

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 27<sup>th</sup> March, 2019

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

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

#### PRAYER

#### PETITIONS

IRON ORE MINING IN KISHUSHE  
AREA, TAITA-TAVETA COUNTY

**Sen. Mwaruma:** Mr. Speaker, Sir, this is a Petition to the Senate on the problems caused by iron ore mining at Kishushe in Taita-Taveta County. I will present the Petition on behalf of the petitioners.

“We the undersigned citizens of the Republic of Kenya living in Taita-Taveta County, Wundanyi Sub County, Wumingu/Kishushe Ward, Kishushe Location, representing various community groups and individuals, wish to state that it is in the public interest that we formally present this petition to the Senate of Kenya.

THAT, the residents of Kishushe have been having a lot of problems with Samruddha Resources Kenya Limited, a company mining iron ore in the region;

THAT, Samruddah Resources Kenya Limited have a secret partnership agreement with the management of Kishushe Cooperative Society Ranch, which claims to own the mining area to mine iron ore for the benefit of themselves, with total disregard of their members and the rest of Kishushe residents;

THAT, Samruddah Resources Kenya Limited and her partner, the management of Kishushe Cooperative Society Ranch-

(1) Are denying members who complain about human rights violations in the mine an opportunity to work in the mine, contrary to Section 30 of the Community Land Act of 2016.

(2) Have failed to provide the right working tools and facilities that ensure health and safety of the workers, contrary to Article 41(2) (b) of the Constitution of Kenya and Section 178 of the Mining Act of 2016.

(3) Have failed to provide insurance cover for the workers and thus violating Section 217 of the Mining Act of 2016 and Section 7 of the Work Injury Benefit Act (WIBA) of 2007.

(4) Are paying workers poorly and thus have violated Article 41(2) (a) and 41(5) which state that every person has a right to fair remuneration, which can be achieved by signing a collective bargain agreement between the employer and the employees;

THAT, by claiming to own the Kishushe iron ore mining area, the management of the Kishushe Cooperative Ranch have contradicted Article 61(f) of the Constitution of Kenya, which declares that all minerals and mineral oils are public land, and that, according to Section 6 of the Mining Act of 2016, are held in trust for all the citizens of Kenya;

THAT, on 1<sup>st</sup> August, 2015 the management of the Kishushe Cooperative Ranch fraudulently got a title deed No.CR65748 despite the fact that-

(1) During the survey of the ranch boundaries by the county government in December 2014 the citizens, whose parcels of land border the ranch, were suspiciously not informed about it and so did not participate in it.

(2) The survey extended the Kishushe Cooperative Society Ranch boundary into residents land and thus, making over 1,500 people landless or squatters of the Kishushe Cooperative Society Ranch on their land, where they have lived and cultivated since 1962.

(3) There was a court order served on the Attorney-General's office on behalf of the Ministry of Lands, Housing and Urban Development not to issue the title deed.

THAT a task force appointed by the then Cabinet Secretary of Mining, hon. Najib Balala, to look into the mining problems in the area recommended that the title deed No.CR65748 be revoked because it was acquired fraudulently;

THAT, the mining being done by the Samruddah Resources Kenya Limited at Kishushe is illegal for it fails to comply with Section 36 of the Community Land Act of 2016;

THAT, on 14<sup>th</sup> January, 2019, the Senator for Taita-Taveta County, Wundanyi and Voi Constituencies Members of Parliament (MPs), the Members of the County Assemblies (MCAs) for Wumingu/Kishushe and Mwanda/Mghange Wards and the County Executive Committee (CEC) Member in charge of Finance and Planning of the County Government of Taita-Taveta brokered a consultative meeting between the Samruddah Resources Kenya Limited and the residents of Kishushe to resolve some of the issues raised in this Petition;

THAT, most of the issues raised herein were discussed and an agreement reached on how they should be resolved and by when, but the company has not implemented any to date;

THAT, the efforts to resolve the matters raised in this Petition with the relevant authorities have proved futile;

THAT, there is no case pending in court or any constitutional body on the matters raised in this Petition;

THEREFORE, your humble petitioners pray that the Senate, through its relevant Committee-

(1) Deals with this Petition immediately in view of the urgency and seriousness of the matters raised herein.

(2) Investigates the poor working conditions at the mining site and recommends appropriate actions.

(3) Investigates the circumstances that led to the non-payment of the royalty to the community of Kishushe and recommends that it be paid in arrears and with accruing interest.

(4) Investigates the circumstances that led to the fraudulent acquisition of the Kishushe Cooperative Ranch title deed No. CR 65748 and recommends that it be revoked forthwith.

(5) Recommends that the Samruddah Resources Kenya Limited stops its mining operations at Kishushe until it makes an agreement with the community members of Kishushe, as guided by Section 36 of the Community Land Act of 2016.

(6) Takes any other appropriate action it deems fit to resolve the matters raised herein.

And your Petitioners will ever pray.”

This Petition is dated 21<sup>st</sup> February, 2019 and countersigned by Sen. Johnes Mwaruma, the Senator for Taita-Taveta County

Mr. Speaker, Sir, this Petition is self-explanatory. I wish that it be expedited promptly because the people of Kishushe are really suffering. Some of the things that are highlighted here have already been resolved, because it has taken a lot of time to dispose of this Petition. For example, there is already a community development agreement between the community and the investor. However, there are so many pending issues that are highlighted here and need to be resolved.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Asante, Bw. Spika, kwa kunipa nafasi hii kuunga mkono kakangu, Sen. Mwaruma, katika maombi haya ambayo ameleta. Nafikiri hivi majuzi tu alileta maombi mengine kama haya ya kuhusu watu wanaoishi Kishushe. Yaonyesha kwamba shida hii haijaangaliwa kikamilifu na bado inaendelea.

Bw. Spika, si sawa kwa jamii yoyote kuteseka kwa sababu wana madini au mali katika ardhi yao ambayo waekezaji wanataka kutumia. Kuna muungano au maelewano ambayo yanawekwa juu ya vile ambavyo mwananchi anapaswa kufanya na vile vile waekezaji wanafaa kufanya. Mambo haya yasipofanywa, huwa yanaleta shida.

Bw. Spika, ni maneno yale yale yanajitokeza kila wakati. Kuna watu ambao ardhi yao imechukuliwa. Nakumbuka kwamba katika Bunge lililopita, tulienda Kishushe kuangalia mambo mengine ambayo yalikuwa yanahusu Kamati nyingine na tulipata mambo ya kustaajibisha sana. Tulikutana na watu ambao wanafanya kazi kwenye madini. Walituambia kwamba wakishamaliza kazi, wakati wa kutoka ni lazima watoe nguo zao zote ili kuhakikisha kwamba hawajaiba chochote. Wao huangaliwa katika sehemu za siri kana kwamba hao sio binadamu. Hii ni kwa sababu yule mwekezaji anashuku kwamba pengine madini yake yameibiwa.

Kiwango cha pesa ambazo wafanyikazi wanalipwa hakiambatani na pesa wanazozipata waekezaji wale ambao wanapata pesa nyingi sana. Kama kuna

makubaliano ambayo yameandikwa, ni sawa kwamba yale makubaliano yafuatwe. Hapa yaonyesha kwamba mnyonge ndiye anapata shida kila siku. Kama watu wameweka cheti cha makubaliano kwamba mambo yatafanywa hivi na vile, kwa nini watu wanageuka baadaye?

Bw. Spika, namshukuru kakangu kwa sababu kwa bahati nzuri wakaazi wa Kishushe wana Seneta kama Sen. Mwaruma ambaye ameleta malalamishi yao hapa juu ya pesa na fidia yao. Malalamishi yote ambayo yamewasilishwa hapa ni muhimu na yanafaa kuangaliwa katika maombi haya.

Ni ombi letu kama Seneti kwamba Kamati ambayo itafanya kazi hii iharakishe sana ili hawa wakaazi wa Kishushe wapate kufurahia madini na mazingara yao bila kuishi kwa shida. Waekezaji hawafai kuingia pale na kuchukua wanachotaka na kuwatesa wananchi hao.

Nashukuru, Bw. Spika.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Omogeni.

**Sen. Omogeni:** Thank, Mr. Speaker, Sir. I also rise to support this Statement by my good friend, the Senator for Taveta. This Petition raises very serious issues. The Constitution that we enacted in 2010 in Article 69 is clear that natural resources and minerals should be exploited for the benefit of the locals and for future generations. However, what I have heard from the Senator from Taveta is worrying.

I cannot understand how the so-called investors can come to our country, go to a county, allocate themselves land and are issued with a title deed. That is something that should worry this House. I hope the Committee that is going to be tasked with looking into this matter will go to the depth of this issue. There is no way we are going to guarantee that our future generations will benefit from these natural resources if foreigners are going to have titles of our natural resources and minerals.

Secondly, we need to interrogate as a Senate, what is the role of our National Land Commission? Where is the National Land Commission in all these? Under the Constitution, Article 67, the National Land Commission should be managing public land on behalf of national and county governments. Where are they when titles are being issued to the so-called private investors?

Thirdly, nobody can leave this country and go to another foreign country, for example, London, Germany or anywhere in Europe and set up a business and start exploiting the inhabitants of that country. This business where investors come to our country and then they start misusing the labour of Kenyans who we are supposed to represent, is something we should take seriously as a House.

I hope that this issue of poor remuneration of people who are working for these investors can be looked into by the Committee on Labour and Social Welfare and make serious recommendations. We should not allow investors who can just walk in, exploit our locals, subject them to inhumane and deplorable conditions then they make profits which they return back to their countries. Our locals should benefit.

I fully support this Petition.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Speaker, Sir. It is not a coincidence that yesterday while contributing to the Bill on natural resources, I actually mentioned

this area called Kishushe, because I know the place very well since many residents from Makueni are working there.

I said yesterday that it is a contradiction, that Taita Taveta County is one of the poorest counties in Kenya yet we have billionaires upon billionaires, who are mining most precious stones in the county. Many of these investors are untouchables. They remind me of the owner of Solai Dam; people who are a law unto themselves. Neither the police nor the county government can go there.

The violations of the rights of Kenyans; poor Kenyans working in these mines is not even what Sen. Mwaruma has mentioned here. If this Senate was to bother, like we have done in many cases - I propose that you make a proper direction on this one - if the Senate was to visit the mines in Kishushe and parts of Taita Taveta County, you would discover the worst violations, beyond violations of both labour laws, human rights and others by people who have refused to be subject to the law. If there is one place where there is impunity, Kishushe is number one and the mines in Taita Taveta ought to benefit the people of Taita Taveta.

Mr. Speaker, Sir, the only institution that is going to protect the interests of Taita Taveta County, is the Senate. May we please visit. Whichever Committee that is given this opportunity, please, invite me. I am prepared to carry my Constitution and the law books so that we deal with these people. We cannot continue this way.

Thank you.

**Sen. Faki:** Asante Bw. Spika kwa kunipa fursa hii kuchangia lalamiko liloletwa na Sen. Mwaruma; Seneta wa Kaunti ya Taita Taveta.

Bw. Spika, imekuwa sasa madini ambayo yanapatikana katika sehemu tofauti tofauti katika nchi yetu ya Kenya, imekuwa kama laana kwa wakaazi, kwa sababu, badala ya madini yale kuwasaidia wao, madini hayo yamekuwa ni chombo cha kuwadhalilisha na kuwanyima haki zao kama raia wa Kenya na binadamu kwa jumla.

Ukiangalia sehemu za Taita Taveta; Kishushe, mpaka kule Kakamega ambako watu wanachimba madini ya dhahabu na kwingineko, utapata kwamba hali ya wafanyakazi katika sehemu zile ni duni sana. Hii hali ni kwa sababu sheria zetu hazilindi maslahi ya wakaazi na wafanyakazi katika sehemu zile. Utapata sheria nyingi zinamlinda yule mwekezaji zaidi kuliko kulinda Wakenya na wenye raslimali ile ambayo Mwenyezi Mungu amewaruzuku iwe katika sehemu zao.

Tunapochunguza lalamiko la watu wa Kishushe, inafaa pia tuangazie zile sehemu zingine ambako pia madini kama haya yanaleta shida. Kwa mfano, sehemu tofauti tofauti za Kilifi ambako hupatikana madini ya *Magnesium*, imekuwa pia ni shida kwa wakaazi kwa sababu wanakuja wawekezaji, wakiwadhulumu haki yao na kuchukua ardhi yao bila kulipa fidia yoyote.

Asante Mheshimiwa Bw. Spika.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I rise to support the Petition by the Senator for Taita Taveta County. This House has a duty to ensure that Kenyans earn fair pay, no matter who it is.

Sometimes we talk about investors as if other sectors---. I know the sector of mining perhaps, is the point of focus and point of discussion here today, but all sectors including the agricultural sector---. I know women who go to pick coffee from morning

to evening and do not even get any money. At times they work for food; they are given a bucket of maize or something ridiculous like that.

Mr. Speaker, Sir, this House will do well to look at the whole issue of fair pay for people working in certain sectors, including agricultural, mining, oil and gas sectors, including the informal sector of domestic workers. It is about time we looked at good legal frameworks, especially the implementation of regulations and minimum pay regulations that exist in this country, so that then, we are not just looking at the issue piecemeal. We need to look at this issue very holistically because I can tell you for a fact that every sector is affected and that the conditions under which people, especially in the informal sectors are working is deplorable. We must as a House really look at this issue holistically.

In the mining sector and especially Taita Taveta and other places where people are mining gold and stuff like that, there are bound to be safety issues. As I support, I think we should seriously look into this issue of fair pay and inhumane treatment of our informal sector workers and legislate, if we need be.

Thank you and I support.

**Sen. Madzayo:** Asante Bw. Spika. Ninataka kwanza kumshukuru ndugu yangu Mwaruma kwa kuleta hii *Petition* hapa.

Jambo la kwanza ni kwamba, madini yameletwa na Mwenyezi Mungu mwenyewe na madini yako ya aina mbali mbali. Tukiangalia pande za Turkana, wamepata mafuta, kule pwani, hususan upande wa Kilifi kumepatikana vitu kama mawe na chumvi. Yote yanakuwa ni madini ya watu wa zile sehemu wanakotoka.

Kungekuwa na sheria mwafaka kwamba watu wanaohusika na kufanya kazi kataki yale maeneo waangaliwe vyema, pia wale ambao wanahusika na kuchimba hayo madini. Hivi sasa, kuna upungufu ama kuna udhaifu wa aina kama hiyo.

