

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 17<sup>th</sup> September 2019

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### GUIDANCE ON CONSIDERATION OF SENATE BILLS

**Hon. Speaker:** Hon. Members, as you may recall, on 24<sup>th</sup> July 2019, I conveyed to the House a Message from the Senate regarding the passage of the Personal Data Protection Bill (Senate Bill No.16 of 2018); the County Statutory Instruments Bill (Senate Bill No.21 of 2018); the Statutory Instruments (Amendment) Bill (Senate Bill No. 24 of 2018); the Determination of the Nature of Bills (Procedure) Bill (Senate Bill No. 30 of 2018) and the County Oversight and Accountability Bill (Senate Bill No. 28 of 2018).

Hon. Members, following the First Readings of the five Bills on 25<sup>th</sup> July 2019, I did undertake to pronounce my opinion with respect to the Money Bill effects of the Bills pursuant to Standing Order 143(2) which provides that:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

Now therefore, I have made the following determination on the said Senate Bills:

(i) The County Statutory Instruments Bill (Senate Bill No.21 of 2018); the Statutory Instruments (Amendment) Bill (Senate Bill No. 24 of 2018) and the Determination of the Nature of Bills (Procedure) Bill (Senate Bill No. 30 of 2018) do not fall within the meaning of a “Money Bill.” As such, they may proceed for Second Reading in the same manner as a Bill originating in the National Assembly as provided for under Standing Order 143(3).

In this regard, the County Statutory Instruments Bill (Senate Bill No.21 of 2018) and the Statutory Instruments (Amendment) Bill (Senate Bill No. 24 of 2018) shall stand referred to the Committee on Delegated Legislation. On the other hand, the Determination of the Nature of Bills (Procedure) Bill (Senate Bill No. 30 of 2018) shall stand referred to the Departmental Committee on Justice and Legal Affairs for consideration.

(ii) The Personal Data Protection Bill (Senate Bill No.16 of 2018) and the County Oversight and Accountability Bill (Senate Bill No. 28 of 2018) are “Money Bills” within the meaning of Article 114 of the Constitution. They, therefore, stand referred to the Budget and Appropriations Committee for consideration and advice on the manner in which the House ought to proceed with these Bills, pursuant to provisions of Articles 109(5) and 114 of the Constitution, as read together with Standing Order 143.

Hon. Members, the House is thus accordingly guided.

I thank you.

### MESSAGES

**Hon. Speaker:** There is a message from the Senate which is just being dropped. I have looked at it. There is a Petition by Hon. (Ms.) Jaldesa Rehema. You do not have a card?

*(Hon. (Ms.) Rehema Jaldesa consulted the Hon. Speaker)*

These are the consultations that I do not want. I have approved the Petition.

### PETITION

#### LAND DISPUTE BETWEEN BURAT RESIDENTS AND THE KENYA DEFENCE FORCES SCHOOL OF INFANTRY

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. I apologise for that. I would like to read a Petition regarding land dispute between the residents of Burat Isiolo County and the Kenya Defence Forces School of Infantry.

I, the undersigned, on behalf of the concerned residents of Burat in Isiolo County, draw the attention of the House to the following:

THAT, residents of Burat settled on and have been enjoying uninterrupted stay and utility of their ancestral land, measuring approximately 10,000 acres, since Independence until the Kenya Defence Forces appeared in 1982 with the intention of setting up a military base;

THAT, in appreciation of the security importance of the presence of the Kenya Defence Forces in the region, the community donated 100 acres to the Kenya Defence Forces to set up a school of infantry;

THAT, to the astonishment of residents, the Kenya Defence Forces has overstretched the boundary of the land donated to it and has been slowly encroaching on community land and is now planning to displace the residents from their land;

THAT, the Kenya Defence Forces School of Infantry has been laying claim to 10,000 acres of land in Burat in Isiolo County, currently occupied by over 30,000 residents, including approximately 3,000 pupils spread across eight public primary schools and two secondary schools;

THAT, the land in question is community land owned in trust by the County Government of Isiolo and there is no record with the county government or the defunct Isiolo County Council to the effect that the Kenya Defence Forces owns the said land;

THAT, on 15<sup>th</sup> August 2019, the Principal Secretary for the State Department of Defence issued a one-month notice to residents to vacate their known ancestral land or face forceful eviction;

THAT, during the 11<sup>th</sup> Parliament, the Departmental Committee on Lands visited Burat to investigate the dispute between residents and the Kenya Defence Forces, but a report of the investigation was not tabled in the House by the time the term of that Parliament ended;

THAT, the National Land Commission visited the area three years ago and agreed that the *status quo* be maintained, whereby the Kenya Defence Forces would only occupy the 100 acres donated by the community and the community would retain the remainder of their ancestral land;

THAT, considering that the arable nature of the disputed land makes it the bread-basket of Isiolo and residents have been practising small and large-scale farming, the impending eviction would disrupt their economic activity, subjecting them to impoverishment and create conflict over the resources;

THAT, the land was also identified as part of the Vision 2030 Government Blue Print and currently, an abattoir constructed by the Ministry of Livestock is operating on the disputed land;

THAT, both the county and national governments have heavily invested in infrastructural developments on the land, including two dispensaries, three boreholes and two dams that provide water to the community;

THAT, the matters in respect of which this Petition is made are not pending before any court of law or constitutional or legal body;

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands –

1. Intervenes through the relevant Ministries with a view to causing withdrawal of the eviction notice until the dispute is investigated by the relevant authorities and resolved;
2. Intervenes through the Ministry of Lands and the National Land Commission to ensure that the disputed land is speedily adjudicated and surveyed with a view to ensuring that residents' right to their community land is safeguarded.

And your petitioners will ever pray.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. I cannot see any interventions save for a belated one. I do not know whether it is for purposes of clarification. Hon. Wamunyinyi, do you want to comment on this?

