that conference in Gaborone.

In this regard, the Houses of Parliament resolved to position Kenya to take up the post of the Chairperson of the Executive Committee of the CPA Africa Region by proposing the Speaker of the National Assembly, the Right Hon. Justin Muturi, EGH, MP., for the election to that position. A message of candidacy was earlier dispatched to member branches of the East African region for the region to speak with one voice and

have the Right Hon. Justin Muturi EGH, MP. elected. The East African Region has countries namely; Uganda, Tanzania, Rwanda, Zambia, Mauritius and Seychelles.

The highlight of that Conference was the election of the Speaker of the National Assembly Right Hon. Justin Muturi, EGH, MP. as the Chairperson of the Executive Committee of the CPA Africa Region. Hon. Elijah Okupa of Uganda was elected the Vice Treasurer. We send our sincere gratitude to CPA Africa Region for their confidence in Hon. Justin Muturi, EGH, MP. and Kenya as a country for the opportunity to serve the region in this capacity.

The 49<sup>th</sup> CPA Africa Region Conference was a huge success and our sincere gratitude goes to the Speaker of the National Assembly of Botswana, Hon. Gladys Kokorwe, the National Assembly of Botswana for hosting us and to the people of Botswana for the warm and lovely reception. Kenya offered to host the 50<sup>th</sup> CPA Africa Region Conference which is the next one at the shortest notice in the event that Bayelsa State in Nigeria, which had offered to host, is unable to.

I now request the distinguished Senator of Narok County, Sen. Olekina, to second this Motion.

**Sen. Olekina:** Madam Temporary Speaker, I second.

*(Question proposed)*

**Sen. Poghiso:** Thank you, Madam Temporary Speaker. This is a Report that should be read by all Members. We are all Members of CPA and I want to thank Sen. Were for moving this Motion and Sen. Olekina for seconding it.

I recommend this Report to all our colleagues. There is very little understanding of what CPA is all about and it is up to this House and the Houses of Parliament to make clear the rights and privileges of Members who should all be told that this is an important Association. It is one of the oldest parliamentary associations that we have and the African chapter is very active.

I happened to be in the Executive Committee of our own chapter of the CPA and I also happen to be one of the oldest members of CPA in this Senate, having joined it in 1988 as a life member. Therefore, I have an understanding of what we are talking about. The CPA Africa Region has honoured Kenya by electing the Speaker of the National Assembly, Hon. Muturi, as the Chair for the next three years. I also want to use this opportunity to congratulate Hon. Muturi for being elected and the delegation that went to Gaborone to give him support. I would also like to join my colleagues in thanking all the African countries of CPA that had confidence in us and elected our Speaker as the Chairperson.

The Committee on Delegated Legislation has just returned from the House of Lords in the United Kingdom where we had gone for business of the House. When you go there, you understand that CPA started there. If a person is a Member of the CPA, he or she gets privileges when in the Palace of Westminster. If a Member of the CPA has their cards, they have access to most parts of the House. It is a privilege to be a Member of CPA.

Madam Temporary Speaker, on the subject matter discussed by the CPA, it has become quite prevalent that these days we speak about current affairs. One of the things that have happened in the world today is called human trafficking. Slavery has come back through the back door in a modern way. Human trafficking has become a big problem in the world and it is being spoken everywhere. However, we have not reached a good solution on how to stop it.

Madam Temporary Speaker, many years ago, William Wilberforce debated and finally succeeded in the passage of a law that abolished slavery. When he spoke, he said that he was on a mission to do two things. One was to abolish slavery and the other to reform manners. I want to dwell on the later. Unless we change and reform inwardly, we will continue to enslave fellow human beings. Slavery has been used to demean other human beings.

Madam Temporary Speaker, slavery has been cascaded to the lowest levels. When you look at labour laws and relations on the way employees are treated, we still have a little remnant of wanting to enslave other people. Unless we reform ourselves and let go of tendency to enslave fellow men, we will continue to deal with these matters.

I, therefore, encourage that we read this report and find out what African countries of the CPA came up with in dealing with subjects like human trafficking and human rights that touch on the very existence of issues that affect us as African countries.

Madam Temporary Speaker, one of the things that we could use as an African Chapter of the CPA is to grow our numbers which are our advantage. We have the biggest number of memberships as a block. Therefore, we can use it to gain positions and influence decisions in the CPA. I encourage Members to pick their membership of the CPA, read more about it now that they have rights and privileges and also follow what is being discussed. These are fellow parliamentarians from all over Africa who made this report. I, again thank the Mover and the Seconder.