Mimi ninaunga mkono hili tatizo ambalo liko katika maeneo ambayo madini yanatoka. Asante.

**Sen. (Dr.) Langat:** Thank you very much, Mr. Speaker, Sir, for giving me this chance to support the Petition from Taita Taveta as presented by Sen. Mwaruma.

Our Committee on Tourism, Trade and Industrialization one time visited Taita Taveta and the issues that are in Taita Taveta are so funny. First, 65 per cent of the land is occupied by animals and they have completely nothing to benefit from the wildlife development. The wild animals simply criss-cross their farms and homes, but the earnings go to the national Government. There has also been destruction caused by the wild animals.

When we were there, we found that for the past six years, only three people had been compensated. We also heard that the same people complain about mining. We discovered that mining in Taita-Taveta is not controlled by any legal framework. The work is entirely done by cartels and the people of Taita-Taveta only watch as people go there to get rich.

It is my opinion that we support the people from Taita-Taveta so as to make things normal and formal. If any mining company registered some interest in the same place, they should have some Corporate Social Responsibility (CSR) at least to assist the people of Taita-Taveta.

When we were in Taita-Taveta, we witnessed people suffering. I am wondering why they have not asked for food relief yet when we were there, there was a lot of hunger among the people.

I support this Petition fully because it is long time overdue.

**Sen. Sakaja:** Mr. Speaker, Sir, I would like to thank Sen. Mwaruma for bringing this Petition. Just to add to what Members have said, it is unfortunate that in this country, areas that have the greatest wealth under the ground are the ones with the highest levels of poverty. We cannot claim to be a country that is independent and working for the interest of its people when Kenyans who actually, by virtue of what God gifted them, are not able to reap the proper benefits of the blessings. I know that county extremely well because there are some projects we were doing in Wundanyi and Mwanda to help my relatives there.

During the previous Parliament, Sen. (Dr.) Zani brought a good Bill here on local content and how the local communities were to benefit. The Bill intended to ensure agreements between the mining companies, county governments and the national Government over the beneficiaries of mineral wealth. Our Constitution is very clear when it comes to land and natural resources.

When you go to Ikolomani which is my home area in Kakamega – Ikolomani is a corruption of the word “goldmine” – the level of poverty is alarming. If you go to Lolgorian in Kilgoris which is in Narok County where there is gold, the level of poverty is enormous. If you go to Turkana, there is oil and aquifers, but that does not reflect on the livelihoods of those people.

Therefore, Mr. Speaker, Sir, the Committee that will look at this Petition should take it seriously and make sure that the laws that have been passed by this House, including the previous Senate, are followed to the letter. If there are cartels, they should be brought to book.

I thank you.

**The Speaker** (Hon. Lusaka): We have 10 more minutes. Therefore, Sen. Wetangula and Sen. Wambua will share and each will have five minutes.

**An hon. Senator:** Handshake!

**Sen. Wetangula:** Handshakes are for opposing parties. Sen. Wambua is part and parcel of me.

*(Laughter)*

Mr. Speaker, Sir, I support this Petition brought by the distinguished Senator for Taita-Taveta. Recently I visited some of the Members of County Assembly (MCAs) elected on my party in Taita-Taveta and the level of poverty I saw was mindboggling.

When the Jubilee Government came to power, the President announced that he was going to pay attention of the highest level to the extractive industry which is mining. However, when you look around the country, in Turkana, apart from the ravaging hunger, there is total chaos around the extraction of oil. Residents are fighting with the investors and the Government is like a helpless bystander. In the process, criminal gangs rule the world. When you go Kwale where titanium is being mined, it is the same thing yet this is not rocket science.

The Government has a duty to learn from countries like Australia. We went to Australia as Members of the Committee on Finance and Budget. You can see the level of development and opulence in Western Australia, an otherwise completely Arid and Semi-Arid Land (ASAL), from the proceeds of mining.

Mr. Speaker, Sir, even the county governments have a share of the blame because they should also legislate to make sure they cream off the proceeds of mining for the benefit of the people of their counties. Unfortunately, in this country, even when taxes are levied, they just get mixed up with all other resources and end up being part of the stories that we hear about corruption and money being stolen in billions.

I urge that we revisit the “Zani Bill” that we passed in this House. We also passed the Mining Bill. More importantly, the desire that a country that is moving towards extractive industry must have a clearly defined sovereign wealth fund programme that clearly assists those who have protected the wealth from time immemorial, those who mine the minerals and above all, the benefit of the rest of the country.

So, this Petition must be taken seriously. The Committee that it will be referred to must visit *in situ* and see the quality of lives of people and how dispossessed and disenfranchised they are from activities of those who make wealth for themselves.

**Sen. Wambua:** Mr. Speaker, Sir, I also congratulate my brother, Sen. Mwaruma, for bringing this Petition. Indeed, the Petition speaks not just for the people of Taita-Taveta but also for people in many counties in this country that are well endowed with natural resources.

I would like to say a few things. First, Article 69 in Chapter Five of the Constitution of Kenya, 2010, is very explicit; that exploitation of resources in any part of this country must be done for the benefit of local communities. This is a basic universal standard. It is very unfortunate that in counties where resources are found, those counties are also synonymous with poverty and deprivation.

There is need to lay emphasis on the benefit sharing agreements, where communities sign up with companies exploring resources. That will make sure that a percentage share of the benefit accruing from the exploration of the resources goes back to the communities and can be utilised to improve the lives and livelihoods of the people where mining takes place.

The mining issue and the unfair treatment of people working in mines is not just found in Taita Taveta but it also happens in counties such as Kitui, where we have iron ore and coal, and Turkana, where we have oil. Let us now move beyond debate. Instead, we should take action that would bring benefit to the people in those mining areas.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No. 232(1), the Petition stands committed to the Standing Committee on Lands, Environment and Natural Resources. Pursuant to Standing Order No. 232(2), the Committee is required in not more than 60 days from the time of reading the prayer to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the table of the House.

The Senators have raised a concern and it will be important to have a practical solution to this problem. The recommendations of the Committee must be practical and as the Members have said, we need to revisit the Mining Bill for us to have something



that is going to guide us in addressing this issue. This is because we have kept on talking about it yet, it keeps coming up.

REVIEW OF THE BASIC EDUCATION CURRICULUM  
FRAMEWORK BY THE MINISTRY OF EDUCATION

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a Petition that was submitted through the Clerk by Dr. Eric Mugambi Kinyua. As you are aware, Article 119(1) of the Constitution states that-

‘Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.’

The subject of the Petition relates to the review of the basic education curriculum framework by the Ministry of Education. The salient issues raised are-

(a) That the Ministry of Education recognises nursery schools, kindergartens, day-care centres and home-based learning as necessary institutions offering pre-primary education as well as recognise them in the Basic Education Curriculum Framework (BECF).

(b) That the subjects proposed to be taught in upper primary, junior and senior secondary school should be recognised and where necessary, merged to accommodate the 85 subjects proposed compared to the current 25 subjects studied in the 8-4-4 system.

(c) That the village polytechnics be transformed into technical secondary schools to offer career and technology studies to accommodate the 100 per cent transition from primary to secondary school policy as well as allow artisan courses that are currently being offered in village polytechnics to be taught in secondary schools.

(d) That the number of minimum subjects proposed to be done by specific pupils to be equal in all the tracks in secondary school.

(e) That the Kenya Institute of Curriculum Development (KICD) should issue curriculum designs or syllabus for grades four to 12 before proceeding with further piloting of the basic education curriculum.

(f) That adult education centres should be recognised as providers of basic education in the BECF, which shall offer subjects with specific interest providing lifelong learning to citizens who need the skills.

(g) That a two-tier approach be considered in implementing the 2-6-3-3 system to avoid an overlap for students joining secondary schools by pioneering classes especially students who are currently under the 8-4-4 system.

The Petitioner has delivered hard copies explaining the above issues to the Ministry of Education, KICD and other national offices that guide education policies. He has only received one response from the director of KICD informing him that the issues would be addressed during implementation.

The Petitioner prays that the Senate should investigate this matter and make appropriate recommendations.

Pursuant to Standing order No. 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

**Sen. Mutula Kilonzo Jnr.:** On a point of order Mr. Speaker, Sir.

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, similar concerns were raised yesterday by Sen. Wetangula and Sen. (Eng.) Maina to the Committee on Education. Would I be in order to suggest that the question posed yesterday to the Committee, this Petition and the issues raised by the various Senators, particularly those regarding the 100 per cent transition and the Technical Vocational Education and Training Institutions (TVET) be forwarded to the Committee on Education?

**The Speaker** (Hon. Lusaka): I know that it will still go to the same Committee on Education but we can give an opportunity to those who did not have an opportunity to speak, like Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to make a few remarks on this matter.

The 100 per cent transition from primary school to secondary school is a noble idea. It is through education that we all progress. If it was not for the good education and the opportunity that was accorded to us, we would not be here. If we were pastoralists, we would perhaps be in different nations or we would be in different professions. A number of us would probably be in jail or dead because of the acts of savagery and criminal activities that most young people indulge in when they are not educated.

This issue is a cliff hanger and dangerous. From where I am, it is not clear that our counties, sub counties and our institutions have been adequately resourced and empowered to ensure that there is smooth transition. In Migori County, if you look at the number of trainers, tutors and complete institutions that would absorb young persons from primary school to secondary school, they are still wanting. Currently the recruitment or replacement of teachers is underway and we were only allocated a paltry 12 teachers to replace the ones who retired or the ones who ceased teaching because of natural attrition. This is a serious situation.

You are also aware of the run-away poverty that we experience in most counties which include Migori. You are also aware of the challenges that we have with the girl child. The girl child in Kuria East, Kuria West and Nyatike are very vulnerable because they do not have sufficient social support network to continue holding them in school. We are talking of 100 per cent transition to secondary school yet resources are not trickling down from our national treasury and we do not have equipment to take on this onerous responsibility.

It will be appropriate for the Standing Committee looking at this matter to ensure that we are ready. As they bring the report regarding this Petition and the question that was raised yesterday by Sen. Wetangula, they should get information regarding our state of preparedness. They should also get information on how each county is able to fit in this otherwise noble idea that seems to be inadequately resourced.

I beg to support the Petitioner for raising this issue and it needs to be looked at seriously.

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I support the petitioner because it is important for us to have 100 per cent transition from primary to secondary school. However, the way we are doing it does not add any value to

most of our students. The preparedness at the county level is really wanting. You will find that there are more than a hundred children in nursery schools who go through one or two years without learning. Therefore, it means that by the time they are joining class one, they are not properly prepared.

I urge county governments to make sure that there are enough primary schools in all the localities. We should also have properly trained teachers to take care of these children. We now have free primary education which means that we have a big number of pupils in classes. This means that if we do not prepare children properly at the nursery level, they will go to the primary schools without knowing anything.

Mr. Speaker, Sir, I remember that during my time, I went to class one when I had known a lot of English. In fact, most of us learnt our English in nursery schools. Therefore, children should not join primary school without learning anything. Sometimes, when they go to school, their classrooms are not taken care of, there is dirt all over and they catch diseases instead of learning. So, education, at whatever level, should be done properly even if it is adult education.

The Kenyan education system has always been very strong because we have been properly prepared at every level. However, if we do half-baked things and expect to get good results, it will not be forthcoming. Therefore, I support the petitioner and urge the county governments and everybody else who is in charge of any form of education at any level to take this into consideration.

I support.

**The Speaker** (Hon. Lusaka): Since the matter was already discussed, I will give the remaining speakers three minutes.

Proceed, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. This is a good Petition that will probably go to the Committee on Education to streamline some of the issues especially regarding Early Childhood Development Education (ECDE). The Committee is spearheading an ECDE Bill that might address some of these issues. However, the incongruence is coming because from the various stages, there is no linkage. Therefore, the policy is okay but it has several challenges, for example, children dropping out of schools. This is because some of the related costs are hidden and some families are not able to handle them, which creates more extreme poverty. There is also congestion in most classes for example, in day and boarding schools.

Mr. Speaker, Sir, about 1, 052,364 candidates are expected to join an already congested group of 2 million students from the previous 2018 data. So, clearly, we are talking about a big number that is coming in suddenly. As much as this was meant to improve access, retention and completion of secondary schools, some of the key issues that are raised need to be handled with care so that we ensure that the transition policy is incorporated. We support the Petition because it will highlight and help to streamline the education sector as far as this policy is concerned.

**Sen. Wetangula:** Mr. Speaker, Sir, the Petition by Dr. Eric Mugambi captures the mood of what Sen. (Dr.) Zani brought here yesterday. I urge the Committee to look deep into this erratic change of policies in the Ministry of Education. Why did we bring the 8-

4-4 system in the first place and why did we abandon it when nobody was protesting that it was not working?

As the Chairperson seeks information, he should tell the House and the country why Kenya has not found it fit and necessary to align its education system with the East African Community (EAC) region that has primary, secondary and higher secondary of form five and six then university, so that we can capture students from the region and for our students to go to regional schools and learn in those countries.

Lastly, Mr. Speaker, Sir, I want the Chairman to also find a way of giving us a dummy costing of all these changes if we are to have effective learning in our schools. How do you talk of 100 per cent transition when you are not giving schools teachers? Children just go to schools to play and go home in the evening. In fact, what this country is doing is turning education into an elitist enterprise. Those who can manage take their children to academies where they pay heavily for their children to learn. At the end of the day, a child in Turkana County battling hunger, bandits and learning under a tree has to face the same examination with a child in Kilimani Juniou Academy. It cannot work.

**The Speaker** (Hon. Lusaka): Finally, Sen. Sakaja.

**Sen. Sakaja:** Mr. Speaker, Sir, I thank Dr. Mugambi for exercising his constitutional right under Article 119 to petition Parliament. In addition to what Members have said, the objective of a 100 per cent transition cannot be just to keep children in schools; it must be to prepare them for a future.

Mr. Speaker, Sir, many of our schools have simply become daycare centres. I know very many primary schools where children in class eight cannot read because they have gone with the crowd from class one to eight just humming at the back of class yet they cannot answer the questions. They are as good as children in ECDE classes.