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Yes, Hon. Speaker.

**Hon. Speaker:** Very well. Proceed.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): A number of Petitions have been brought before this House particularly on land where the Kenya Defence Forces (KDF) is involved. This is something which is becoming very common. Very soon, we will have conflict between our institutions and the people of Kenya. It is important that this matter be given attention. Recently, we had another Petition like this one and another one before it. So, the National Assembly should put its feet down and resolve issues to do with land and particularly where the military is involved. This is going to help us ensure we do not get into unnecessary disputes and conflicts.

Thank you, Hon. Speaker. I support the Petition.

**Hon. Speaker:** Nominee 001.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. I support the Petition. This Petition is not the first one and it seems it will not be the last one where Government agencies have encroached on community land. We still have the issue of Mau Forest where the Government itself is the greatest encroacher of that land. It has erected schools, connected people to electricity, appointed chiefs and sent teachers there duly paid by the Government because there are school-going children. Yet, this is community land and they are saying it is a forest. I think this matter should be given enough attention. Otherwise, there will be a fight between the community and the Government because it is becoming the greatest encroacher of community land.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kamukunji.

**Hon. Yusuf Hassan** (Kamukunji, JP): Thank you, Hon. Speaker. I stand to support this Petition. I, particularly, think it is important for us to address the conflict between civilians and the military in an amicable way. This is because we cannot have a peaceful and stable country, unless we are able to address this issue. I also speak as an MP who is hosting a significant military base in my own constituency and we are facing the problem of conflict of land occupied by civilians in neighbourhoods like Kiambu. That informal settlement has remained undeveloped because the military is laying claim over that land.

I think it is important for the military to be sensitive and start working with the civilians to address many of those critical and contentious issues like land. Only then will we have stability and work very hard to support our armed forces in the very difficult task they have of defending our national borders.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The Petition is committed to the Departmental Committee on Lands to process it in the normal way. Before I deliver the Message, let me announce that the Chair of the Departmental Committee on Finance and National Planning will be tabling his Report on his consideration of the Finance Bill at some later stage during this Sitting.

Hon. Members, allow me to recognise, seated in the Speaker's Galley, students from the following institutions: Gatunguru Boys High School, Gatundu North Constituency, Kiambu County and those from Githambo Primary School, Kiharu Constituency, Murang'a County.

They are welcome to observe the proceedings of the National Assembly this afternoon.

## MESSAGE

### APPROVAL OF THE MEDIATED VERSION OF THE DIVISION OF REVENUE (NO. 2) BILL

**Hon. Speaker:** Hon. Members, before we proceed to the next Order, allow me to, belatedly, deliver this Message from the Senate.

Pursuant to the provisions of Standing Order No. 41, I wish to report to the House that I have now received a Message from the Senate conveying its approval of the mediated version of the Division of Revenue (No. 2) Bill (National Assembly Bill No. 59 of 2019) on Wednesday, 11<sup>th</sup> September 2019. Hon. Members, you will also recall that this House approved the mediated version of the said Bill on Thursday, 12<sup>th</sup> September 2019. It, therefore, concluded the bicameral approval of the Bill.

I wish to further inform the House that I, indeed, presented the said Bill to His Excellency the President for assent today morning in accordance with the provisions of Article 113(3) of the Constitution. The Bill is, therefore, an Act of Parliament.

*(Applause)*

Therefore, Hon. Members, the assent to the Bill by the President paves way for consideration of the County Allocation of Revenue Bill which, ordinarily, originates from the Senate. Noting the importance of the County Allocation of Revenue Bill in dividing the share of national revenue among the 47 counties, I will be requesting the House Business Committee (HBC) to prioritise the said Bill soonest should it be received from the Senate today in the course

of business so that, that process may also assist the counties to access revenues due to them from the national share.

I thank you, Hon. Members.

### PAPERS LAID

**Hon. Speaker:** Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Report of the Auditor-General on the Financial Statements of Bomet University College for the year ended 30<sup>th</sup> June 2018, and the certificate therein.

The Reports of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2018, and the certificates therein:

- a) Molo.
- b) Lafey.
- c) Galole.
- d) Malava.
- e) Dadaab.
- f) Bura.
- g) Likuyani.
- h) Mumias East.
- i) Eldama Ravine.
- j) Nakuru Town West.
- k) Gilgil.
- l) Kilgoris.
- m) Narok North.
- n) Emurua Dikirr.
- o) Njoro.
- p) Ainamoi.
- q) Ndaragwa.
- r) Mogotio.
- s) Tiaty.
- t) Baringo South.
- u) Narok East, and
- v) Naivasha.

**Hon. Speaker:** A total of 22 constituencies are involved. It means a lot of work for the Special Funds Accounts Committee. Next Paper is by the Chairman of the Departmental Committee on Education and Research, Hon. Melly.

**Hon. Julius Melly** (Tinderet, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House.

Reports of the Departmental Committee on Education and Research on its Consideration of:

The Revised Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya; and,

The Kenya Institute of Curriculum Development (Amendment) Bill, 2019.

**Hon. Speaker:** I see intervention by the Member for Eldama Ravine, Hon. Lessonet.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Thank you, Hon. Speaker. You have rightly said that you see my intervention. I stand on behalf of the Chair of the Committee on the National Government Constituencies Development Fund (NG-CDF).

Hon. Speaker, I beg to lay the following Paper on the Table of the House:

National Government Constituencies Development Fund Budget Ceilings for each constituency for the Financial Year 2019/2020.

Hon. Speaker, these are the ceilings available for each of the 290 constituencies in terms of NG-CDF so that the constituency fund managers, the Members of Parliament and the NG-CDF committees are able to propose the projects to be funded.

I thank you, Hon. Speaker.

**Hon. Speaker:** The next Paper is by the leader of delegation to the Sixth Session of the Global Platform for Disaster Risk Reduction, Hon. Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Delegation to the Sixth Session of the Global Platform for Disaster Risk Reduction held in Geneva, Switzerland, from 11<sup>th</sup> to 19<sup>th</sup> May 2019.