Madam Temporary Speaker, I support.

**Sen. Halake:** Madam Temporary Speaker, I stand to support and congratulate Sen. Were and Sen. Olekina for the report of the CPA.

Madam Temporary Speaker, I do not wish to go to the benefits because Sen. Poghisio has very well captured them. However, in terms of the content of the report, I am happy that the areas of focus of the report are very topical. African countries need to think about them, for example, the human trafficking aspect. The other area of focus is one of teenage pregnancies and the epidemic of HIV/AIDS.

Madam Temporary Speaker, as we were looking at the Budget Policy Statement (BPS), we were appalled to see how little we spend on our health. About six per cent of our revenue is what goes to health. However, HIV/AIDS and teenage pregnancies are beyond health; they are social issues. In fact, women and young girls are disproportionately affected by HIV/AIDS and other communicable diseases according to the statistics. Therefore, the fact that African countries have picked on this is very encouraging. We look forward to seeing some of the strategies that the commonwealth countries will put in place so that there is information and experiences sharing, learning from each other and scaling up some of what has worked in other parts of Africa.

Madam Temporary Speaker, I do not know whether the House knows that Kenya is the fourth most affected country by HIV/AIDS, after South Africa and two other African countries. Therefore, we must focus on the high impact areas which are our youth and HIV/AIDS. The recent survey that was done showed that the highest incidents of HIV/AIDS are in our youth and mostly in girls. So, I am glad that at the policy level, because our resources follow policy, we have now picked this and are highlighting and focusing on the strategic areas of looking at our youth and young women with regards to their burden of HIV/AIDS.

Madam Temporary Speaker, as Sen. Poghismo has said, it is important that we all read the Report. I have not read it but I will definitely take advice and read it. I am encouraged that it has picked on topical and strategic areas of focus both in terms of the health and other sectors of migration that affect African countries disproportionately.

Madam Temporary Speaker, I support and look forward to working with other Members of the CPA to make sure that we take advantage of the platform that is created by CPA to take our legislative, oversight and representation mandate forward.

I support.

**The Temporary Speaker** (Sen. Pareno): There being no other request, I, therefore, call upon the Mover to reply.

**Sen. Were:** Thank you, Madam Temporary Speaker. I greatly thank Sen. Poghismo for contributing to this Motion. I join him in congratulating Hon. J.B Muturi on his election to the CPA African Region. That position places Kenya at a very good point in Africa, both politically and economically. Therefore, I once again join Sen. Poghismo and other Senators in congratulating Hon. J.B Muturi.

Hon. Poghismo also talked about the benefits of CPA membership. I encourage Members to register and pay an annual little amount of around Kshs2,000. There are great benefits. He just indicated to us that when they visited the House of Lords, those who are Members of CPA were given privilege and first priority.

As well espoused by Sen. Halake, whom I thank for contributing, the issues of slavery and human trafficking are core to her key interest and passion which is human dignity and social economic rights of people. That was a major topic in the conference and Parliaments committed themselves to establish various legislative frameworks to ensure that this is curbed.

The Conference happened when there was a video going round of certain Africans from West Africa who were mistreated in the Middle East. Therefore, it was quite a topical issue. I agree that HIV/AIDS is still a challenge in Africa and it is most rampant in countries in Africa compared to the rest of the world.

The issue of vigilante groups that create conflict in the name of trying to bring security was validly discussed at the Conference and countries, especially, within the East and Central African committed themselves.

We hope that when the 50<sup>th</sup> Conference shall come to Kenya, we shall receive good reports on how parliaments across Africa have tackled these issues.

With those few remarks, Madam Temporary Speaker, I reply.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, this being a Motion that does affect counties, I proceed to put the question.

*(Question put and agreed to)*

Next Order.