Mr. Speaker, Sir, I urge the Chairperson of this Committee to realise that he can actually deal with both Petitions jointly. He needs to invite the Ministry of Labour, Social Security and Services on top of the Ministry of Education and the Kenya Institute of Curriculum Development (KICD). We passed a Bill in this House that I sponsored on national employment authority that says that we must streamline our education with what the market needs.

Mr. Speaker, Sir, by the time a child goes to university from high school, he or she should do a course that will give them a job. However, many of the courses that we have in our universities and much of the education in our schools is only postponing the unemployment of our young people. They must look at quality, access and suitability of what we are teaching our children.

Mr. Speaker, Sir, that law brings together the Federation of Kenya Employers (FKE), trade unions, manufacturers, curriculum people and those who are charged with looking at what the market will need in the next five or ten years. That is what we need to tailor-make our curriculum to be about. It cannot just be about keeping children in a classroom for so many years.

Mr. Speaker, Sir, the fact that is prevailing in our country today is that many people are not unemployed because they do not have education. However, when you find *matatu* touts and house helps with diplomas and degrees, there is a problem with the education system. It is not suitable to what the market needs and to what the international

economy has now become. Therefore, as they look at the curriculum issues, they should look at them with a mind to make sure that we are not just keeping children in classrooms which, in many areas, are not adequate. We should guarantee and prepare these people for a future where even if they will not access employment, they can actually become entrepreneurs and create employment for other people.

Finally, we need a good justification as to why a child in Turkana County or Trans Nzoia County, cannot by the time they are 18 years, be prepared for the economic needs and activities of their counties before streamlining their career choice. A one size fits all cannot work in this country. A child from Sen. Olekina's county should be able to, by the time they finish form four, deal with issues of agriculture, livestock *et cetera*. The needs there are different from Taita Taveta County.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No. 232 (1), the Petition stands committed to the relevant standing Committee for its consideration, in this case the Standing Committee on Education. In terms of Standing Order No. 232 (2), the Committee is required, in not more than 60 days from the time of reading the prayer, to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

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

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

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. Three weeks ago, there was a round of protest in this House in the manner in which petitions stay for too long with committees. We implored the Chair that, in fact, when you set the deadline of 60 days, within at least the first 40 or 45 days, if there is any challenge, the Chairperson must bring a progress report to this House so that we can interrogate this matter fully. If a citizen brings a petition and six or seven months down the line we have not done anything, we even demoralize those who have faith and trust in this House.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Wetangula. The matter is already being handled by the Deputy Clerk. I will be giving a communication on the progress of what we shall do to make sure that these petitions do not overstay with the chairpersons of various committees.

Let me call the Chairperson of the Committee on Finance and Budget.

REPORT ON PETITION: ISSUANCE OF CURRENCY THAT  
CAN BE IDENTIFIED BY THE VISUALLY IMPAIRED

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir. I beg to lay the following Report on a petition on the Table of the Senate today, Wednesday, 27<sup>th</sup> March, 2019:

Report on the Petition by Sen. Mwaura on the issuance of currency that can be identified by the visually impaired

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

AGREEMENT BETWEEN ISIOLO COUNTY GOVERNMENT  
AND LIVING GOODS LIMITED

**The Speaker** (Hon. Lusaka): Okay, hon. Senators. The Report on the health petition to the Senate by residents of Isiolo County was already tabled. I will just allow maybe a comment from the Senator of the area because petitions are supposed to go to the petitioners once they are tabled on the Floor of the House. She had requested to make some comments.

Sen. Sakaja, what is your point of order?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. Sorry to come in after you had moved on to Sen. Dullo. However, just from what the Chairperson of the Committee on Finance and Budget has reported and we are glad he has reported that, we had agreed as a House, that each Senator of a county would be receiving a monthly exchequer release report from the Controller of Budget (CoB) through the Committee on Finance and Budget or directly. Members even gave out their e-mail addresses so that these reports can be sent directly to us so that we can know how much money is coming to our counties as soon as it is released ---

**The Speaker** (Hon. Lusaka): Order, Sen. Sakaja! We are not yet there. This was a Petition regarding Kenya currency.

**Sen. Sakaja:** Mr. Speaker, Sir, we will not get there because what I am asking for is not on the Order Paper. Since he spoke and gave us a report, I am just asking where the other reports that he should be giving us are.

**The Speaker** (Hon. Lusaka): It is under Papers, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I shall ask the question again.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. He is jumping the gun.

**The Speaker** (Hon. Lusaka): Okay. Let us have Sen. Dullo.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir, for this opportunity. I am sure most of the Members have gone through the Report. I have looked at it personally.

There are certain allegations against me which, according to me, were not fair. Nevertheless, to some extent, I agree with the Report. However, there are certain issues that I totally disagree in terms of the recommendations made by the Committee.

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

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

I hope there are ways in which when petitions are brought back to the House, we have an opportunity in terms of how we should interrogate the reports presented by those committees.

There are a few comments that I wanted to make, if you allow me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Dullo. I know that you have been on this matter for a while. Unfortunately, the Standing Orders do not allow me to allow you to make comments. In particular, Standing Order No.232(2) which says that when the report addressed to the petitioner is laid on the Table of the Senate, no debate

on or in relation to the report shall be allowed. That is a mandatory provision. If it was discretionary, I would have exercised that discretion in your favour. It is not.

Sen. Dullo, under Standing Order No.232(2), the only discretion the Chair has is when the petition is first read, observations and comments for not more than 30 minutes. Once the report is tabled, there should be no debate, comments or observation and there is no discretion. Therefore, that matter is closed.

**Sen. Malalah:** On a point of order, Mr. Deputy Speaker, Sir. I think this House is guided by the Standing Orders and also the precedence by the Speaker's ruling. You have just made a ruling a while ago when you were on that seat that Sen. Dullo is allowed to comment on that. I think we go by your ruling that the Senator is ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which one?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, you have just made --- The person who was sitted there, who is the Chair, has just made a ruling that the good Senator can comment.

*(Loud consultations)*

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

**Sen. Malalah:** Mr. Deputy Speaker, Sir, we want to know if you are overruling the previous Chair.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Was there a person sitted here or you are referring to the Speaker?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, it is the Speaker.

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

What is it, Sen. Dullo?

*(Laughter)*

**Sen. Dullo:** On a point of order, Mr. Deputy Speaker, Sir. With all due respect, I think you are contradicting yourselves, if I may use that word.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Who is contradicting who? Sen. Dullo, I have just read out Standing Order No.232(2) and ---

**Sen. Dullo:** No, Mr. Deputy Speaker, Sir. Let me finish. I remember very well the last time when you were on that seat, and the HANSARD can bear be witness, you said the Report should be shared so that we interrogate it. Now, before you came to the Chair, the Speaker who was on the Chair said that he is going to give me an opportunity to comment on the petition. Now, you have come in and you have said that you will not allow any debate, observation or comments on this petition. Kindly, give us direction.

**Sen. Wetangula:** On a point of order, Mr. Deputy Speaker, Sir. If I may assist you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Before you assist, what is your contention, Sen. Dullo? Is your point of order that you are allowed to debate?

**Sen. Dullo:** Mr. Deputy Speaker, Sir, to comment.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): To comment? To that extent, you are right; but that a comment should not involve the merits or demerits. You have to distinguish between debate and comment.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, you quoted Standing Order 232(2), and my reading seems to vary in understanding with your interpretation. The Standing Order says:-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than 60 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 the report shall be allowed---”

Mr. Deputy Speaker, Sir, you only read up to that point; but if you read on, it now gives you the discretion and says:-

“but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty minutes.”

Mr. Deputy Speaker, Sir, my understanding is that when the Petition is first presented by the Speaker, you can allow comments on it for not more than thirty minutes. Equally, when the report is laid, you may use your discretion to still allow comments on it for not more than thirty minutes. It gives you a double discretion because it does not say at what level you should allow and in a broad interpretation of the Standing Orders. Our own Constitution says that in reading and appreciating our Constitution, you must not take a narrow view, but must interpret it broadly. In my opinion – and I believe that I am right, being you senior in law – that the discretion is two pronged; at the presentation of the petition and at the receipt of the report.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wetangula! I shall say no more---

*(Loud consultations)*

Order!

I welcome further comments on that point, but my understanding of Standing Order 232 is that the observations and comments are in respect to the petition, not the report. Concerning the report, there shall be no debate; but concerning the petition, there shall be observations and comments.

Therefore, Sen. Wetangula, the 30 minutes--- That is why I said I do not want to make further comments to the allegation or to the fact that you mentioned – because it could be prejudicial. There is a difference between comments and observations on the report; and comments and observations on the petition.

Sen. Khaniri, would you want to comment around that Standing Order?



**Sen. Khaniri:** Mr. Deputy Speaker, Sir, you are very right; both issues are covered in the two Standing Orders. Standing Order 231 deals with comments on a petition, once it is presented to the House. Standing Order 232 deals with when the report on the Petition has been tabled. I, therefore, think that both of you are right; Sen. Wetangula is right that you have discretion---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Both of us cannot be right---

**Sen. Khaniri:** No, no, no, Mr. Deputy Speaker, Sir; Sen. Wetangula said that you have double discretion---

**Sen. Wetangula:** Which is true---

**Sen. Khaniri:** Which is very true; that in Standing Order 231, when the petition is presented to the House, you have discretion to allow thirty minutes for Senators to make observations and comments.

**Sen. Wetangula:** It is very clear.

**Sen. Khaniri:** Yes, it is very clear. However, Standing Order 232 applies for that time when the report is tabled, and you also have the discretion to allow comments and observations for thirty minutes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Khaniri. You are one of the longest serving Members of Parliament; so I have no doubt in my mind that you have applied yourself to this Standing Order. However, if you look at the crafting of Standing Order 232(2), there is a difference between the report and the Petition. Therefore, my earlier interpretation, which Sen. Dullo said was contradictory, stands; that there shall be no debate on the report.

However, that Standing Order, in my view, based on what Sen. Khaniri and Sen. Wetangula have said, is not very clear. This is because if the intention was to separate between the procedure when the Petition is read, versus when the report on the Petition is brought to the House, then there seems to be some contradiction to the last part of that Standing Order. This is because it is distinguishing no debate on the report, but there can be comments and observations. That is contradictory because trying to demarcate between what constitutes debate, and what constitutes comments and observations could, in itself, be problematic.

Having said that, I will apply Standing Order 1. I made a very extensive ruling during the last Session on the application of Standing Order 1; that in spite of the ambiguity on Standing Order 232(2), I consider that this is a matter that is applicable to Standing Order 1. Therefore, I will allow some remarks from Sen. Dullo on that report for not more than five minutes.

Proceed, Sen. Dullo; you have the Floor.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir, for being kind enough to allow us to comment on this Petition, which has hit the headlines in this country. According to me, it is a matter that is very critical for this House because it is about the oversight role of the Senate. It is a matter that we should be able to comment on so that it does not just pass like that.

Mr. Deputy Speaker, Sir, let me first take this opportunity to thank the Committee Members for having done the Report despite several challenges. I believe that Members have looked at the Report and they have seen its contents, observations and

also its recommendations. I agree, to a certain extent, with the observations and recommendations made by the Committee. One of them is that they have agreed to some extent with the Petitioners, that the whole process that was taken by the County Government of Isiolo was illegal. To that extent, they have agreed with the petitioners and I also agree with them.

Mr. Deputy Speaker, Sir, the Committee has observed that the Public Finance Management (PFM) Act was not complied with in the whole process. That is also something that is very good to the House, the petitioners and also to the county. The Committee has said that the whole process should be halted, the anomalies corrected and a report be brought back to the same Committee. I disagree with that recommendation because once the Petition is brought to the House and the Committee reports, that particular report becomes the property of the House and not the Committee. To that extent, I disagree with the Committee.

Secondly, the Committee mentioned that public participation was done properly in this process. I totally disagree because the petitioners presented a ticket that was used then by the county government to allow public participation to take place. As far as I am concerned, public participation is an open forum. So, I still hold my position and that of the petitioners that public participation was not done properly.

The other point that is very critical and I wanted to raise here is that you cannot say that the whole process was illegal and, therefore, the money that was utilised for an illegal process should not be refunded. That is a contradiction in itself because the whole transaction and procurement process was illegal. So, if there was illegality from the word go, the Committee cannot go and make a decision that the money utilised for the illegal process should not be refunded. That is totally wrong.

The company that was contracted for this particular purpose, and according to me I gave a certificate that was certified by the Registrar of Companies with a seal--- If I am required to table that I will do it. All that process was changed after the company and the county government appeared before the Committee. For the Committee to say that the company was registered with Poisons and Pharmacy Board, that was done much later after the Petition was tabled in this House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your five minutes are over. Please, wind up.

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I am winding up. Let me say in finality that the Petition was successful as far as I am concerned. I hope that the Report will be shared with the relevant authorities, to make sure that justice is given to the people of Isiolo County.

Secondly, the Senate should carry out its oversight role without fear or favour.

I thank you.

*(Applause)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. What is it, Sen. Malalah? Are you on a point of order?

*(Sen. Malalah spoke off record)*

Okay. That brings us to the end of that Order.  
Next Order!

### PAPERS LAID

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I beg to lay the following papers on the Table of the Senate, today, Wednesday, 27<sup>th</sup> March, 2019:-

#### REPORTS ON THE FINANCIAL STATEMENTS OF GARISSA WATER AND SEWERAGE COMPANY

Report of the Auditor-General on the Financial Statements of Garissa Water and Sewerage Company for the year ended 30<sup>th</sup> June 2015.

#### REPORTS ON THE FINANCIAL STATEMENTS OF THE COUNTY ASSEMBLY OF KITUI STAFF CAR/MORTGAGE LOAN SCHEME

Report of the Auditor-General on the Financial Statements of the County Assembly of Kitui Staff Car and Mortgage Loan Scheme for the year ended 30<sup>th</sup> June, 2017.

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

#### REPORT ON THE COUNTY GOVERNMENTS BUDGET IMPLEMENTATION REVIEW FOR FY 2017/2018

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 27<sup>th</sup> March 2019-

Report of the Standing Committee on Finance and Budget on the Annual Report of the County Governments Budget Implementation Review for financial year 207/2018.

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

#### REPORT ON THE COUNTY PLANNING (ROADS PAVEMENTS AND PARKING BAYS) BILL

**Sen. (Eng.) Hargura:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 27<sup>th</sup> March 2019-

Report of the Standing Committee on Roads and Transportation on its consideration of the County Planning (Roads Pavements and Parking Bays) Bill (Senate Bill No. 18 of 2018).