**Hon. Speaker:** Next Order!

## NOTICES OF MOTIONS

### REPORT ON THE REVISED SESSIONAL PAPER ON POLICY FRAMEWORK FOR REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT IN KENYA

**Hon. Julius Melly** (Tinderet, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Education and Research on its Consideration of the Revised Sessional Paper No. 1 of 2019 on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya, laid on the Table of the House on Tuesday, 17<sup>th</sup> September 2019 and adopts Sessional Paper No. 1 of 2019 (Revised) on Policy Framework for Reforming Education and Training for Sustainable Development in Kenya.

**Hon. Speaker:** Hon. Wamunyinyi.

### ADOPTION OF REPORT OF SIXTH SESSION OF THE GLOBAL PLATFORM FOR DISASTER RISK REDUCTION

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Delegation to the Sixth Session of the Global Platform for Disaster Risk Reduction held in Geneva, Switzerland from 11<sup>th</sup> to 19<sup>th</sup> May 2019, laid on the Table of the House on Tuesday, 17<sup>th</sup> September 2019.

**Hon. Speaker:** Next Order!

**ORDINARY QUESTIONS**

**Hon. Speaker:** The first Question is by the nominated Member, Hon. Nasri Sahal Ibrahim.

*Question No. 395/2019*

**HARMONISATION OF WAGES FOR LOWER CADRE STAFF IN GOVERNMENT SCHOOLS**

**Hon. (Ms.) Nasri Ibrahim** (Nominated, FORD-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Labour and Social Protection the following Question:

(i) Why are the lower cadre staff in Wajir Special School for the Mentally-Handicapped and Wajir Girls Boarding Schools in Wajir County remunerated below the minimum recommended wages?

(ii) Are there measures in place to ensure that wages for all staff in lower cadres working in all government schools are harmonised and are in line with the regulations relating to minimum wages in Kenya?

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Labour and Social Welfare. Next Question is by the Member for Rabai, Hon. Kamoti Mwamkale.

*Question 396/2019*

**VALIDITY OF THE ORDER BANNING CULTURAL OVERNIGHT VIGILS IN KILIFI**

**Hon William Mwamkale** (Rabai, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) What is the validity of the order banning cultural overnight vigils and celebrations popularly known as “*Disco Matanga*” in Kilifi County by the national Government and, in particular, in Rabai Constituency?

(ii) What measures has the Ministry put in place to ensure that security is provided during such cultural celebrations to enable communities give their departed kin deserving send-offs in line with their cultural and traditional practices?

**Hon. Speaker:** What is the original cultural name of this particular celebration apart from *Disco Matanga*? Is it a way of honouring the departed? What was the original name? There must have been another name for it. This must be very recent, Hon. Kamoti.

**Hon. William Mwamkale** (Rabai, ODM): Hon. Speaker, every community has a way of celebrating their dead. In Rabai and Kilifi, when one dies, particularly on the eve of his burial, people celebrate with the dead overnight. Dirges are sung during those overnight vigils. If there are gospel bands, they play till morning. This is what the Cabinet Secretary (CS) put together and called *Disco Matangas*. Otherwise, those are traditional practices which have always been there to honour the dead. In short, that is what they call *Disco Matanga*. They are actually traditional practices which have lived with us.

**Hon. Speaker:** In the banning order, did the CS refer to them as *Disco Matangas*?

**Hon. William Mwamkale** (Rabai, ODM): They were called *Disco Matangas* by the CS. That is why I am using that term. Otherwise, those are honourable ways of mourning.

**Hon. Speaker:** That is why I wanted to know whether that is the language used in the banning order. There is nothing wrong in that. I am sure you, as a trained lawyer, know that the definition of the word “*chang’aa*” in the *Chang’aa* Prohibition Act of 1970 referred to all those drinks variously known as “kill me quick” and “*machosi ya simba*”. You are right. If the CS used the term “*Disco Matanga*” then you are right to frame the Question in the manner that you did. You read the definition section of the *Chang’aa* Prohibition Act. That is what it says. It refers to “kill me quick”, *machosi ya simba*, *kangara* and many other names. The Act states appropriately, “variously known as...”. You can call it any other name and it will still apply. You are right, Hon. Kamoti.

The Question will be responded to before the Departmental Committee on Administration and National Security.

The next Question is by the Member for Gichugu who has written to request that it be deferred to some other time when he is in the Chamber. He is engaged in other constituency matters.

*Question No.397/2019*

PROVISION OF WATER TO RESIDENTS OF GICHUGU CONSTITUENCY

*(Question deferred)*

The next Question is by the Member for Butere, Hon. Tindi Mwale.

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Speaker. I rise to...

**Hon. Speaker:** Is there somebody who has a point of order? Member for Mvita, what is your point of order?

**Hon. Abdullswamad Nassir** (Mvita, ODM): My apologies, Hon. Speaker. It was not a point of order. I wish to comment on the issue of *Disco Matangas* because I saw many Members had started agitating.

Two things are important. First, we should respect the cultures of others. More importantly, we should respect our own culture. What initially started as a rightful way for the tribes to give a befitting send-off has now been tarnished. I am aware that a number of leaders from those areas have claimed that one of the major reasons why there are early childhood pregnancies is because of *Disco Matangas*. The reason is because we ourselves have tarnished our own cultures. What was once good has ended up being something else!

**Hon. Speaker:** Hon. Members, there are so many of you who want to intervene. Let us have Hon. Washiali.

**Hon. Benjamin Washiali** (Mumias East, JP): Mine is different, Hon. Speaker. I am happy that you have pushed forward Question No.397 that was meant to be raised by Hon. Gichimu Githinji. I have seen on the Order Paper that this Question is referred to the CS for Education. I request that as we wait for Hon. Gichimu to come, we need to review whether this should be referred to the CS for Education or the CS for Water and Irrigation. I am a Member of the Departmental Committee on Environment and Natural Resources. I have a very strong feeling that this Question should be handled by the CS in charge of Water and Irrigation.