NOTING OF REPORT OF 50TH SESSION OF THE ACP  
AND 35TH SESSION OF THE ACP-EU JOINT ASSEMBLY

THAT this House notes the Report of the Parliament of Kenya delegation to the 50<sup>th</sup> Session of the ACP Parliamentary Assembly and the 35<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium, 13<sup>th</sup> to 20<sup>th</sup> June, 2018.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, I am informed that Sen. (Prof.) Kamar is out on official duty and this matter is, therefore, deferred

*(Motion deferred)*

**The Temporary Speaker** (Sen. Pareno): Next Order.

PLIGHT OF STREET FAMILIES  
IN URBAN CENTRES

AWARE THAT the Street Families Rehabilitation Trust Fund (SFRTF) was established on 11th March, 2003 by the then Ministry of Local Government to address the concerns of all homeless, destitute and vulnerable persons in urban areas, and was registered as a body Corporate in August, 2010 under the Trustees (perpetual succession) Cap 164, Laws of Kenya;

FURTHER AWARE THAT the mandate of SFRTF includes coordinating rehabilitation activities for street families; conducting public education on street families issues; mobilizing resources and fundraising as well as receiving donations and funding street families rehabilitation programmes; managing donations for the rehabilitation of street families through a trust fund; monitoring expenditure and disbursement of donations; and advising the government and other relevant agencies on matters relating to rehabilitation of street families;

NOTING THAT Article 43 (1) of the Constitution of Kenya provides for the right to every person to the highest attainable standard of health, accessible and adequate housing, adequate food of acceptable quality, clean and safe water in adequate quantities, education, and social security;

CONCERNED THAT the street family phenomenon has persisted despite the existence of the SFRTF and street families do not enjoy the rights enshrined in the Constitution due to lack of a national policy on the rehabilitation of street families, with women and children being the primary victims;

COGNIZANT THAT the Ministry of Devolution and ASAL Areas through the SFRTF supports children and youth through charitable and community-based organizations which are vetted and approved for funding under the rescue, rehabilitation and reintegration of street families programme;

NOTING THAT both the National and County Governments have a role to play in addressing the plight of street families across the Country;

NOW THEREFORE the Senate resolves that Ministry of Devolution and ASAL Areas in collaboration with the Council of Governors-

- (1) conducts a census of street families in all urban centres in the country to determine their numbers and demographics;
- (2) develops a clear policy on street families rehabilitation and reintegration at county level; and,
- (3) tables an audit report of how funds allocated to the SFRTF have been utilized since the Fund was established, indicating the impact of the rehabilitation exercise.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, equally, Sen. Kwamboka is also not available and this matter is therefore deferred.

*(Motion deferred)*

Next Order.

## BILLS

### *Second Reading*

THE PRESERVATION OF HUMAN DIGNITY AND  
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILLS NO. 27 OF 2018)

*(Sen. Halake on 19.2.2019)*

*(Resumption of Debate interrupted on 26.2.2019)*

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, this is resumption of debate. It will resume from where it was last interrupted and, therefore, it is open. I call upon Sen. Poghisi.

**Sen. Poghiso:** Thank you once again, Madam Temporary Speaker. This is probably the final part of this Bill. Again, it is a very important Bill because it is a human rights Bill. It is a Bill that picks our conscience, so I beg to support this Bill that our sister, Sen. Halake Abshiro, has brought and moved before this House.

Madam Temporary Speaker, anything that has to do with human rights especially one that looks at the dignity of a human being requires that we put all our conscience in it. This Senate will do a great job; it will go into the annuals of history and be remembered for passing a Bill like this one.

However, this is the kind of a Bill that requires that we look at ourselves and renew our conscience about how we deal with the rights of fellow human beings. I just want to cite one thing in Clause 4; the only thing that I am going to highlight is the guiding principles that we are given under this Bill which we need to look at very critically.

It says-

“All persons under this Act shall in the performance of their functions under this Act be guided by the following principles in addition to the national values and principles set out under Article 10 and 174 of the Constitution.”

They are many principles but I just want to highlight two.

“The empowerment and capacity building as means of promoting the realization of economic and social rights;” The national Government and county governments need to listen to this. The idea is to have human beings attain economic independence, attain freedom economically and socially. One of the things is we pass rules and regulations – we sometimes act without necessarily involving those whom we want to serve. It says here that we must, therefore, have an empowerment capacity as a means of promoting that.

The other one is the very obvious one called transparency in implementing of programmes and activities. One of the sources of corruption in our counties comes from not adhering to these two. First of all, there is no public participation or giving information to the people we serve, but most importantly acting in an opaque manner. It is not transparent in many issues.

I just want to encourage that as we deal with this matter, let us retain our African culture of taking care other people. It is very easy for Africans if they were to get back to the roots to think about other people in terms of promoting human dignity.

I would like therefore to support and thank the Mover of this Bill, and ask my colleagues to support.

Thank you, Madam Temporary Speaker. I support.