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I had raised an issue earlier on regarding the Controller of Budget with respect to the Report that the Chairperson of the Standing Committee on Finance and Budget has just laid. I was advised to raise the issue now as he lays that Report.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who advised you?

**Sen. Sakaja:** It was the Speaker sitting on the Chair.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It does not matter where the Speaker is; the Speaker is always the Speaker. He can issue orders anywhere.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, he certainly did not advise me on email or *Whatsapp*. However, it is a very important issue and I would wish that Senators listen to it. We are trying to do oversight, but the oversight we are doing is like a pathologist; on historical basis. It adds no value.

The leadership of this House, at a meeting I was at, agreed that on top of what we normally get as audit reports - and right now I am looking at the Nairobi County Audit Report 2017/2018 of the current Governor, Gov. Mike Sonko - the Controller of Budget will be sending to every Senator elected from a geographical constituency called a county--- For instance, the Senator for Tharaka-Nithi will receive a monthly Exchequer release report of how much money has been sent to Tharaka-Nithi and for what.

In fact, the Controller of Budget requested that we all give our email addresses, so that we can have real-time accountability and the Senator can be informed on what is happening in his county, instead of doing post-mortem years later. Up to date, that has not been agreed upon. Given that the Chair has tabled an annual report, we are asking: Where is the monthly Exchequer release report that is supposed to be sent to every Senator representing a county?

It is extremely crucial, and if others are not interested in it, I am very interested in receiving that every month for Nairobi County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is an important point. Chair, you have noted the concerns of Sen. Sakaja. You need to follow it up with the Commission for Revenue Allocation (CRA)---

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, this matter was discussed when the leadership was meeting in Windsor Hotel. The Controller of Budget said that she sends monthly reports on Exchequer releases to counties and we challenged her because none of us is actually receiving it. So, it is in the report of the leadership that is now before the Senate Business Committee (SBC), which we are going through.

In fact, what we need to do now is to quickly get all the emails of the Senators and make a communication to the Controller of Budget, so that arising from what she said in that meeting and what we decided, she can now be requested to send that information.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): To quicken issues, why do you not get the contacts of all the Senators, and on the behalf of this House as the Chairperson of the Committee, liaise with CRA and ask them to start honouring that agreement with immediate effect?

**Sen. (Eng.) Mahamud:** Correction; it is the Controller of Budget. I can do that, but official communication between Senate and the Controller of Budget should be through the Clerk. In fact, when I was going there I was getting---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, but it could also be a directive that your Committee gets seized of the matter, instead of waiting for letters.

**Sen. (Eng.) Mahamud:** I will do that.

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I want to inform the good Chair that this is a matter I have followed up. The Clerk of the Senate responded and informed me that they have indeed sent all the contact details of all Senators to the Controller of Budget.

Mr. Deputy Speaker, Sir, it will be in order for you to direct that the Chairperson follows up directly as he plays oversight role with the Controller of Budget instead of trying to collect another round of email addresses and delaying it. She has all our email addresses. Why is she not giving us the Exchequer release reports?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thought that is exactly what I directed the Chairperson to do because it is an issue now within your Committee. Please, follow up on behalf of the House and get in touch with the Controller of Budget (COB).

Sen. Sakaja, would you be interested in a response from the Chairperson in a weeks' time of the progress made?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I would be very interested.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, so ordered.

**Sen. Ochillo-Ayacko:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order, Senator for Migori County?

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, just to request you to expand on your directive; I heard Sen. Sakaja say that each Member elected in a county should be given the most recent disbursement. I want to request that if you can make the information available on disbursements nationally, so that I am not just restricted to information regarding Migori County. I would like to know everything about everywhere because I oversight every county. I do not just want to remain a Migori Senator, but a national Senator.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir. Just to ride on what Sen. Sakaja has said because I heard him insisting that it should be through email. I know there are some colleagues who are not comfortable with even *WhatsApp*. So, I request that you expand your directive so that hard copies can be provided for, because not all of us are good with technology.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Nyamunga?

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, I recognize the fact that there are some Senators who are elected in their counties. However, we are also representatives of Kenyans. So, we cannot narrow it down that only the elected 47 Senators should get the report. It should be made available to all of us, so that we can look at it nationally because we represent everybody in this country.

**The Deputy Speaker** (Sen. (Prof) Kindiki): This intervention is becoming a motion for debate. So, unless you have something extremely new and novel, I urge you to restrain yourself so that we make progress.

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

What is it, hon. Senator for Kakamega County?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I want to believe that whatever I am going to say is novel.

I want to comment on what my good Sen. Nyamunga, has said. Yes, we have nominated Senators who represent the country. However, the Controller of Budget deals with 47 counties. So, how I wish the Controller of Budget just deals with the 47 Senators. As heads of delegations, we shall be able to share with our colleagues in our respective delegations. I think it is fair enough if she deals with heads of delegations and then we share with our colleagues in our respective delegation because this is a matter that affects counties.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir. I want you to rule Sen. Malalah out of order because that is public office which deals with public funds.

Secondly, I support Senator for Migori County because when you get everything then you have comparison for parity. How is it that some other counties get and others do not? That information is very important for everybody.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I believe we do have a solution to that problem in this House because we rely on technology. We have iPads in front of us. So, I would involve the Clerk's office; once they receive this information to share it here so that any Senator who wants, can get into our intranet and get that information. They could also send it to individual Senators.

*(Applause)*

I stand here and I bear witness that the Controller of Budget has already instructed the regional controller of budget officers to communicate with the elected Senators of counties. The Controller of Budget has communicated to me. I have received certain information from her---

In addition to that information being send to individual Senators, I suggest that it be also shared with the Clerk, so that it can be posted in our intranet and then each Senator can get it. If it is Migori County, he will compare it with Narok County.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Hon. Senators, we are complicating a fairly straight forward issue. This matter was discussed as the Chairperson has said, at the leadership level and conversed with the Controller of Budget. This is meant to deal with a certain mischief whereby hon. Senators are not able to track disbursements in their counties. They cannot know when their county has not received money or when they have, how much and for what purpose. By getting that information, Hon. Senators will be able to exercise their oversight role under Article 96 (3) of the Constitution.

The logistics of asking and getting this information was agreed that every county - because the COB deals with county governments - has an elected Senator and that Senator for purposes of the Constitution and the Standing Orders is the head of

delegation. Therefore, it is assumed that, that information ought to be conveyed to the elected Senator who is at liberty to share it with Members of his delegation.

I am of the view that this is one of the matters which by influence and analogy falls within Article 123 of the Constitution as a matter concerning counties. The procedure for voting on matters concerning counties under Article 123 should, in my view, be the same procedure for treating matters concerning counties.

I, therefore, direct the Chairperson of the Committee on Finance and Budget to follow up on behalf of this House with the Controller of Budget with immediate effect, express in formal communication the reservations and observations that Senators have made about this information not being available and request the Controller of Budget to be providing that information with effect from 1<sup>st</sup> April 2019 without fail. Therefore, Chairperson, I further direct that you report progress of these efforts in two weeks' time. So, ordered.

Next Order.

Sen. Sakaja was your Statement dispensed with?

**Sen. Sakaja:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker (Sen. (Prof.) Kindiki):** Is that the only Statement?

Sen. Ochillo-Ayacko, proceed. We are not doing well on time, so make it brief and quick.

## STATEMENTS

### MINING ACTIVITIES IN MIGORI COUNTY

**Sen. Ochillo- Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to ask the Chairperson of the Standing Committee on Lands, Environment and Natural Resources, under Standing Orders 48(1), to respond to matters arising in Migori County, specifically Nyatike Constituency regarding mining.

(1) In the response that I am requesting, I want the Chairperson of the Committee to provide us with the names and addresses of the directors of companies that are licensed to carry out mining activities in Migori County, particularly in Nyatike Constituency.

(2) State the number of accidents, disasters and fatal emergencies that have occurred in the mines in the last five years, the persons involved in these accidents or disasters and whether the victims of these accidents or disasters have received any compensation.

(3) Explain the measures that have been put in place to safeguard the public, or the miners against accidents, disasters, emergencies and any other thing that may threaten their well-being.

The background of this Statement is that there are so many accidents that are going on and there is run-away poverty. There are so many companies, or people who were involved in mining, but there is no proper monitoring or trying to follow up on the identities of these people. The specific mining areas are Macaldar, Kolwal, Nyatwaro, Mikei and Masara.

**Sen. Prengi:** Thank you, Mr. Deputy Speaker, Sir. I would like to ask the Senator to give us two weeks to respond to his Statement.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Under the prevailing Standing Orders, you are supposed to discuss that with the Senator and agree accordingly. I direct that you apply Standing Orders 48(3) b.

It is so ordered.

Next Statement by Sen. Mary Seneta. She is not in the House. The statement is therefore, deferred.

STATUS OF EMALI HOLDING GROUND IN  
KAJIADO COUNTY

*(Statement deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Statement by Sen. (Canon) Waqo.

INCREASED INSECURITY IN MARSABIT COUNTY

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity.

Pursuant to Standing Orders (48)1, I rise to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations, on the increased insecurity in Marsabit County, the most recent occurrences being in Garr- rare area. In the Statement, the Committee should:-

(1) Explain the circumstances under which innocent people have been killed or injured in a recent attack in Garr- rare area in Marsabit County.

(2) Enumerate the number of people killed and injured during the recent attack in the area and other preceding attacks between the year 2017 to date.

(3) Enumerate the number of livestock that has been lost and property that has been destroyed as a result of the attacks and indicate whether there is any form of compensation that will be offered to the victims who have suffered these losses.

(4) State the urgent measures being taken by the national Government and county government to put an end to the increased insecurity in Marsabit County.

(5) State the actions that are being taken to bring the perpetrators to book.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, apply Standing Orders 48(3) b.

It is so, ordered.

Next is the request for Statement by Sen. Fatuma Dullo.

**Sen. Dullo:** Thank you, Mr Deputy Speaker, Sir. I can see Sen. Sakaja looking at me with some---

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



## INCREASED INSECURITY IN ISIOLO COUNTY

**Sen. Dullo:** Mr. Deputy Speaker, Sir, pursuant to Standing Order 47(1), I rise to make a Statement on the escalating insecurity situation in Isiolo County and state that that---

**Sen. Sakaja:** Point of Order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja? You are still looking at the Senator for Isiolo County?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I would request that you ask her to complete her statement, "that I am looking at her with" because---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You were looking at each other because she says she could see----

*(Laughter)*

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, hon. Members might be misled. It is important to clear the air; was I looking at her with excitement, admiration or concern?

**Sen. Dullo:** He was looking at----

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Dullo, are you complaining about the looking?

**Sen. Dullo:** No, I am not complaining, Mr. Deputy Speaker, Sir. However, I am agreeing with him that he knows what I am going to say.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Dullo and Sen. Sakaja, you can transact that business elsewhere.

Proceed Sen. Dullo.

*(Laughter)*

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. Isiolo County has over the years witnessed increased cases of inter-communal dispute and violence over boundaries and grazing areas.

The areas mostly affected are the border areas of Isiolo South, Lagdera Constituency, Isiolo County, Marsabit County and Samburu County.

The disputes are as a result of limited resources, including pasture and water and they have escalated in the recent months. Mid last year, the residents of Eldera were forced to vacate their homes owing to attacks from bandits.

Mr. Deputy Speaker, Sir, I brought a Statement to this effect to this House last year, and the Committee, where the Vice Chairperson sits, who was then in the House, promised to visit the area. However, up to now, that has not happened. I would like the Vice Chairperson to give a comment on that.

Several homes were burnt down, including schools and dispensaries, disrupting lives of over 200 families and forcing the displaced people into camps in Garbatulla.

To date, the Government has not made any efforts in resettling many of these families and a few families that had returned to those homes have been forced back to the camps in Garbatulla due to fresh violence as we have in the media. As a result of the on-

going violence, Modogashe Town is in a standstill even today. Several houses been burnt by residents from Lagdera and several people were killed.

The attackers have destroyed the only generator that is used to pump water to the locals, thereby depriving several families of the precious commodity. Security officers who were on site in Modogashe, failed to respond to these atrocities that were committed on the innocent people of Modogashe. The situation looks bad and more needs to be done by the Government, if we are to find a long lasting solution to this dispute.

One week ago, four innocent lives were lost in Merti Sub-County as a result of an attack by bandits believed to be from Samburu County. Yesterday, several goats belonging to Isiolo people, were also taken away by the same bandits believed to be from Lagdera Constituency.

This is not the first attack in Isiolo County by our brothers from the neighbouring counties. These animals have not been recovered to date, neither have the people been compensated despite the Government's promise before election that some families would be compensated. These attacks have continued to occur despite the presence of security personnel in the area, including the Anti-Stock Theft Unit who are aware of these occurrences.

Despite the willingness of the people of Isiolo to share their grazing land with their neighbours in the spirit of good neighbourliness, these same neighbours have turned against the locals and have resorted to killing the locals, destroying their homes, taking away their animals and rendering them poor.

Further to this, the Government took livestock from communities during the last drought under the livestock off-take programme. This is very serious, but the Government is yet to compensate the families for the livestock---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have two minutes to complete.

**Sen. Dullo:** Mr. Deputy Speaker Sir, they have not been compensated for the animals taken up to date. The Government has not resolved the issues of the boundary dispute between Isiolo County and Meru County. However, that needs to be done as quickly as possible.

Finally, I would request the security personnel to be dispatched to affected areas immediately in order to restore security in the areas and recover stolen animals, resettle the displaced, pay the families their dues from the livestock off take programme and design appropriate structures of resolving the disputes, once and for all. I would request the Vice Chairperson of the Committee on National Security and Foreign Relations to comment on that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! That is not your mandate.

Hon. Senators, we are not doing very well. We want to give as many Senators as possible a chance to request for Statements. We have already overshot our time.

The new Standing Orders actually should not allow some of the things that we are allowing. We can allow when there is time, but today is not one of those days.

*(Sen. Sakaja stood up in his place)*

Are you on a point of order, Sen. Sakaja?