**Hon. Speaker:** Very well. The Clerk will have it examined. It may be fair that the Member be invited to explain and shed some light as to why he has directed the Question to the CS for Education. It does not make sense.

*(Hon. Benjamin Washiali spoke off record)*

**Hon. Speaker:** That is why the Clerk will look at it and then realign it. Member for Funyula, you also want to weigh in on the *Disco Matanga* thing?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Yes, Hon. Speaker. I also come from a constituency where, luckily enough, my new Deputy County Commissioner (DCC), Mr. Talam, has put his foot down strongly on the issue of *Disco Matanga*.

At the very beginning in our culture, we never used to have *Disco Matangas*. We used to have cultural practices that were done respectfully to honour the dead, especially the aged in the community. Luckily enough, it used to happen after the burial when we would hold a vigil for three days for a lady and four days for a man. What we have now is the cause of high cases of teenage pregnancies, school truancy and many other social ills.

Just for comic relief, the other day a parent approached me. They, together with their son who is in Form Three had gone to a *Disco Matanga*. Thieves broke into their house and stole uniforms, schoolbooks and anything pertaining to education. It is a matter that we need to interrogate clearly as a community or a society to see its cultural value. If the cultural value has been eroded, I would rather support the ban on *Disco Matangas*.

**Hon. Speaker:** I wish there was a Motion. Then there would be something to debate. Let us have Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Speaker, I rise to give my small input into this matter. There are things that may be very popular for a Member of Parliament in the constituency, but there are times when you have to bite the bullet to save your people.

I once heard the Governor of Kilifi County talking about this *Disco Matanga*. He said that many young girls had ended up getting pregnant because of *Disco Matangas*. If this cultural practice is becoming a problem for the girl-child or the boy-child, it is about time we bit the bullet and did what is right. I am glad to hear Members of Parliament from the same region say that it is a bad cultural practice that must come to an end. I urge the honourable Member to reconsider his Question and do what is right for the children of his constituency.

**Hon. Speaker:** Let us have Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Hon. Speaker, thank you so much. Very briefly, I want to add my voice on the issue of...

**Hon. Speaker:** It looks like Hon. Kamoti is being responded to by Members. The Question is directed to the CS for Interior and Coordination of National Government, but it looks like...Hon. Kamoti, take the views being expressed. I will give you a chance to say something as well.

Let us have Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. My very brief contribution would be that in my community, what is being called *Disco Matanga* was called *likopo* and *isilemba*. They were done after burial and during the day. Back to the Coast, being an educationist and a teacher, it is an area where, and Kilifi in particular, education is very low. That has been partly attributed to the *Disco Matangas* and such like things.

Recently, the Teachers Service Commission (TSC) advertised positions for promotions. I was there two weeks ago. That is an area where the level of education is so low that no one currently qualifies to apply to become deputy principal or principal of school. We asked the Commission to come up with some form of affirmative action to accommodate them. As the Member fully supports *Disco Matanga*, I kindly, without agitation, ask him to reconsider what that means to his society and education of the child.

Thank you, Hon. Speaker.

**Hon. Speaker:** Leader of the Majority Party, do you also want to weigh into the matter?

*(Laughter)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I am a bit shocked by this matter of *Disco Matanga*. This Member should have brought a Motion. This is a Question. From my religion's perspective, you should bury the dead very fast and pray for him. You cannot bury a dead person through *disco*. I really want to speak about this issue. I am sure Members from Western Kenya and Nyanza regions are suffering because they have to participate in *matanga* every weekend in their constituencies. They have commercialised *matanga*. You keep the body for a month, do *harambees* and allow people to eat. Please, borrow from the Muslims. If somebody dies right now in my constituency, he will be buried before 4 p.m., and I will be informed.

What is happening in Kilifi County is shocking. Sometimes, you borrow from other best practices. The best practice is from the Islamic religion. Members are not talking here. Their pockets are drained because they attend over 20 burials every weekend. *Disco Matanga* has been turned into an avenue where young girls are impregnated and then they drop out of school. The clergy and the leadership need to borrow from the Islamic teaching. When you pass on, you need prayers. Please, learn from the Muslims. Do not keep a body and move around with it. Sometimes, politicians fight during burials. All the things you are saying are not in the Bible. Please, respect the church. You have never seen a Muslim politician addressing people in Jamia Mosque. I sit at the back. I do not address people there. You would see none of us, including Hon. Sheriff Nassir, addressing people in mosques. You have taken politics to the church. You have made burial and *matanga* a disco. Where are you, as Christians, going? I even do not know how the Cabinet Secretary will answer the Question. This is your life. How you bury the dead does not concern the Government. This Member has asked the Question to the wrong person. The Cabinet Secretary cannot answer a Question on how you bury your dead. How you bury the dead is in the scriptures: The Bible and the Quran. Please, learn the best practice from your neighbours. Learn from us. Bury the dead as fast as possible, within 24 hours. Stop the practice of *Disco Matanga* and fighting over the dead. Stop taking politics to the church. Respect religion and the dead.

*(Loud consultations)*

**Hon. Moses Cheboi** (Kuresoi North, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Very well. It is not a debate. The Member for Rabai asked a Question. It looks like this is a very popular topic. You are in the process of answering him but the Question is directed to the Cabinet Secretary for Interior and Coordination of National Government. There is a point of order from the Deputy Speaker, who takes precedence.