**The Temporary Speaker** (Sen. Pareno): Sen. Olekina Ledama.

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for giving me an opportunity to comment on the importance of this Bill. Earlier on, we were debating the issue of corruption and when you look at what has been happening in this country, unless we deal with corruption; there is no way we can ever preserve human dignity.

Madam Temporary Speaker, I submit today that it is not the Government that is corrupt. It is us who are corrupt. We are corrupt to a point where the Government

becomes corrupt. The reason why I support this Bill is that when you look at Article 43 of the Constitution, every human being living in this country has a right to a good life and has to be protected. However, our human activities; what we subscribe to in this country, it is special interests first and human dignity last.

Madam Temporary Speaker, earlier this week, we were taken to a place by the Majority Chief Whip, who actually is walking, and I hope she is listening, to meet these young men whose dignity was being violated by certain people. May be sometimes it is because we do not have certain rights. These young people deserve the right to good housing.

When you look at Article 43 of the Constitution which refers to the issues of economic and social rights, some of the things that we are discussing in this country today, which are projects that are being run down by corruption were designed to ensure that we have proper, clean and safe drinking water in adequate quantities. However, the media is awash with the stories of people using money which is supposed to provide that basic necessity for all the corrupt deals.

When we stand here; we start pointing fingers at the investigating agencies and asking questions as to why these investigative agencies should use social media. I submit to hear that they do so because this is becoming a national crisis. The public out there must know that somebody is doing something to ensure that human dignity is preserved.

The Mover of this Bill, Sen. Halake, who I respect a lot because of her contribution in this House, has really taken her time to ensure that, finally, we can have a law that we can refer to and ensure that Article 43 of the Constitution is fully implemented. It is wrong when we talk about huge projects---

My people have been traumatized for a century to a point where they cannot think about their future. We talk about bequeathing this world to the future generation. However, if we do not respect its own basic human dignity, how on earth are we going to do so?

This Bill recognizes that we as human beings are all one race. Earlier on, I said as grow up, there is something called spatial awareness. I know the distinguished Senator who brought this Bill when she was three years and below she was inquisitive as any other child. When she was being carried on the back of her mother, she was only seeing the back. A country like USA and others in Europe, children are carried on the front, so that they can see everything. There is a big gap of understanding between them and us.

When we talk about corruption, certain people can boldly say: "Oh it is not Ksh21 million, it is Ksh7 million." Corruption is corruption. We will not preserve human dignity if we will continue belittling serious issues. We cannot say because it is not much, it is okay. It is not okay because somebody somewhere is missing water. We talk about food security in this country. However, all our actions have been reduced to what I can call food insecurity.

This Bill promotes the issue of ensuring that every citizen in this country has access to proper health care. I want to commend the National Assembly because finally they passed a Bill that will ensure that if someone dies in a hospital, he will not be kept there. I hope this Bill will be brought here.



What pains me most is the fact that Boniface from Makueni County who died about seven months ago is still in the morgue in Nairobi Womens' Hospital because of a Bill of Kshs2 million. Ours is a country that believes in the rule of law and respect the human dignity. It is sad that after you have passed on, your family cannot even lay you to rest.

I hope that the Governor of Makueni County will assist that family and ensure that remains of Boniface rest in peace.

When you travel around this country—

**The Temporary Speaker** (Sen. Pareno): Sen. Olekina, I would want you to wind up because we still have the Mover to reply and the Motion to adjourn this House to allow Senators to attend the Devolution Conference.

**Sen. Olekina:** Thank you Madam Temporary Speaker, I support.

**The Temporary Speaker** (Sen. Pareno): I see no further requests. I call upon Sen. Abishiro Halake to reply.

**Sen. Halake:** Thank you very much, Madam Temporary Speaker. As I reply I would like to thank the Senators that have contributed immensely to this Bill. I have a lot of notes with regard to improvements and what great inputs that the Senators have proposed.

I would like to thank Sen. Murkomen for seconding me and giving quite a few suggestions for amendments, including audits of the health sector and how much counties are raising on source revenue. I also thank him for proposing that we include a reporting mechanism. I think that already exists, but we will make sure that we refine it and make it better.

I would like to thank Sen. (Dr.) Zani for her very elaborate inputs with regard to inequalities, income structure and her proposals to have baselines to set where we are so we can track. Again, it is important for us to know where we are with regards to preservation of human dignity and enforcement of social economic rights in this country because every human being like Sen. Olekina has just said, deserves to be treated with dignity and to have basics that make him a human being. There is nothing as dehumanizing as not being able to have what is rightfully ours, the dignity as a human being. I have taken notes and we will definitely make sure that where this can be refined further, we will definitely do so.