**Sen. Sakaja:** Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope it is not about the looks.

**Sen. Sakaja:** No, Mr. Deputy Speaker, Sir. It is just to inform the House that we are taking this matter seriously. Between now and Monday, I am going with the Committee to that area and I would also like to---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which area are you going to?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, we are going to Isiolo County. Since it is in the same provincial jurisdiction in the terms of the security forces, we would also want to invite Sen. (Rev.) Waqo based on what she has asked. The question she has asked on enumerating numbers we will bring in two weeks. However, it will be good for her to also come and ask the provincial police command and *et cetera*, the questions she has raised.

I wish to inform the House my Committee takes these issues very seriously and works extremely hard.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Sen. Sakaja.

*(Sen. Linturi stood up in his place)*

Are you on a point of order, Sen. Mithika Linturi?

**Sen. Linturi:** Thank you, Mr. Deputy Speaker, Sir, for indulging me on this. My good neighbour Sen. Dullo has raised a number of issues that are of concern to our two counties. We would like that this good neighbourliness is extended for the mutual benefit of the two counties. Just last week we buried five people that were killed in a place called Digashuru in Igembe North neighbouring Isiolo.

There is quite some bit of unease along that particular area. However, as far as I am concerned, I have not heard of a situation whereby we have differed in terms of boundaries between Isiolo and Meru. If the Chairperson finds it necessary, I would wish to request that when the Committee on National Security and Foreign Relations is visiting this place, to consider doing a tour of the border between Isiolo and Meru where these five people were killed, so that we can ease tension. Probably, by that time, we will have had an opportunity as leaders to talk to our people and bring about cohesion so that people can understand the need to co-exist as good neighbours other than quarrelling every time over things that can be discussed and sorted out through dialogue.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sakaja, is your Committee able to indulge the request from Sen. Linturi?

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, because we are using advanced modes of transport, if Sen. Linturi accompanies us - I will confirm to him whether the visit will be on Saturday or Monday. We will be able to a detour. It is not even a detour, it is substantive.

We will rearrange our programme, we will start with the Isiolo meeting at the border of Isiolo and Garissa, the Modogashe issues. On our way back, we shall go to the boundary of Isiolo and Meru County.

I am sure that Sen. Mithika shall provide good lunch to encourage the---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! I direct that the Committee in examining the issues of insecurity in Modogashe, takes that opportunity also to visit the affected areas at the border of Meru County and Isiolo County. The Senator for Isiolo, Sen. Dullo and the Senator for Meru, Sen. Linturi should provide the Committee with the necessary co-operation.

It is so ordered. I am afraid we have to leave it there.

Senator for Migori, you had one more Statement request? Briefly you have the Floor.

INSECURITY CAUSED BY THE SANGWENYA  
GANG IN MIGORI

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker Sir. I rise to seek a Statement from the Chairperson of the Committee on National Security and Foreign Relations regarding a notorious gang in Migori County known as *Sangwenya*.

This gang has been on rampage and has become full of impunity as recently as 1<sup>st</sup> of October they went and marooned the County Assembly of Migori and mercilessly attacked the distinguished Members of the County Assembly (MCAs). This gang last year was on rampage and has been attacking people. These matters have been reported to Migori Police Station. These gangs are being transported by vehicles that are owned by the County Government of Migori.

The members of the public in Migori County are very angry and to avoid a situation where we might be called upon to take the law into our hands and deal decisively with these gangs, I am requesting the Chairperson of the Committee to:-

(a) Explain under what circumstances the gang has been attacking members of the public in the county, including MCAs, and why they are being ferried by vehicles that belong to the County Executive of Migori;

(b) Explain why the police have not arrested or acted on reports that have been given to them; and

(c) Explain the measures that the police are putting in place to prevent a full out war that might create pandemonium and mayhem in Migori County.

It is a county where girls disappear and get killed by some people. So it is very important that law and order is maintained.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Ochillo-Ayacko, what is the difference between mayhem and pandemonium?

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, there is a little difference between the terms 'mayhem' and 'pandemonium' because they involve many people.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But I thought the consequence is the same.

**Sen. Ochillo-Ayacko:** The consequence is not the same. One is more ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The consequence of mayhem is the same as that of pandemonium.

**Sen. Ochillo-Ayacko:** Pandemonium is more grievous than mayhem. However, both are happening in Migori County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Hon. Chairperson, take note and deal accordingly.

Sen. (Dr.) Milgo.

BAN OF NON-WOVEN POLYPROPYLENE CARRIER  
BAGS BY NEMA

**Sen. (Dr.) Milgo:** Thank you Mr. Deputy Speaker, Sir, for giving me this chance to ask a question on the recent move by the National Environment Management Authority (NEMA) to ban the non-woven polypropylene carrier bags.

Mr. Deputy Speaker, Sir, pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Land, Environment and Natural Resources on the necessary move by the (NEMA) to ban the manufacture, importation, supply and use of non-woven polypropylene carrier bags which are synthetic resin-based and are suitable alternative to the plastic bags.

In the Statement, the Committee should-

(1) State the reasons and circumstances that prompted the NEMA to ban the manufacture, importation, supply and use of non-woven polypropylene carrier bags.

(2) State whether the NEMA is offering alternative options to the use of non-woven polypropylene carrier bags considering that the usage of plastic bags had already been banned.

(3) State the reasons why drinks are still being bottled in plastic containers yet plastic has been reported to have negative impact on the environment.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Sen. (Dr.) Milgo. Finally, we will have Sen. Olekina.

PROTECTION OF CUSTOMER DATA  
BY TELECOMMUNICATION COMPANIES

**Sen. Olekina:** Mr. Deputy Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a statement from the Standing Committee on Information, Communication and Technology on protection of customer data by telecommunication corporations or companies. In the Statement, the Committee should-

(1) Explain the regulatory framework for financial transactions, including loans and promotions transacted through mobile telecommunication companies.

(2) Explain whether the interest charged on loans and other credit facilities advanced to customers by or through mobile telecommunication companies adhere to the law on interest capping.

(3) Explain measures put in place to ensure lending services by telecommunication companies do not bring down the economy in case companies collapse or shut down.

(4) State whether financial services being offered by the telecommunication companies can be delinked from those companies and registered as financial companies.

(5) Explain measures put in place to protect customer data obtained by mobile telecommunication companies and other companies using the mobile platform for financial promotions from falling in the hands of criminal entities or being used for identity theft.

(6) State whether mobile telecommunication companies have Unstructured Supplementary Service Data (USSD) code that customers can use to check for services registered under their mobile phones and national identification numbers.

(7) State whether mobile telecommunication companies can set up a mechanism to alert mobile phone users when their national identification numbers are used to register a new phone number.

(8) State whether mobile telecommunication companies and third parties such as banks have a safe data sharing platform between each other for the purpose of protecting the customer, for example, the reversal of erroneous financial transactions.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I stand to congratulate my friend, Sen. Olekina, for stating the importance of us coming up with a framework to regulate M-pesa and mobile banking industry in our country.

We have witnessed situations where people forge national identification cards to register in other people's names. It is important for this House to be furnished with information on what is being undertaken to ensure that customers are well protected.

Secondly, we should ask ourselves whether these are telecommunications companies or financial institutions. We would like to know whether Safaricom is a telecommunication company or a bank. Those two functions should be separated so that when need arises, then Safaricom should operate as a telecommunication company and register M-pesa as a bank. Airtel Kenya should also operate as a telecommunication company. Airtel Money be registered as a bank, just like Family Bank and Kenya Commercial Bank.

Nowadays, the telecommunication companies have ventured into the financial market too much to an extent that they have forgotten their core mandate of providing telecommunication platform to the people of this country. They are now getting to businesses of lending people loans. We have mobile loan apps like *Fuliza*, *Dandika*, *Banjuka* and many others.

It is important for us legislators and come up with a framework to ensure that we define the role of the telecommunication companies.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Sen. Malalah.

Hon. Senators, the next Order is a procedural Motion. We will make it as brief as possible. I request that we dispose of it and then move on to the Committee of the Whole.

**Sen. Olekina:** On a point of order, Mr. Deputy Speaker, Sir. This is a weighty matter that I have requested under Standing Order No.48(1), but I have not heard you committing it to a committee.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is automatically committed by provision of Standing Order No.48(3). For the avoidance of doubt, this is a matter whose subject matter belongs to the Committee on Information, Communication and Technology. That committee might want to involve any other Senator or committee, but it takes leadership. It is so ordered.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, we have always relied on you for good guidance and we have always benefited from your wisdom.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Until now?

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Until there was a little sleep.

Mr. Deputy Speaker, Sir, we attempted to tackle this matter in the previous Senate through the Committee on Information, Communication and Technology, but we had a lot of bottlenecks. This is because this matter concerning Safaricom which is a monopoly---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hold on, Sen. Mutula Kilonzo Jnr. Sen. Olekina, please, approach the Chair.

*(Sen. Olekina approached the Chair)*

Sen. Mutula Kilonzo Jnr., you may continue.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I was going to suggest that you put a timeline to it. There is an element which I strongly feel should go to Sen. Sakaja's Committee on Security, Defence and Foreign Relations. The money that Safaricom holds concerns the security of this nation. It is in billions of shillings.

There is also a matter of legal issues concerning the regulations where the money is kept. That has been done ambiguously and opaquely that I think the Committee led by Sen. Cherargei should also get involved, so that we help the country. This is because the monopoly of Safaricom is a danger to our national security.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. At least you have given me a chance to talk about this Statement by my brother, the Senator for Narok County.

I would like to ride on what the Senator for Makueni has said. He forgot to add that there is need of involving a committee where he is a Member. That is the Committee on Finance and Budget.

The issue of prudential controls and issues relating to matters of banking fall squarely within the jurisdiction of the domain of the Committee on Finance and Budget. If all of us work in coordination, we will be in a position to come up with a very good resolute solution to this serious problem.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I am very concerned that a number of Senators, I think two of them; do not seem to be acquainted with our Standing Orders. You summoned Sen. Olekina and I do not know if you saw him pass right in front of Sen. Mutula Kilonzo Jnr. when Sen. Mutula Kilonzo Jnr. was speaking.

*(Sen. Cheruiyot entered the Chambers)*

Sen. Cheruiyot wants to do the same thing right now.

*(Sen. Cherargei walked out of the Chamber)*

Sen. Cherargei has just passed right in front and between the line of your sight and that of Sen. (Dr.) Kabaka. Allow me to acquaint the Senators who may not be aware. Standing Order No. 112(2) says that;-

‘No Senator shall pass between the Chair and any Senator who is speaking or between the Chair and the Table except in so far as it is necessary for the purpose of the administration of Oath or Affirmation of Office.’

Please, keep reminding the Hon. Members.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, be acquainted accordingly because I am not aware of any administration of oath that was taking place because that is the exception. Let us observe our Standing Orders.

**Sen. Mwaura:** Thank you, Mr. Deputy Speaker, Sir. I want to make my remarks with regard to the Statement about Safaricom and the other institutions that are offering financial services in a very oligopolistic manner. I have heard Sen. Malalah talk about *fululiza* yet it is *fuliza*. *Fululiza* means that you follow in quick succession. However, it is *fuliza* which some people are comparing with a shylock business.

We need to agree that financial institutions and the way in which we transact business has changed because of interconnectivity. There was a thinking that it is an issue for the Committee on Finance and Budget, but this matter squarely falls on the Committee on Information, Technology and Communication.

As the Committee superintends on this issue, they may want to look at our regulatory framework with regards to the new ways of doing and transacting business other than looking at it from the traditional way of saying that this is a bank and this is a mobile phone company. I say so because Mpesa is an innovation that originated from our country. Therefore, we may also want to show other jurisdictions how such entities would function in a modern economy.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We leave this matter at that point. It is an important matter. I, therefore, reiterate the directive that I had given that the Committee on Information, Technology and Communication takes leadership.

I further direct that Committee is at liberty to apply Standing Order No. 216 and sit jointly with the Committee on Finance and Budget.

Next Order.

## PROCEDURAL MOTION

### CONSIDERATION OF NATIONAL ASSEMBLY AMENDMENTS TO THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2017)

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I wish to move this Procedural Motion:-



THAT, pursuant to Standing Order 159, the amendments of the National Assembly to the County Governments (Amendment) Bill (Senate Bills No.11 of 2017) be now considered.

I would request---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What are the amendments about?

**Sen. Dullo**: Mr. Deputy Speaker, Sir, allow me to consult. I have not looked at the amendments because it is going to come up.

*(Sen. Dullo consulted the Clerks-at-the-Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Dullo.

**Sen. Dullo**: Mr. Deputy Speaker, Sir, there are several amendments that were introduced by the National Assembly on Clauses 8, 11 and 15.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Have they been considered by the relevant Committees?

**Sen. Dullo**: Not yet, Mr. Deputy Speaker, Sir. I wish to be seconded by Sen. Malalah.

**Sen. Malalah**: Mr. Deputy Speaker, Sir, since it is a Procedural Motion, I second though I have not read the amendments.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Cherargei?

**Sen. Cherargei**: Mr. Deputy Speaker, Sir, did you note the content of the speech of Sen. Malalah? He said that he is seconding that which he has not read and that he is only seconding because it is a Procedural Motion and not because he agrees or disagrees with it.

Should that be left in the HANSARD of this House?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator for Kericho County and the leader of the Kericho delegation, a seconder does not have to give reasons for seconding. He does not even need to speak. They can indicate secondment by bowing and that will be adequate.

For that reason, it means that the merits of secondment do not lie in the reasons advanced. It is in the affirmation of the Motion. Therefore, I find Sen. Malalah completely in order.

Is there debate? I do not see any requests.

*(Question proposed)*

Sen. (Dr.) Kabaka and Sen. Cherargei are not in the Chamber. We will hear from Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.**: Thank you, Mr. Deputy Speaker, Sir. Sen. Dullo would have helped us in this debate because there are some critical amendments that have been passed by the National Assembly. It would have been important to inform the Senators whether these amendments are agreeable.

In the amendment of Clause 8, the word 'county gazette' has been deleted. I am aware that the Senators have proposed a law that would put a county gazette in place, including a county printer. The name county gazette appears in the County Governments Act and in our review of the publication of Bills; the word 'county gazette' appears to have been sanctioned even if it is not directly.

Justice Mabeya sitting in the High Court in Nakuru ruled that a governor cannot dismiss an executive. Many counties, including the County of Machakos, do not have the 10 County Executive Committee Members (CECs) and Nyeri County had three acting CECs when Gachagua was alive. A very serious amendment has been made in Clause 11. That is the reason as to why this should have been spoken to. It states that a governor

'(a) may dismiss a county executive member, if the governor considers appropriate and shall give reasons for dismissal.'