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Speaker, I rise on a point of order. I do not have an issue with the Leader of the Majority Party. It is absolutely wrong for him to imply that Christians practice certain things which are against the biblical teachings. Hon. Mwamkale is a Muslim. Secondly, *Disco Matanga* is not practised by Christians. It is a *disco*. Christians do not go to *Disco Matanga* or even ordinary *disco* out there. The Leader of the Majority Party must be respectful of all other religions. Let us not even talk about best practices. There is no best death practice. If he means the way we dispose of the people who die, there are systems which the Christians and Muslims follow. They have a very good reason. Most of the Muslims are in very hot areas. The bodies cannot last for so long. Christians want to mourn the dead.

Just to clarify to the Leader of the Majority Party, our Bible says that you go, cry and mourn with the bereaved. It is a biblical teaching. So, the Leader of the Majority Party must respect Christianity just like we respect Islam. Everybody should do his or her things in the manner that is dictated by the holy books.

Thank you, Hon. Speaker.

(Laughter)

**Hon. Speaker:** Hon. Members, there is no debate. You can see even Hon. Millie Odhiambo, who has just walked in, wants to weigh into this matter. Let me allow Hon. Kamoti to make a few remarks and the matter will rest there. Those Members who are interested in this matter, kindly appear before the Departmental Committee on Administration and National Security when the Cabinet Secretary for Interior and Coordination of National Government appears to respond, so that you can ventilate there. For now, this is a Question that has been directed to the Cabinet Secretary.

Proceed, Hon. Kamoti.

**Hon. William Mwamkale** (Rabai, ODM): Thank you, Hon. Speaker. There is need for clarification. When I rise to ask Questions here, I do so on behalf of the people of Rabai. As you initially pointed out, everything is put together as *Disco Matanga*. We, in Rabai, are being stopped from mourning the dead and performing our cultural practices that we know. *Chang'aa* drinking is considered as part of *Disco Matanga*.

We respect the Muslims and other people's ways of doing things. The reason I rose to ask the Question is because this order was given in Kilifi County. When you go to the neighbouring counties, people mourn their dead overnight and they have no problem. That is why I am questioning the validity of the order because there was no gazette notice. It is a crime to mourn the dead in Kilifi County. You cannot criminalise an action in one county when the same is being done in other counties without any problem. So, we need to know the validity of this order. The Cabinet Secretary should understand that mourning the dead should not be considered as *Disco Matanga*. People are stopped from mourning their dead in the traditional way. Muslims do their things according to the Quran. We are doing ours according to our culture. I do not think anybody should interfere with that.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well, Hon. Kamoti. You will canvass that matter when the Cabinet Secretary appears before the Committee. You may even seek to know whether the particular order is based on any legislation or it is an Executive Order. You are at liberty to go and canvass that issue before the Committee. The Cabinet Secretary will respond as to whether indeed what he has done is only affecting Kilifi County or Rabai Constituency, and it is not being extended to

other counties where something similar may be happening. I do not have a position regarding how people should pay their last respect to their departed loved ones. The Cabinet Secretary will be in a position to explain the issues you have raised, Hon. Kamoti.

Hon. Members, let us leave it at that.

Let me have the Member for Butere, Hon. Tindi Mwale to ask his Question.

*Question No.398/2019*

COST OF CONSTRUCTION OF INTER-CHANGE AT GSU ROUNDABOUT ON  
THIKA SUPER HIGHWAY

**Hon. Nicholas Mwale** (Butere, ANC): Hon. Speaker, I rise to ask Question No.398/2019 to the Cabinet Secretary Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

(i) How will the construction of an inter-change at the junction of Outer Ring Road and the Thika Super Highway at the GSU Roundabout ease traffic congestion on the busy highway and Outer Ring Road?

(ii) How much will the project cost once completed?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Teso North, Oku Kaunya.

*Question No.399/2019*

CONSTRUCTION OF STALLED MALABA-ANGURAI-MALAKISI  
AND ANGURAI-MODING- KAKEMER ROADS

**Hon. Oku Kaunya** (Teso North, ANC): Hon. Speaker, I rise to ask Question No.399/2019 to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

(i) Why has the construction of Malaba-Angurai-Malakisi (C1) and Angurai-Moding-Kakemer (C2) Roads, which were awarded to M/s.AVIC International Corporation during the Financial Year 2017/2018, stalled for the last eight months?

(ii) Could the Cabinet Secretary confirm that the construction carried out so far on the said roads meets the set quality and standards?

(iii) What steps is the Ministry taking to ensure that the construction of the two roads is completed soonest possible, considering that the contract period for the construction has since expired?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

**POINT OF ORDER**

EVICTION OF RESIDENTS OF MOWLEM

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Pukose, what is your point of order?

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, last week on Thursday, I sought a Statement from the Chair of the Departmental Committee on Administration and National Security on an issue where police officers under the command of the Endebess Sub-County Police Commander forcefully evicted residents of Mowlem. The Leader of the Majority Party gave an assurance that it will be responded to today. I am aware that the Chair of the Departmental Committee on Administration and National Security is around and, therefore, through you, Hon. Speaker, I seek to get the response to the issue today.

**Hon. Speaker:** Is the Chair of the Committee present? Hon. Pukose has said that he is sure that the Chair of the Committee is present. The Leader of the Majority Party who undertook to have the issue responded to may respond.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I passed the message to the Chair of the Committee because I was a messenger. I also passed the message to the Ministry of Interior and Coordination of National Government. The Chair was here a few minutes ago. I will make sure that he gives an answer tomorrow.

*(An Hon. Member photographed Hon. Aden Duale)*

Hon. Speaker, the hon. Member is photographing me in the Chamber. It is not allowed and I am not sure whether he is going to send it to my enemies. Instead of recording me, he can get the HANSARD. I will tell the Chair of the Committee to provide an answer tomorrow afternoon. He is a good friend of mine, but I do not know why he is taking my photo. We will discuss why later.