I would like to also thank Sen. Were for her inputs. She did propose a feedback mechanism through the Kenya National Human Rights Commission (KNHRC) plus the Ombudsman's office. Those are very good suggestions. We will look at how then we are going to have feedback. This Bill seeks to make sure that we are accountable to the citizens of this country with regards to the socio-economic rights and give effect to Article 43 of the Constitution. We must make sure every human being is accorded the dignity that is inherent in him as human beings before anything else.

As Kenyans, therefore, the services that they are supposed to get with regards to health, sanitation, water and all the basic rights that are guaranteed in our Constitution in the many Articles that Bill speaks to. They are many Articles 43, 19, 28, *et cetera*. This Bill has so many Articles in the Constitution that it sticks off and it becomes a very important one in that respect.

Sen. (Dr.) Zani talked of social audits to be done as a starting point and the issues of baseline of where we are and an advisory oversight committee.

Sen. Farhiya acknowledged the idea on Clause 6 on the national rights and fundamental freedoms, realization of economic and social rights and value of hard work.

Sen. Poghizio elaborated for us what we need to do as human beings to make sure that these principles under Article 4 are upheld to promote sustainable development and that all persons under this Act is guided by the principles.

I hope I am not forgetting anybody, but we will make sure, as this House, that all the inputs will be taken care of. There was also talk of the framework that of enforcement by Sen. Cheruiyot. I thank him very much for linking leadership to this Bill where he talked about individual actions being a hallmark of leadership. This Bill takes us from just lamenting about services not being there to actually putting in place a framework where we can provide services to our citizens.

I thank all the Senators that have contributed. I will make sure that every input, suggestion and proposal for amendment is taken into consideration to refine the Bill. However, I will also make sure that the provisions of this Bill are implementable and trackable. It will also become a tool of providing our counties and our governors with a framework that would enable them to report on enforcement of socio-economic rights in our country.

Madam Temporary Speaker, I thank everybody once more for the opportunity to legislate on this area of great importance to our country. I look forward to the implementation of the provisions in this Bill, as well as the support that this Bill will get even from the “lower” House.

Madam Temporary Speaker, with those few remarks, I beg to reply, but request that we defer the putting of the question to a different time.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, definitely, the preservation of human dignity and enforcement of economic and social rights is a matter that touches on counties, and requires a vote by county delegations. This matter is, therefore, deferred for that purpose.

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

Hon. Senators, we need to move to the Motion on Adjournment, noting that the Senate will be in Kirinyaga County, for the next one week, for the Devolution Conference. I, therefore, defer Orders 18, 19, 20, 21 and 22.

*Second Reading*

THE COUNTY STATUTORY INSTRUMENTS  
BILL (SENATE BILLS NO.21 OF 2018)

*(Bill deferred)*

*Second Reading*

THE COUNTY OVERSIGHT AND ACCOUNTABILITY  
BILL (SENATE BILLS NO. 28 OF 2018)

*(Bill deferred)*

*Second Reading*

THE DETERMINATION OF THE NATURE OF BILLS  
(PROCEDURE) BILL (SENATE BILLS NO.30 OF 2018)

*(Bill deferred)*

*Second Reading*

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

*(Bill deferred)*

*Second Reading*

THE MENTAL HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO. 32 OF 2018)

*(Bill deferred)*

**MOTION FOR ADJOURNMENT**

**The Temporary Speaker** (Sen. Pareno): I note that although the Senate Majority Leader is not here, the Standing Orders allow a Member of the Senate Business Committee to move this Motion.

I, therefore, call upon Sen. Ledama Olekina to move the Motion.

ADJOURNMENT OF THE SENATE PURSUANT TO THE  
APPROVED CALENDAR FOR THE 2019 SESSION

**Sen. Olekina:** Thank you, Madam Temporary Speaker. I beg to move the following Motion-

THAT, pursuant to Standing Orders 28 and 29, the Senate do adjourn until Tuesday 12<sup>th</sup> March, 2019.

Madam Temporary Speaker, we have had a very good opportunity to carry out serious work in this Senate. I am sure that the public has seen us pass various Bills. It is

good for us to take a small break of about a week to go and visit our constituents, and also participate in a very important conference on devolution. This time will help us to refresh and meet with other legislators, governors and the Executive, and think about where we are taking this country.