This is something that is bound to be very controversial. It is helpful for those who are seated here and would want to join the Council of Governors as governors in the next term.

The other one is the county secretary. Sen. Cheruiyot has raised concern on the qualifications of a county secretary, dismissal of county secretaries and the position of a county secretary in the county executive committee. The amendment in Clause 15(b)(2F) speaks to the fact that. It says:-

"The county secretary shall be an ex officio member of the County Executive Committee with no voting rights."

These are serious issues that must be considered. This has become the county executive number 11 without voting rights. What is the legal implication of having the county secretary who is in charge of public service also sitting in an equal capacity as another county executive? It is a serious issue. We must consider whether this amendment is not promoting the county secretary to a super county secretary. This is because he holds another portfolio not held by any other person. Other than managing the county executive minutes, he becomes the head of public service and sits in equal rank.

This person is more senior than a deputy governor. A deputy governor has no role, but this person has been assigned a very huge role. Is that acceptable? Those are some of the issues that I thought may be debated. However, more importantly, the governor cannot remove this person. The grounds for removing this person have become like the ones for impeaching a governor, including violation of the Constitution. How do we elevate a county executive committee member, who is an *ex-officio*, to be removed for those reasons in the same manner as the removal of a governor under Article 181?

That is why Sen. Dullo should have explained this Motion for purposes of debate. Even if we leave it to the Committee, it becomes an important issue because there are serious concerns about the roles of county secretaries in our counties.

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, it is quite interesting for the Deputy Majority Leader, the distinguished lawyer and friend, Sen. Fatuma Dullo, Senator for Isiolo County to give us a Motion without elucidating the contents of the amendments. The fact that this has occasioned our concern is really important.

If I could rely on what Sen. Mutula Kilonzo Jnr. has just told us, these are weighty matters. The Committee charged with this mandate would be of very good use to

inform us the merits and demerits of the various clauses. However, there is a pre-occupation with the idea that we can replicate all the instruments of governance of the national administration to the county administration.

I beg to differ because of the difference in scope and size. Devolution does not necessarily mean decentralization. We do need to copy paste the institutions in the national Government to the 47 counties because of the size, sheer mandate and the running costs. This is a unitary system and not a federal system.

Mr. Deputy Speaker, Sir, in the same vein, there seems to be a serious breach of procedures, laws and provisions of various statutory instruments with regard to how counties are superintending their affairs. Of concern is where Members of County Assembly (MCAs) are de-whipped from Committees if they do not agree with the governors.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Stick to the amendments on the report of the National Assembly.

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, I will come to that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have two minutes.

**Sen. Mwaura:** Thank you for your guidance. I have received several complaints on this with regards to how, for example, County Executive Committee (CEC) Members are removed from office. A lot of underhand tactics are used in terms of intimidation and use of violence. This may not be officially documented because of the situation which we find ourselves in. However, I hear a genuine concern and cry from people who would genuinely want to provide oversight of county governments who feel that they are not properly protected. This is because following the rule of law in county governments is almost becoming an anathema. This is not just a sweeping statement. There are very clear examples of the same.

It is incumbent upon this House, therefore, to look at these issues. We need to ensure that we strengthen the roles of the deputy governor so that they are not just flower boys and girls in various county governments. However, also ensure that our imagination is not to the extent that we are only replicating what we think is supposed to be in the national Government to the county governments. This is because there are nuances that led to the various establishments of such institutions.

Mr. Deputy Speaker, Sir, this is a good discussion and deliberation that we must have. I imagine that this should go to the mediation, if at all, because our colleagues in the National Assembly are very much pre-occupied with the entitlement that the national Government can only do so much and county governments are kind of inferior. These are some of the things to be conversed in the Committee and plenary.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I see no further requests. I will propose the question. However, please, note that we are not voting on the amendments. We are voting that the report from the National Assembly be considered. Therefore, those amendments will go to the Committee, processed in the normal way and brought back for voting which would determine whether or not we accept them.

The Motion reads that the report of the National Assembly be now considered which is not a matter concerning counties.

*(Question put and agreed to)*

**Sen. Mutula Kilonzo Jnr.** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.!  
You cannot be on a point of order when the Speaker is on his feet.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, it was simultaneous, as you sat.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.!

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I have a question.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you on a point of order?

**Sen. Mutula Kilonzo Jnr.:** Yes, Mr. Deputy Speaker, Sir.

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, my concern is one: what is it that does not concern counties? Is it the procedural Motion, or the contents? I am not challenging your ruling.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is the procedural Motion whether or not to consider the report of the National Assembly. However, the content concerns counties. This is a Bill. Therefore, all Bills automatically are matters that concerns counties.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, it is for clarity. I have known you to be very clear in your---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I am still are and will continue being.

*(Laughter)*

Sen. Mutula Kilonzo Jnr., when lawyers want to insult a judge, they start by saying “with great respect” then you will be shocked by what follows.  
Next Order!

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Nyamunga) in the Chair]*

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

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are proceeding to the County Early Childhood Education Bill (Senate Bills No.26 of 2018) in the Committee of the Whole.

Clauses 3-5

*(Question, that Clauses 3-5 be part of the Bill, proposed)*

Division will be at the end.

*Clause 6*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:  
THAT, Clause 6 of the Bill be amended in paragraph (d) by deleting the words “that are secular in nature and that promote culture” appearing immediately after the words “curriculum programs” and substituting therefor the words “that promote positive culture”.

The rationale is that the term “secular” is inappropriate to be used in this clause hence the amendment seeks to replace it with a more appropriate term.

*(Question of the amendment proposed)*

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

*Clause 7-18*

*(Question, that Clauses 7-18 be part of the Bill, proposed)*

Division will be at the end.

*Clause 19*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:  
THAT, Clause 19 be amended by-

- (a) deleting sub-clause (3) and substituting therefore the following new sub-clause-  
(3)The compound in which an education centre is situated shall not be less than one acre in measurement.
- (b) deleting sub-clause (4).

*(Question of the amendment proposed)*

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

*Clause 20-29*

*(Question, that Clauses 20-29 be part of the Bill, proposed)*

Division will be at the end.

*Clause 30*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 30 of the Bill be amended-

- (a) in sub-clause 1 by inserting the words “living with disability” immediately after the words “one person” appearing in paragraph (e);
- (b) in sub-clause (3) by deleting the words “and shall report to the County Education Board in the performance of his or her functions under this Act” appearing immediately after the words “board of management”; and
- (c) by inserting the following new sub-clause immediately after sub-clause (3) –

(3A) The board of management shall report to the County Education Board on the performance of its functions under this Act.

*(Question of the amendment proposed)*

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

*Clauses 31-37*

*(Question, that Clauses 31-37 be part of the Bill, proposed)*

Division will be at the end.

*Clause 38*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 38 of the Bill be amended in sub-clause (1) by deleting the word “training” appearing immediately after the words “Recruitment and” in paragraph (a) and substituting therefor the words “professional development”.

*(Question of the amendment proposed)*

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

*Clauses 39-40*

*(Question, that Clauses 39-40 be part of the Bill, proposed)*

Division will be at the end.

*Clause 41*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 41 be amended in sub-clause (1) by deleting the word “three” appearing immediately after the words “the age of” and substituting therefor the word “four”.

*(Question of the amendment proposed)*

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

*Clauses 42-48*

*(Question, that Clauses 42-48 be part of the Bill, proposed)*

Division will be at the end.

*Clause 49*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 49 be amended by inserting the words “and the County Education Boards” at the end of the clause.

*(Question of the amendment proposed)*

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

*Clauses 50-62*

*(Question, that Clauses 50-62 be part of the Bill, proposed)*

Division will be at the end.

*Clause 63*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson, I beg to move:-  
THAT, Clause 63 be amended-  
(a) in sub-clause (1) by –

- (i) inserting the words “of either gender” immediately after the words “two persons” in paragraph (a);
- (ii) deleting paragraph (b) and inserting therefore the following new paragraph –
  - (b) the county executive committee member responsible for education or a representative nominated by the county executive member in writing;
- (iii) by inserting the following new paragraph immediately after paragraph (b) –
  - (ba) one public officer in the department responsible for health, nominated by the respective county executive committee member responsible for matters relating to health;
  - (b) by inserting the following sub-clauses immediately after sub-clause (1)-
    - (1A) The appointments under subsections (1)(a) and (1)(d) shall be for a term of three years renewable for one further term.
    - (1B) The Committee shall, at its first meeting elect a Chairperson.
    - (C) The County executive committee member responsible for education shall establish a secretariat to support the Committee.

*(Question of the amendment proposed)*

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

*Clause 64-66*

*(Question, that Clauses 64-66 be part of the Bill, proposed)*

Division will be at the end.

*Clause 67*

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Chairperson, I beg to move-

THAT, Clause 67 of the Bill be amended by inserting the following new sub-clause immediately after 1 –

1(A) The Cabinet Secretary (CS) shall in consultation with the Teachers Service Commission and the Council of Governors (CoG) prescribe minimum standards relating to schemes of service for early childhood teachers within one year of the enactment of this Act.

*(Question of the amendment proposed)*

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



*Clauses 68-69*

*(Question, that Clauses 68-69 be part of the Bill, proposed)*

Division will be at the end.

*New Clause 66A*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson. I beg to move:-  
THAT, the Bill be amended by inserting the following New Clause 66A immediately after clause 66.

Qualified persons. 66A. A person employed as an early childhood teacher at the commencement of this Act and does not possess the minimum requirements as stated under section 36(1) shall continue to qualify for employment as an early childhood teacher if that person obtains the necessary qualifications within four years of the commencement of this Act.

*(Question of the New Clause 66A proposed)*

*(New Clause 66A read the First Time)*

*(Question, that New Clause 66A be now read a second time, proposed)*

*(Question, that the New Clause 66A be part of the Bill proposed)*

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

*First and Second Schedules, the Title and Clause 2*

*(Question, that the First and Second Schedules, the Title and Clause 2 be part of the Bill, proposed)*

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

*Clause 1*

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson. I beg to move:-

THAT, Clause 1 be amended by deleting the word “County” appearing immediately after the words “cited as the”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end. Hon. Chair, can you move that the Committee reports progress to the House?

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Chairperson. I beg to move that the Committee of the Whole reports progress on its consideration of the County Early Childhood Education Bill (Senate Bills No. 26 of 2018) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **PROGRESS REPORTED**

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

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

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report progress; that the Committee of the Whole is considering the County Early Childhood Education Bill (Senate Bills No. 26 of 2018) and seeks leave to sit again tomorrow.

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Speaker. I beg to move that the House do agree with the Committee of the Whole on the said Report. I request Sen. Olekina to second.

**Sen. Olekina** seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Nyamunga) in the Chair]*

THE PUBLIC PARTICIPATION BILL  
(SENATE BILLS NO. 4 OF 2018)

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are now in the Committee of the Whole to consider The Public Participation Bill (Senate Bills No.4 of 2018).

Let us proceed.

*Clause 3*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 3 of the Bill be amended-

- (a) in the introductory clause by inserting the words “and developmental programmes” immediately after the words “in governance processes”;
- (b) by inserting the following new paragraph immediately after paragraph (f)-
- (g) promote participation by non-state actors in decision-making processes.

*(Question of the amendment proposed)*

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

*Clause 4*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 4 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph-

- (a) that the public, communities and organisations to be affected by a decision shall have a right to be notified, heard and involved in the decision-making process;

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): There is a further amendment by Sen. Were. Sen. Mutula Kilonzo Jnr. is moving the amendment.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, on behalf of Sen. Were, I beg to move:-

THAT, Clause 4 of the Bill be amended—

(a) by numbering the existing clause as sub-clause (1);

(b) in the new sub-clause (1) by deleting the words “taken into consideration in” appearing immediately after the words “views shall be” in paragraph (d) and substituting therefor the words “the basis of”;

(c) by inserting the following new sub-clauses immediately after sub-clause (1)—

(2) In conducting public participation, the responsible authority shall—

(a) allocate sufficient time before the public participation event to create public awareness on the subject matter;

(b) avail the relevant information to the members of the public with respect to the issue under consideration;

(c) engage the relevant stakeholders in such manner as the responsible authority shall consider appropriate;

(d) where the issue under consideration is of a technical nature, avail an independent technical expert to take members of the public through the matter under consideration in detail; and,

(e) put in place a feedback mechanism to enable stakeholders submit their views and to receive feedback on the decisions made by the responsible authority.

(3) Where the issue for public participation relates to a matter that affects the nation generally, the responsible authority shall conduct public participation forums with respect to that matter in at least twenty-four counties.

(4) The responsible authority shall, in determining the counties in which public participation is to be conducted under sub-section (3), ensure that the forums are held in the counties alternately and that the residents in the counties in which the forums are not conducted are carried out through an alternative appropriate method.

*(Question of the further amendment proposed)*

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

*Clause 5*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 5 of the Bill be amended in sub-clause (2)-

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

(c) independent commissions or offices, boards, authorities or any other public body, the respective chief executive officer or secretary to the public body;

(b) in paragraph (f) by deleting the words “County Secretaries” appearing immediately after the words “County Executive” and substituting therefor the words “respective county executive committee member”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): There is a further amendment by Sen. (Dr.) Zani.

Senator, kindly move to the Dispatch Box.

*(Sen. (Dr.) Zani walked to the Dispatch Box)*

**Sen. (Dr.) Zani:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause 2-

2(A) The responsible authorities shall, in developing the guidelines specified under subsection (1), consult with the department in the respective entity.

*(Question of the further amendment proposed)*

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

*Clause 6*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 6 of the Bill be amended in sub-clause (2) by deleting the word “specific” appearing immediately after the word “include” in paragraph (a) and substituting therefor the words “any further”;

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): There is a further amendment proposed by Sen. Were.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, your direction on this matter is critical. I thought that the amendments I was reading on behalf of Sen. Were are the ones in the Order Paper and the further amendments would be read by the Chairperson of the Committee on Legal Affairs and Human Rights.

However, on Clause 6, the Chairperson has read the amendment in the Order Paper. Similarly, on Clause 5, he read the amendment in the Order Paper, yet, you have also given him the opportunity to read the further amendments. Therefore, if I am not needed, I can be excused.