**Hon. Speaker:** Hon. Members, particularly Chairpersons of Committees, I do not know how many times I need to say this. If the Chairperson of a Committee is not present at this point when they know that there could be a request for a Statement or a Question or a Statement that can be responded to on the spot, if for one reason or the other the Chairperson is not present, please, make sure that the Vice-Chair is in the Chamber. Otherwise, we should then overhaul the leadership of Committees. It is not right that a Committee that has a Chairperson and a Vice-Chair is totally unrepresented by both of them when the House sits in the first one hour. The first one hour usually, even if you go to records, you will see what I have said. Even when we used to have ministers, the minister or the assistant or some alternate from the Cabinet would be present.

Hon. Paul Koinange and Hon. Waluke cannot both be absent! Any of the ranking Members should be present to respond. It is very frustrating.

Hon. Kaunya, do you want to respond by raising your hand?

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Speaker. I am a member of that Committee. I would like to confirm that our Chairman, Hon. Paul Koinange and the Vice-Chairman have been here. They have just stepped out shortly.

With regard to the question, this morning, we examined Bills. We have set aside Thursday to answer the questions. Already, the Cabinet Secretary has been invited on Thursday and next Tuesday. We have a number of questions lined up. So, I believe that, after that, our Chairman will provide the answer.

Thank you, Hon. Speaker.

**Hon. Speaker:** I now remember that this was a request for a Statement and, therefore, Hon. Kaunya, make sure that CS provides an answer. The Statement will not be given before the Committee. There is a difference between a Question and a Statement. The Statement was sought from plenary and, therefore, it should be given here. It is the property of the entire House now. I am sure the House would want to hear the response from the CS so that Members can also make comments or give their input as to how it would have been responded to. So, make sure it is one of those that should be available for delivery on Thursday afternoon.

The next Statement is by Hon. Melly who would wish to make some request.

## STATEMENTS

### DEMISE OF STANDARD SIX PUPIL OF KABIANGEK PRIMARY SCHOOL

**Hon. Julius Melly** (Tinderet, JP): Hon. Speaker, there was a request by Hon. Joyce Korir, MP for Bomet last week that the Cabinet Secretary for Education issues a Statement on the demise of a Standard Six child of Kabiangek Primary School.

Hon. Speaker, as the Departmental Committee on Education and Research, we transmitted the message to the CS but to date, we have not got full information on the same. The CS has communicated to us that he will give full information on the same by Thursday. I am doing this because I had made a commitment before the House that I shall bring the Statement to the House today. Therefore, I request that it be extended to Thursday so that we bring a comprehensive Statement.

Thank you, Hon. Speaker.

**Hon. Speaker:** Thursday, it is. Hon. Joyce Korir is also away on official duties. Hon. Washiali, do you have something you want to say?

### UNANSWERED QUESTION BY DIRECTOR OF PUBLIC PROSECUTIONS

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. I rise under Standing Order No. 42D(a), on unanswered Questions. Early in the year, I rose in my place to ask Question No. 089/2019 that I directed to the Director of Public Prosecutions (DPP). The Question, from the records that I have, was forwarded to the DPP by a letter written by Mrs. Serah Kioko. Later on, the answer having not been brought forth, I rose again on this point to ask why the answer had not been brought to the Floor or even given to me. You gave an order and from that order, the Clerk wrote another letter on 19<sup>th</sup> June 2019. I confirm, Hon. Speaker, that to date, I have not received the answer. I am wondering whether the DPP is operating above the law. I do not think it is fair that he keeps the Question for that long.

I thank you.

**Hon. Speaker:** Indeed, the written reply which was sought ought to have been provided to you and a copy to the Clerk. I have seen the letters that the Clerk has written. Clerk, do one final letter reminding the DPP that he is required, within the next seven days, to provide that written answer; failing which, we will look for a way of inviting him. Since this is not before a Committee, we will have to devise a way of dealing with strangers in plenary. It is one of those things that the Procedure and House Rules Committee, as well as this plenary, should address. How do we deal with strangers whom we want to hear responses from here in plenary? This is because Article 125 of the Constitution provides, *inter alia*, that each House of Parliament or its

committees has power to summon any person to appear before it to give evidence and/or information. Now, to the extent that we have not made provision of how strangers will appear before us here to give us information or evidence, we need to address that.

We will want to seek the assistance of some of the legal minds like Hon. Otiende Amollo since he is the only member of the Committee of Experts who is a Member of this House to tell us what they had in mind. We do not want to guess the intention of the framers of the Constitution in Article 125 when you provided that each House of Parliament or any of its committees may summon any person before it to give evidence or to give information. How was it intended to be actioned on by the Houses sitting in the plenary? Hon. Gitonga Murugara, please, help us. How do we action this?

Some of the problems that Members have here with responses are as a result of us not having made provision for that. Yes, they can appear before committees. I have seen the other House has done away with the strictures of not inviting strangers. Maybe, we need to begin thinking of how to deal with such strangers because they will still be strangers. Maybe, we need to make some provision; something like a dock or a witness box where such strangers will appear and respond to questions and statements sought in plenary. We should be proactive in how we interpret some of these provisions. I can see the Member for Mathare is very happy to provide some input but, please, just sit and think through this in light of some of the reasons why Cabinet Secretaries are not allowed into the plenary. We need to think about this because we do not want also to hamstring ourselves. By not thinking of ways of getting these people to appear before the plenary and respond, it could be one of the reasons why Members tend to get frustrated seeking statements and answers from Cabinet Secretaries who, sometimes, do not even appear before committees. We should be able to look for a way of dealing with this particular aspect. That will be sorted out that way.

The Chair of Budget and Appropriations Committee wanted to make a statement. Is he away?

#### RESOLUTIONS OF POST-BUDGET CONFERENCE

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Sorry, Hon. Speaker, I was consulting with the Deputy Speaker and the Leader of the Minority Party.

I beg to read the following Statement.