Madam Temporary Speaker, we have been entertained this week by a lot of interesting things. Therefore, this break will assist to bring all these things into perspective. Corruption is one of the biggest problem that we have and I proud of this House for having passed the Motion on maize issues. Farmers will see that the Senate is doing a fantastic job in order to protect their interests.

Madam Temporary Speaker, the other legislations that we were able to pass will help this country to generate more revenue and also bring sanity into the issues of compensation. One of the good legislation that we were able to work on, which has been sent back to the National Assembly, is The Land Value Index Laws (Amendment) Bill, which sets out a clear mechanism on how people can be compensated, once any national development projects are done. I am proud of the Committee that worked on that Report because they ensured that the rule of law prevails.

Madam Temporary Speaker, the other issue that I cannot forget has to do with the responsibilities of this House. When this House summons anybody to appear before it, it is important--- I want to send a very strong warning and message to Cabinet Secretary, Dr. Fred Matiang'i. The fact that the President appointed him to co-ordinate national Government did not say that he is above the law. It is time that people respect this House, because the Constitution is alive. We are given an opportunity to look at matters that affect Kenyans, otherwise, we will be reduced to rubberstamps.

Madam Temporary Speaker, I am proud of this House because, yesterday, a few Senators remained here until 10.30 p.m. to debate and pass the Budget Policy Statement (BPS). I am proud that we were able to propose an increase in the money going to the counties. During the break, we will make this position very clear to the Executive. I am sure that the Council of Governors (CoG) will be very happy to hear that we, as the Senate, in our wisdom, have increased the money which is to be sent to the counties.

Madam Temporary Speaker, I know that this is a well-deserved break. I want to wish all the Senators a good break and hope that we will get back here energized, to continue serving the people of Kenya.

With those few remarks, I beg to move and request the distinguished Senator for West Pokot County to second.

**Sen. Poghiso:** Thank you very much, Madam Temporary Speaker. I beg to second the Motion on Adjournment. I wish all Members of this House, beginning with you, a good break during which we will engage in various national and county activities.

I just want to encourage that we use this recess for county visits. Of course, part of it will go to the Devolution Conference. I wish everyone well during this moment.

Madam Temporary Speaker, I beg to second.

*(Question proposed)*

**Sen. Were:** Thank you, Madam Temporary Speaker. I support the adjournment the Senate, so that we can attend the Devolution Conference. The Devolution Conference is very important for all actors in the devolution process. It will enable them to meet and discuss how far they have come and they are going. It will also enable them to take note of what it is they need to do and the challenges and scenarios in devolution.

I welcome this break and look forward to deliberations in Kirinyaga County and the interaction involving Senators, county assemblies and governors on the issues in devolution.

I support.

**The Temporary Speaker** (Sen. Pareno): Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. I stand to support this Motion on Adjournment. It is a good time for us to reconnect on matters devolution. This is the Sixth Conference over the period - many others have been there - and it gives a good time to have a bird's view of the various issues, top among them being corruption. I was listening to the debate yesterday in the House and think we should not try to allocate responsibilities. We should just face it squarely and address the matter once and for all, for the sake of all Kenyans.

I support, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Proceed, Sen. Halake.

**Sen. Halake:** Thank you, Madam Temporary Speaker. I would like to add my voice to those of my colleagues to say that this is very welcome break. It is going to be a working break given that we are going to be engaging in the Devolution Conference.

As we know, that Devolution Conference is a very important calendar item for this House given that our mandate is to protect the interests of counties and therefore, devolution. It may even be a misnomer to call it a recess. It is a working break away from Nairobi. I wish all the Senators a very fruitful Devolution Conference. I look forward to attending and perhaps adding value to it.

Madam Temporary Speaker, this is going to be my Second Devolution Conference. In the first one, we learnt very much. As this House, we engage and interact with our county assemblies, governors, understanding and looking at the scorecard. This is where they usually showcase what has worked or not worked for them and the challenges they are facing.

Therefore, as this House in our mandate, we need to be at this Conference to make sure that if there is any oversight, it is not done after the fact but when we can correct course by walking and understanding what is happening in our counties.

Madam Temporary Speaker, with those few remarks, I support.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to adjourn the business of the Senate. The Senate, therefore, stands adjourned until Tuesday, 12<sup>th</sup> March, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.