**The Temporary Chairperson** (Sen. Nyamunga): There are two different amendments to the same Clause.

**Sen. Mutula Kilonzo Jnr.:** No, Madam Temporary Chairperson. The amendment to Clause 6 that is in the Order Paper has been read word for word by the Chairperson, Sen. Cherargei. Therefore, I would say that I have no amendment, because the amendment has already been read.

**The Temporary Chairperson** (Sen. Nyamunga): That is okay.

**Sen. Mutula Kilonzo Jnr.:** That is my concern. Similarly, that happened in Clause 5. If we had a further amendment, it would not be the amendment in the Order Paper, because these are the amendments by Sen. Petronilla Were and there are the Committee amendments. That part is confusing.

**The Temporary Chairperson** (Sen. Nyamunga): Senator, all the amendments are in the Order Paper and each person should just take care of their bit.

**Sen. Mutula Kilonzo Jnr.:** When you called Sen. Cherargei on Clause 6, he read the amendment to Clause 6. Then, you have called me on Clause 6 again. That is the problem.

**The Temporary Chairperson** (Sen. Nyamunga): There are two amendments to Clause 5. There is one from the Committee and another from Sen. Petronilla.

**Sen. Mutula Kilonzo Jnr.:** The Chairperson has read the amendment to Clause 5 by Sen. Were, exactly as the Committee amendments. That is the problem I have.

On Clause 6, if that is the Committee amendment, Sen. Petronilla Were has the same amendment. That is the problem.

**The Temporary Chairperson** (Sen. Nyamunga): Are they not two different amendments?

**Sen. Mutula Kilonzo Jnr.:** It is not synchronised and that is the problem. We are just industrious in our Committee, but it does not mean we should repeat ourselves.

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senator, you need to approach the Chair so that we can show you where the difference is.

*(Sen. Mutula Kilonzo Jnr. approached the Chair)*

Senator, you can now move that amendment on behalf of Sen. Were.

*Clause 6*

**Sen. Mutula Kilonzo Jr.:** Thank you, Madam Temporary Chairperson. On behalf of Sen. Were, I beg to move:-

THAT, Clause 6 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(4) The responsible authority shall publicize and publish, by notice in the *Gazette*, the guidelines.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end. There is a further amendment proposed to Clause 6, Mover to move amendment, Sen. (Dr.) Zani, proceed.

*Clause 6*

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Chairperson. I beg to move:-

THAT, Clause 6 of the Bill be further amended in sub-clause (1) by inserting the words “in accordance with this Act” immediately after the words “shall develop guidelines”.

*(Question of the further amendment proposed)*

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

*Clause 7*

**The Temporary Chairperson** (Sen. Nyamunga): Mover to move the amendment. Sen. Cherargei, proceed.

**Sen. Cherargei:** Thank you Madam Temporary Chairperson. I beg to move:-

THAT, Clause 7 of the Bill be amended by inserting the words “publicize and” immediately after the words “authority shall”.

*(Question of amendment proposed)*

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

*Clause 8*

**The Temporary Chairperson** (Sen. Nyamunga): The Mover to move to proceed and move the amendment.

**Sen. Cherargei:** Thank you Madam Temporary Chairperson. I beg to move:-

THAT, Clause 8 of the Bill be amended in sub-clause (4) by inserting the words “including information on the purpose, dates and participants” immediately after the words “of public participation” in paragraph (a).

*(Question of the amendment proposed)*

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

There is a further amendment proposed to Clause 8. The Mover of the amendment is Sen. Were. The amendment is being moved on her behalf by Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, the same problem has arisen. Sen. Cherargei has read the amendments of Sen. Were. So, you must agree.

*(Sen. Cherargei spoke off record)*

You read the Order Paper. Maybe he is reading the wrong amendment. He read the Order Paper, the same way it is here.

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr. please approach the Chair again.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, if you ask him to read the amendment to Clause 8 word for word, you will see what I am talking about.

**The Temporary Chairperson** (Sen. Nyamunga): Just approach the Chair again. I think there is just a confusion.

*(Sen. Mutula Kilonzo Jnr. approached the Chair)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr. please go ahead and move the amendment by Sen. Were.

*Clause 8*

**Sen. Mutula Kilonzo Jnr.:** Thank you Madam Temporary Chairperson. On behalf of Sen. Were, I beg to move:-

THAT, Clause 8 of the Bill be amended in sub-clause (5) by deleting the words “in such other manner” appearing immediately after the words “and publicized in” and substituting it thereof with the words “through such other appropriate platform”.

*(Question of the further amendment proposed)*



**The Temporary Chairperson** (Sen. Nyamunga): There is a further amendment proposed to the same Clause. Mover to move amendment; Sen. (Dr.) Zani.

*Clause 8*

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Chairperson. I beg to move:-  
THAT, Clause 8 of the Bill be amended in sub-clause (4) by inserting the following new paragraph immediately after paragraph (b).  
(ba) particulars of persons or organizations that have taken part in any public participation exercise conducted by the relevant entity.

*(Question of the further amendment proposed)*

*New Clause 8A*

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move:-  
THAT, the Bill be amended by inserting the following New Clause immediately after Clause 8-

General Penalty

8A. A person contravenes a provision of this Act commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings.

*(Question of the New Clause 8A proposed)*

*(New Clause 8A read the First Time)*

*(Question, that New Clause 8A be now read a Second Time proposed)*

*(Question, that the New Clause 8A be part of the Bill, proposed)*

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

*Clause 9*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei, Chairperson, Committee on Justice, Legal Affairs and Human rights and the Mover to move amendments.

**Sen. Cherargei:** Madam Temporary Speaker, I beg to move:-

THAT, Clause 9 of the Bill be amended by inserting the words “within six months of the coming into operation of this Act” immediately after the words “the Cabinet Secretary may”.

*(Question of amendment proposed)*

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

*New Clause 7(A)*

**The Temporary Chairperson** (Sen. Nyamunga): Mover to proceed. Sen. Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I beg to move the following amendment on behalf of Sen. Were:-

THAT, the Bill be amended by inserting the following New Clause immediately after Clause 7-

Provision of  
Resources for  
Public participation

7A. The responsible authority shall provide the necessary resources for the conduct of public participation under this Act.

*(Question of the New Clause 7A proposed)*

*(New Clause 7A read the First Time)*

*(Question, that New Clause 7A be now read a  
Second Time proposed)*

*(Question, that the New Clause 7A  
be part of the Bill, proposed)*

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

*New Clause 8(A)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. (Dr.) Zani, proceed.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move -

General Penalty. 8A. A person contravenes a provision of this Act commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings.

*(Question of the New Clause 8A proposed)*

*(New Clause 8A read the First Time)*

*(Question, that New Clause 8A be now read a  
Second Time proposed)*

*(Question, that the New Clause 8A  
be part of the Bill, proposed)*

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

*Schedule*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr., and the Chairperson, Standing Committee on Justice Legal Affairs and Human Rights to move amendments.

**Sen. Cherargei:** The Chair always goes first. Madam Temporary Chairperson, I beg to move:-

THAT, the schedule to the Bill be amended-

- (a) in paragraph 2 by deleting the word “continuing” appearing immediately after the words “shall facilitate” and substituting therefor the word “continuous”;
- (b) in paragraph 5 by inserting the words “youth, minorities and marginalized communities” immediately after the words “persons with disabilities” in sub-paragraph (2);
- (b) by deleting paragraph 8 and substituting therefor the following new paragraph  
8. Every public participation forum shall be undertaken within a reasonable timeframe from the earliest possible time for consultation, allowing a reasonable period for each stage of the process.
- (d) in paragraph 11 by deleting sub-paragraph (b) and substituting therefor the following new sub-paragraphs-
  - (b) the final decision, including the reasons for the decision, is made widely available in a timely manner to the public;
  - (ba) the final decision is publicized in the same manner required for giving notice for public participation under these guidelines;
- (e) in paragraph 13 by inserting the words “and may be subject to penal consequences under any relevant law” immediately after the words “from a meeting” in sub-paragraph (2).

*(Question of amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr., to move further amendments.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, on behalf of Sen. Were I beg to move: -

THAT paragraph 10 of the schedule be amended by inserting the following new sub-paragraph immediately after sub-paragraph (4) to read—

(4A) The confidentiality requirement imposed by the responsible authority shall be reasonable and not unduly fetter the rights of the applicant.

*(Question of further amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end. Sen. (Dr.) Zani, to move further amendments.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to move -

THAT the Schedule be amended-

(a) in paragraph 4(2) by deleting subparagraph (f) and substituting therefor the following new paragraph-

(f) radio stations and print media.

(b) in paragraph 5 by inserting the words “including ensuring nondiscrimination and reasonable access to information by such persons” immediately after the words “public participation processes” appearing in subparagraph (2);

(c) in paragraph 10(3) by deleting sub-subparagraph (c) and substituting therefor the following new sub-subparagraph –

(c) shall be subject to the limitations on the right to access to information as set out in section 6 of the Access to Information Act.

*(Question of the further amendment proposed)*

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

## *Clause 2*

**The Temporary Chairperson** (Sen. Nyamunga): Mover, and the Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights to move amendments.

Senator, there are two amendments on the same; that is on the definition of the Public Participation. The same one is being moved by Sen. Mutula Kilonzo Jnr. You need to agree which one to adopt. There are two different amendments to one definition.

**Sen. Cherargei:** We agree in principle with Sen. Mutula Kilonzo Jnr. that the Committee’s amendments take precedence.

**The Temporary Chairperson** (Sen. Nyamunga): If it is okay, then we stand down the one for Sen. Were which is to be moved by Sen. Mutula Kilonzo Jnr.

**Sen. Cherargei:** It is okay, Madam Temporary Chairperson.

*(The proposed amendment to Clause 2 by  
Sen. Were was dropped)*

**The Temporary Chairperson** (Sen. Nyamunga): Sen. Cherargei, you may now move your amendment.

*Clause 2*

**Sen. Cherargei:** Madam Temporary Speaker, I beg to move-

THAT Clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the word “general guidance”-

“public participation” means the process through which the public are broadly engaged in understanding and contributing to decision-making process of the policy making, law making and implementation level.

*(Question of amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Let us move on to the next amendment.

*Title*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended in the long title by inserting the words “at the national and county level of government” immediately after the words “effective public participation”;

*(Question of the amendment proposed)*

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

*Clause 1*

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

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end. Proceed, Mover.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Chairperson. Pursuant to Standing Order No.139, I beg to move that the Committee do report progress of its consideration of The Public Participation Bill (Senate Bills No.4 of 2018) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **PROGRESS REPORTED**

#### THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO.4 OF 2018)

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report progress that the Committee of the Whole House has considered The Public Participation Bill (Senate Bills No.4 of 2018) and seeks leave to sit again tomorrow.

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

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I beg to move that the House doth agree with the Chair on the said report. I request Sen. Samson Cherargei to second the Motion.

**Sen. Cherargei:** I second.

*(Question proposed)*

*(Question put and agreed to)*

*(Applause)*

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

Order, Senators, I am duly informed that the Movers of the amendments in the business in Orders No.11, 12, 13, 14 and 15 are not in the House, which is a bit interesting because today's Order Paper is a good one, but the Movers are not there to move the business.

I, therefore, order that Orders No.11 to 15 be deferred. However, this is, of course with a rider that, having made a ruling on this issue on a previous date; that if you are not there as movers to move your business, then we shall simply move without those people that are supposed to move those amendments the next time.

Therefore, those Orders stand deferred.

### **COMMITTEE OF THE WHOLE**

#### THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) (AMENDMENT) BILL (SENATE BILLS NO. 2 OF 2018)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE DATA PROTECTION BILL  
(SENATE BILLS NO. 16 OF 2018)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE CARE AND PROTECTION OF OLDER MEMBERS OF  
SOCIETY BILL (SENATE BILLS NO. 17 OF 2018)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY PLANNING (ROADS, PAVEMENTS AND  
PARKING BAYS) BILL (SENATE BILLS NO. 18 OF 2018)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL  
(SENATE BILLS NO. 19 OF 2018)

*(Committee of the Whole deferred)*

For the convenience of the House, we now move to Orders No.16 and 17 at the same time so that we can conclude.

Next Order.

**COMMITTEE OF THE WHOLE**

*(Order for Committee read)*

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

IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Nyamunga) in the Chair]*

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE)  
BILL (SENATE BILLS NO. 22 OF 2018)

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are in Committee of the Whole to consider The Petition to County Assemblies (Procedure) Bill (Senate Bills No.22 of 2018).

Let us proceed.

*Clauses 3 and 4*

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

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end. Let us move on to Clause 5. The Mover, who is the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Cherargei, to move amendments.

*Clause 5*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 5 of the Bill be amended by-

(a) deleting subclause (1);

(b) deleting the introductory phrase to paragraph (4) and substituting therefor the following new introductory phrase-

(4)The relevant county assembly committee shall in considering the petition-

*(Question of the amendment proposed)*

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

*Clauses 6 and 7*

*(Question, that Clauses 6 and 7 be part of the Bill, proposed)*

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

*The Schedule*

*(Question, that the Schedule be part of the Bill, proposed)*

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

*Clause 2*



*(Question, that Clause 2 be part of the Bill, proposed)*

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

*The Title*

*(Question, that the Title be part of the Bill, proposed)*

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

*Clause 1*

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

**The Temporary Chairperson** (Sen. Nyamunga): The Division will be at the end. I now call upon the Mover.

**Sen. Olekina:** Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee do report progress on its consideration of The Petition to County Assemblies (Procedure) Bill (Senate Bills No.22 of 2018) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

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

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are still in the Committee of the Whole. Therefore we will move to the next Bill, which is, The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018).

THE TREATY MAKING AND RATIFICATION (AMENDMENT)  
BILL (SENATE BILLS NO.23 OF 2018)

*Clause 2*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, Clause 2 of the Bill be amended in the proposed new section 8 by inserting the following new subsection immediately after subsection (1)-

(1A) The memorandum submitted under subsection (1) shall include the same information specified under section 7.

*(Question of the amendment proposed)*

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

*Clauses 3, 4 and 5*

*(Question, that Clauses 3, 4 and 5  
be part of the Bill, proposed)*

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

*New Clause 1A*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by inserting the following  
new clause immediately after clause 1-

Amendment of  
section 3 of No.  
45 of 2012.