As you are aware, the Liaison Committee and the Budget and Appropriations Committee held a post-budget conference on 14<sup>th</sup> September 2019 at the Whitesands Hotel in Mombasa. The main objectives of the conference were to review the weaknesses and strengths in processing the Financial Year 2019/2020 Budget and devise strategies for effective oversight and monitoring implementation for the Financial Year 2019/2020. The facilitators of the conference were drawn from the Parliamentary Budget Office and the Directorate of Committee Services. During the said Conference, the following resolutions were made:

1. There should be a close link between the Budget Policy Statement and the Annual Estimates
2. The Parliamentary Budget Office to provide details of what is needed by the departmental committees when considering quarterly reports and ensure that committees' work plans include the pre-budget and post-budget conferences.

One of the outstanding issues identified in the conference is weakness in the oversight of budget implementation. While budget formulation and approval has been largely successful, oversight on budget execution, which refers to monitoring of various performance targets and outputs, has largely been inadequate. Further, Kenyan citizens require to see development

projects being implemented and essential services being provided to them in line with the approved budget. Equally, the National Assembly has a central role of ensuring services and projects for which monies were appropriated by this House through the Appropriations Act are equally delivered to the citizens. However, effective delivery of services requires regular monitoring by committees to address the slow pace of implementation of development projects, stalling of projects, lack of achievement of the planned targets and misappropriation of funds.

Hon. Speaker, if you allow me to just re-emphasise that particular point, effective delivery of services requires regular monitoring by committees. Those committees are just what you were referring to here when you spoke about the presence of Chairs and Vice-Chairs of committees at least during the first one hour to address questions and statements in the House, and goes beyond the plenary to the business that we transact in the committees of the House. Therefore, I want Members to take note of the role that we are being called upon to play as honourable Members of this House. As legislators, the Constitution gives us three principal roles to play including oversight and representation. We must take up that role of oversight within our committees and, more so, the oversight of the implementation of the budget that we approve in this House. I know many Chairs of Committees are aware of the issues that are there in terms of implementation. To enable this process, Departmental Committees will be required to undertake oversight and table status reports on Budget implementation at the end of every quarter. In order to support this, I urge the House Business Committee which you chair to also prioritise the processing and adoption of those reports at the end of each quarter.

I would further wish to bring to the attention of Members of the publications of the Parliamentary Budget Office (PBO), particularly the latest *Budget Watch* which highlights the key issues and development targets that the Committees of this House should keep an eye on during the implementation of the Financial Year 2019/2020. It is good to mention that this *Budget Watch* is a publication by our PBO. It gives very good highlights that would guide Members. I urge, especially Chairs of Committees, to ensure the clerks that are in charge of their Committees get each Member a copy of this *Budget Watch* document. That is so that they go through it and see what areas need focus.

For instance, the Chair of the Departmental Committee on Education and Research, the Chair of the Departmental Committee on Finance and National Planning or the Chair of the Departmental Committee on Agriculture and Livestock who are seated here, would see what areas to focus on. That is so as to ensure that it is not just the input during the Budget Estimates, but also that the output and targets are being achieved and that the projects that were identified to be implemented in this Financial Year are implemented. That is the most important role to us as Members of Parliament and Members of various Departmental Committees. It is what we can offer the population back in our constituencies – ensuring that each and every project is implemented. Remember our Budget is programme-based and project-based. We should make sure each project that was identified and whose resources were appropriated by this House is implemented within this Financial Year. That is so that even those which will not be completed within this Financial Year are, at least, started.

As I conclude, the PBO will, in the coming days, circulate a framework highlighting key areas for Departmental Committees to monitor budget implementation in line with their mandates. I urge this House to support the office in this endeavour. Even as the framework highlighting the key areas the Departmental Committees will monitor comes, it is important to remind the Chairs of the Committees that, as much as we put in a lot of effort and time in the month of February from the time we start reviewing the Budget Policy Statement (BPS) to the

time we review Estimates in April all the way to towards the end of June being the time we approve the annual Estimates and we put in a lot of work in reviewing and approving those Estimates, we need to do more. We fail during the post-Budget period. That is why, together with the Liaison Committee, we thought it is important to have this post-Budget conference. We have realised that there is a huge gap in how Parliament, through its Committees, oversees the implementation of that Budget.

It is instructive that we are in the third month of this Budget or the last month of the First Quarter of this Financial Year. Many Chairs of Committees and Members of this House will tell you that the implementation of our development budget expenditure is almost at zero per cent towards the end of the First Quarter. That should be a matter that is of concern to MPs and the country at large. Our people are complaining about unemployment and not having money in their pockets. Considering that the Government is the single largest consumer of goods and services, this can only happen if we are able to roll out development projects and our development expenditure is going into projects that will invigorate the economy to run for there to be liquidity in the market. Even creation of jobs comes through implementation of development projects, not just recurrent expenditure.

I am aware that we will pass the County Allocation of Revenue Bill in the coming few weeks, as you mentioned earlier. I hope it will be before us by tomorrow. We have already created a gap of Kshs6.5 billion in our Budget Estimates. That is from what we passed in the Division of Revenue Bill or adopted last week.

Let me take this opportunity to thank His Excellency the President for assenting to that Bill, the right version of the Division of Revenue Bill with the correct date of 1<sup>st</sup> July, not the other one - the altered one from the other House. I thank the President for assenting to the right version of the Bill.