1A. Section 3 of the principal Act  
is amended in subsection (2) by  
inserting the following new  
subparagraph immediately  
after subparagraph (v)-  
(vi) any matter that may have  
an impact on national revenue  
and public finance.

*(Question of the New Clause 1A proposed)*

*(New Clause 1A read the First Time)*

*(Question, that the New Clause 1A  
be read a Second Time, proposed)*

*(Question, that the New Clause 1A  
be part of the Bill, proposed)*

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

*New Clause 4A*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by inserting the following new  
clause immediately after clause 4-

Amendment of  
section 10 of No.  
45 of 2012.

4A. Section 10 of the principal Act  
is amended by inserting the  
following new subsection

immediately after subsection (2)-  
(2A) Where the Cabinet Secretary intends to withdraw a reservation to a treaty ratified under this Act, the Cabinet Secretary shall submit the proposed reservation to Parliament for approval in accordance with the procedure set out under this Part.

*(Question of the New Clause 4A proposed)*

*(New Clause 4A read the First Time)*

*(Question, that the New Clause 4A be read a Second Time, proposed)*

*(Question, that the New Clause 4A be part of the Bill, proposed)*

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

*Title and Clause 1*

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

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

**Sen. (Dr.) Milgo:** Madam Temporary Chairperson, pursuant to Standing Order No. 148, I beg to move that the Committee do report progress on it is consideration of the Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018) and seeks leave to sit again tomorrow.

**Sen. Pareno** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**PROGRESS REPORTED**THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL  
(SENATE BILLS NO. 22 OF 2018)

**The Temporary Speaker** (Sen. Pareno): We are starting with the Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018) and I call upon the Chairperson to give a report.

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered the Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018) and seeks leave to sit again tomorrow.

**Sen. Olekina** seconded.

**The Temporary Speaker** (Sen. Pareno): Could we hear from the Mover.

**Sen. Olekina:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report.

I request Sen. Malalah to second.

**Sen. Malalah:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Pareno): We now to report progress on The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018)

**PROGRESS REPORTED**THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL  
(SENATE BILLS NO.23 OF 2018)

**Sen. Nyamunga:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018) and seeks leave to sit again tomorrow.

**Sen. (Dr.) Milgo:** Mr. Temporary Speaker, Sir, pursuant to Standing Order No. 148, I beg to move that the Committee do report progress on its consideration of The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018) and seek leave to sit again tomorrow.

**The Temporary Speaker** (Sen. Pareno): Sen. (Dr.) Milgo, you have not moved appropriately, kindly approach the table.

*(Sen. (Dr.) Milgo consulted the Clerks-at-the-Table)*

**Sen. (Dr.) Milgo:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report.

**The Temporary Speaker** (Sen. Pareno): Who is the Seconder? You are not on record.

**Sen. (Dr.) Milgo:** Madam Temporary Speaker, I ask Sen. (Rev.) Waqo to second.

**Sen. (Rev.) Waqo:** I second.

*(Question proposed)*

*(Question put and agreed to)*

Next Order!

## BILLS

### *Second Reading*

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

*(Sen. (Dr.) Zani on 26.3.2019)*

*(Resumption of debate interrupted on 26.3.2019)*

**The Temporary Speaker** (Sen. Pareno): Sen. (Dr.) Milgo submitted last on this one. So, she may proceed.

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker. I thank Sen. (Dr.) Zani for bringing this Bill. I spoke to a number of issues yesterday. I agree with Clause 13(3) on election of five people to oversee the benefit sharing forum.

It states that-

“The members of a local community benefit sharing forum shall serve for a single term of five years”

However, in cases where the same forum has done a good job, they should be given a second chance to continue to serve the community.

Madam Temporary Speaker, under Clause 6, members of the local community, in this case, would benefit from allowances that will be determined by the Salaries and Remuneration Commission (SRC). This is a good idea because of the fact that in the past, we have had various committees deciding on their own allowances, and in most cases, it led to corruption.

This is a very good Bill. We have had many people suffering. Like I said, in Bomet County, there are many Chinese companies that are extracting natural resources in the form of murram. The concerned people are underpaid and right now, their farms cannot even be put into use again. They are digging deep gullies which will end up causing havoc and injuries to the same people they are not adequately compensating.

I support this Bill with the amendments.

**The Temporary Speaker** (Sen. Pareno): Having no further requests on this Bill, I now call upon the Mover to reply.

**Sen. (Dr.) Zani:** Madam Temporary Speaker, I beg to reply. I wish to thank all the Senators who contributed to this Bill. From the contributions they made, they came up with very many insights and new ideas that continue to enrich the Bill.

It starts right from the issue of the Commission on Revenue Allocation (CRA) and how we should contextualise their involvement; the formula for sharing and what changes we should make; the Sovereign Wealth Fund (SWF) and what issues we should address; the Cabinet Secretary (CS) and ensuring that a time frame is put in a place for the regulations; and, many other important issues.

I urge that as we continue to consider this Bill, we should remember the communities out there, who do not have a proper structure for enactment. The Mining Bill put proportions of sharing to go back to counties, but no specific structure has been put in place to ensure that at the bottom and within the communities, they are able to have a say. A lot of money may be collected, but might not go back to the communities.

Madam Temporary Speaker, some Members spoke about the role of the Kenya Revenue Authority (KRA) and how it can be enhanced in terms of auditing. With all these, we will be able to put everything together.

As I finish, I would like to thank Sen. Githiomi who is in this House and in whose Committee this Bill rested. They have done a lot of work in that Committee to improve this Bill. Together as the Senate, one day, we will see this Bill become an Act.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, this being a matter that affects counties, we cannot proceed to put the question now. I, therefore, defer this matter to another date for purposes of Division and voting.

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

Next Order!

*Second Reading*

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

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for this opportunity. The purpose of this Bill is to give effect to the oversight role of the Senator, as enumerated by Article 96(1) and (3) of the Constitution. Through enhancing public participation---

**Sen. (Dr.) Zani:** On a point of order, Madam Temporary Speaker. The Bill has to be moved appropriately at the beginning, so that it is contextualised properly in the House.

**The Temporary Speaker** (Sen. Pareno): Kindly, do the necessary, Sen. Olekina.

**Sen. Olekina:** Madam Temporary Speaker, I beg to move that The County Oversight and Accountability Bill (Senate Bills No. 28 of 2018) be now read a Second Time.

This Bill is divided into four parts. Part I of the Bill sets out the preliminary issues, including definition of various terms used, and most importantly, the object and purpose of the Bill.

Part II of the Bill sets out the criteria for public participation facilities. Under this Part are matters touching on planning, implementation, funding and creating these facilities.

Part III of the Bill deals with the oversight and public participation provision of the Bill. Under this part is the oversight of county revenue allocated by the national Government, the oversight and public participation programme to be carried out by the Senator of each of the 47 counties, the oversight office and the role of the county assembly in the context of this Part.

Part IV of this Bill contains the miscellaneous provision which grants the County Executive Committee (CEC) of the respective county, powers to make regulations and better implementation of the Bill.

Madam Temporary Speaker, when you look at the current budget-making process in the county governments, mostly the citizens are not involved. This Bill seeks to involve them from the onset of making the county budgets.

Recently, we were looking at the overall Budget Policy Statement (BPS). When it is now taken to the county governments to be able to interpret it, they come up with various ways of how they can develop their counties. When I sat down and thought about my county of Narok, for instance, we have six constituencies where sometimes, not all of them benefit. This Bill, therefore, sets out to ensure that every person in Kenya, regardless of which constituency they come from, have their life touched by the money which is devolved.

The main purpose of this Senate as enshrined in Article 96 of the Constitution, is to protect the interests of the county governments and their people. If a governor sits in the county headquarters, comes up with a budget and decides at his or her own wish that he is going to develop a certain part of the county and not another, this Bill once it becomes law, ensures that in each and every ward, a public participation hall is constructed.

Madam Temporary Speaker, once this public participation hall is developed, the residents of that ward would be involved during the budget-making process. If in that ward, for instance, they have a problem of a health centre, there is no reason or justification for a governor to prioritize the construction of a road.

Secondly, as a Senator, you are also able to use this facility to engage the people on the ground on matters development. We have a big debate on what the Member of County Assembly (MCAs) wanted which was to have a Ward Development Fund. The reason was that some of them were feeling that the governors were not getting services to their people.

Madam Temporary Speaker, once this Bill becomes law, the Auditor- General or the Controller of Budget will get an opportunity to meet with the citizens of each ward and say: "In this county we have been able to disburse "X" amount of money". Based on the budget that was developed by your county, we see that ward "A" was supposed to get a hospital. If that hospital was not build there, it will be easy to call the governor to account. As we speak, there is no such mechanism.

I dare say that this Bill defines the role of this House. This is because when we look at Part II, these public participation halls which are to be developed would be public

assets. I know in other jurisdictions, you will find that governments will go and speak to the people in town halls and discuss their issues.

When we politicians go and meet people in our county governments, we do not have a defined place for public participation. We talk to them under a tree, in churches and at funerals. When MCAs are sitting down in their assemblies, sometimes they do not know what the overall goal of the governor is.

Madam Temporary Speaker, because of time, I will respond later when I get more time once this Bill has been debated upon. I would like to request that Sen. Malalah comes in and seconds it, but before that, looking at the way funds are devolved in the counties, right now we are having serious problems. We are looking at 47 Audit Reports from the County Public Accounts and Investments Committee (CPAIC). We are looking at 47 reports for the assemblies and the county executive committees.

Those Reports which we are looking at do not have any input of the citizens. Once we make this law, it would then be possible to cross-reference what the Auditor-General is saying in the report. Even the citizens can read the report and confirm that indeed a hospital was not built there and yet it was indicated in the budget of the county government that a hospital would be built there.

The other thing which will also help once this Bill becomes law is that it will define clearly how on-source revenue is accounted for. Today I was very happy to read that Nairobi City County is leading in collection of on-source revenue. Collecting Kshs10 billion a year is something which is very commendable.

Once we have this Bill in place, the county governments can easily say they were able to collect a certain amount of money, for example, from a particular ward. They will be able to involve the citizens of that ward and tell them to prioritise on services that they want to reach them and we can easily narrow this gap between the rich and the poor. We have serious challenges in terms of marginalisation; the only way we can effectively use the funds for the marginalized is once the citizens are involved.

With those few remarks, I beg to move that the Bill be read a second time and request Sen. Malalah to Second.

**Sen. Malalah:** Thank you, Madam Temporary Speaker. In the interest of time, because I can see we are only remaining with seven minutes, I will quickly second this Bill.

This Bill is informed by Article 1 of the Constitution which provides that the sovereign power belongs to the people. Through public participation, the sovereign power can be exercised.

I support this Bill because it provides for the operationalisation of our Constitution and the different Acts that have been passed by Parliament. Just to mention but a few; it enhances Article 33 of the Constitution which provides for freedom of expression; Article 35 of the Constitution on Access to Information and further, Section 96 of the County Governments Act which also provides for access of information and states that every Kenyan has got a right to access information. This Bill is providing a framework in which we are going to exercise those freedoms.

Part II of this Bill generally cures bad public participation practices. We have seen situations whereby people are convened under a tree or in the scotching sun. It, therefore,



provides mechanisms in which county governments will be mandated to come up with facilities in which public participation will be undertaken.

We need facilities and a conducive arena for carrying out public participation which is equipped with HANSARD equipment and a public address system. We have seen places whereby we do not have documentary evidence and, therefore, we have officers who take advantage of the public. After they have taken views from the public they go and change whatever views the public has proposed. It is important for these facilities to be equipped with HANSARD equipment so that we can have a better way of enhancing public participation.

This Bill is laid on a foundation of legal provisions, and I would like just to state one or two legal provisions that we have that cements the operationalization of this Bill.

Madam Temporary Speaker, when you look at Section 33(g) of the County Governments Act, it gives the governor powers to promote and facilitate citizen participation in the development of policies, plans, and service delivery in the counties. The same Act provides that the County Executive Committee (CEC) member will execute their mandate on the basis of a participatory decision-making mechanism. When you further look and interrogate the County Governments Act specifically in Sections 50(3)(g), 51(3) (g), and 52(3)(a), it provides for the sub-county, ward and the village administrators to be responsible for the coordination, management and supervision of general administration functions in their respective jurisdiction, including ensuring and coordinating the participation of the public in governance.

Therefore, it is important to note that this Bill is laid on a foundation of other legal frameworks. Just to interrogate deeply, Part II of this Bill provides for mechanisms in which the county governments are mandated to come up with these facilities. However, I would like to advise the Mover of this Motion, to look into ways in which Article 179 of the Constitution which states that-

“The executive authority of the county is vested and exercised by the county executive committee”.

Madam Temporary Speaker, Part II of this Bill slightly wants to micromanage the CEC as to when to allocate monies and implement these projects. How I wish we would just provide a general mechanism to allow the county governments to implement their mandate without micromanaging them.

Madam Temporary Speaker, on Part III I think we do not have the legal framework or the tunnel in which a Senator can oversight a CEC member directly. As it stands, we can only oversight counties through our committees here in the Senate. Therefore, we need to amend this Bill, so that we have a provision whereby the Senator has a direct tunnel, to ensure that we ---

*(Sen. (Dr.) Zani and Sen. Olekina spoke off record)*

I am being interrupted, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Order Sen. (Dr.) Zani and Sen. Olekina. Kindly proceed Sen. Malalah.

**Sen. Malalah:** Madam Temporary Speaker, we need to establish a channel in which there is a connection between the Senator and the CEC's because as we speak right now, a Senator cannot go to a CEC and demand for documents; a Senator cannot constitute a committee that oversees the CEC for Finance or the CEC for Lands. Therefore, it is important for us to adjudicate the matter of the role of oversight of a Senator versus the role of oversight of a Member of the County Assembly (MCA).

Madam Temporary Speaker, because I am being harassed I will have to end there and second this Bill.

*(Question proposed)*

**Sen. Mwangi:** Thank you Madam Temporary Speaker for giving me this opportunity. This is a very important Bill because it deals with implementation of projects -  
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**The Temporary Speaker (Sen. Pareno):** Order, Sen. Mwangi, you will have a balance of 19 minutes when debate on this Bill resumes.

### ADJOURNMENT

**The Temporary Speaker (Sen. Pareno):** Hon. Senators it is now 6:30 p.m. time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday 28<sup>th</sup> March 2019 at 2:30 p.m.

The Senate rose at 6:30 p.m.