That hole of Kshs6.5 billion may necessitate cuts in our Budget Estimates as we passed in April. It is important for Chairs and Members of the Departmental Committees to check that. As we have raised concerns in all our budget reports, in the last two or three successive years, they should ensure that budget cuts do not affect the development votes of our Budget. They should make sure we truly focus on the recurrent expenditure because there is still a lot of wastage. Why am I over-emphasising on the issue of oversight of budget implementation? We have talked today on issues to do with the *Punguza Mizigo* Initiative and other referendum issues or other endeavours to change the Constitution. One of the principal targets by members of the public out there is Parliament. Why do we become a target? Various times as we transact business here, we have said it will not help even if you were to completely do away with Parliament as an institution. We have some other forms of democracy that do not have elected representatives. We probably would save only 1 per cent of our Budget. With this Division of Revenue Bill, our counties are consuming about 30.5 per cent of our revenues. Therefore, almost 70 to 80 per cent of our Budget is in the national Government. We get bashed by the public because we have been given a key responsibility as MPs to oversee that very huge budget in the hands of the national Government. How well we are doing that is the question that begs for an answer. That is why I am asking MPs, especially through our Committees, to indeed take up the role of overseeing our Budget, after approval, more seriously than we have been doing. Failure to do that, we will continue being accused that we are gobbling up a lot of money which is only 1 per cent. As I said, we would only save probably 1 per cent of our national Budget if you did away with Parliament. The very huge percentage of money that is being wasted in Government, in the national Government, is because we do not offer meaningful oversight in our Committees,

especially on the implementation of the Budget. We wait. We have become a House, I am sorry to say, that is like the Director of Criminal Investigations and others who are chasing headlines. We have also reduced our parliamentary committees to chasing headlines. We go to look for things to transact in Committees in newspaper headlines other than offering meaningful oversight based on the Budgets that we pass in this House in June.

Therefore, I urge Chairs of our very good Committees to take up this challenge. I take this opportunity to thank a number of Chairs and their Vice-Chairs who sacrificed their time over the weekend and attended the conference.

*(Hon. Amos Kimunya spoke off record)*

**Hon. Kimani Ichung’wah** (Kikuyu, JP): I hear the Vice-Chair of the Departmental Committee on Education and Research saying “Vice-Chairs” much as he was not there. Oh! I am sorry. Hon. Kimunya was there.

As you mentioned, there are the Chairmen and Vice-Chairs who were not there and they were not represented even by a Member of the Committee. It is time this matter is handled by the Chair of the Liaison Committee. That is so that Chairs and Vice-Chairs of Committees comply. That is the reason we took liberty to involve even the Vice-Chairs – to have broad representation.

With that, I urge the House, not just Chairs of Committees, to support the resolutions of that conference to take up our roles in oversight of Government’s development expenditure. That should be the case even as we go to the Supplementary Budget. I beg that we look at where we can make savings from our recurrent expenditure.

As the acting CS of the National Treasury said last week, there are certain things that people can do without and not die. People can do without flowers; people can do without training for a year or so; people can do without conferences for a year and still survive. But, we cannot do without implementing development projects in our constituencies, in our counties and in the country – development projects which will spur economic growth and ensure that not only our population has liquidity in their pockets, but also in the economy there is job creation for our very vulnerable youths who are well educated but lacking jobs.

With that, I beg to move.

**Hon. Speaker:** Leader of the Majority Party, do you want to weigh in?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I want to thank the Chairman of the Budget and Appropriations Committee. Next time I will help him to lobby, through the Liaison Committee, so that all Committee Chairs can be present for the Budget implementation for the Financial Year 2020/2021 meeting. However, I want him to withdraw two statements: One, that, Chairs are chasing headlines. I do not think Chairs are chasing headlines. Neither is the Director of Criminal Investigations, who cannot defend himself here. The DCI does not use headlines to chase people. That was a bit careless on the part of the Chairperson of the Budget and Appropriations Committee. Those are independent institutions. Maybe there is a plan to arrest him for certain crimes he has committed. He is trying to make serious allegation against the DCI; that he is chasing headlines. As the Leader of the Majority Party, that statement is not in order. We are talking about the Budget. We are talking about chairs who did not attend his meeting, and I am wondering how the DCI comes in.

On a serious note, the Chairperson of the Budget and Appropriations Committee invited his colleagues to a meeting at the beginning of the Budget cycle. Today the Senate is out on what we call: “Senate *Mashinani*.” I have not seen that in our Constitution. Senators are defending it.

Kenyans must be told how much the Senate is spending on Senate *Mashinani*. The Auditor-General must speak to this matter. I do not think they will come to my county. They are in Kitui County. What I have heard is that they have been caught up in the wars between the Senator and the Governor of Kitui County. That is not what we can call “Senate *Mashinani*.” The Senate should know that the Chairperson of the Budget and Appropriations Committee is talking about the Budget of the Financial Year 2020/2021. The Budget cycle has already begun. In the next few months, after public participation, we will get the next document of the 2020/2021 Financial Year. So, when we deal with the Division of Revenue Bill, it will not be that people would have woken up one morning to deal with it. The Senate must follow the 2020/2021 Financial Year Budget from now on, as the Chairperson has said.

Second, it is important that the money that we appropriate to Government, particularly to the national Government, the Judiciary, Parliament and the independent offices through our respective committees, is followed up to check whether it has been used according to how the House appropriated. The Standing Orders allow us to do so. I agree with the Chairperson that every three months, for example, the Departmental Committee responsible for education and that responsible for energy can give this House reports on how the monies appropriated to the spending entities under them have been used so far, including indication of their absorption rates. That element of appropriation must be followed with oversight.

We are all talking about fighting corruption. This august House, alongside the Directorate of Public Prosecutions, the Ethics and Anti-Corruption Commission (EACC), the Office of the Auditor-General, and the Office of the Controller of Budget, have an oversight role to establish how each penny appropriated through the Appropriations Bill has been used, and if the people of Kenya got value for it. On the Chairs who were present at the meeting, the Chairperson of the Budget and Appropriations Committee is right that we must have three quarterly reports tabled, debated and approved by the House, so that we do not give money to an agency or a Government Department whose absorption rate is low. Why should we give them money if they cannot spend what we gave them, on behalf of the people of Kenya?

The Chairperson did well apart from insinuating bad motive on the DCI and Committee Chairs. When he comes to my office, I will deal with that matter.

**Hon. Speaker:** Hon. Ichung’wah that is just a difference of opinion. I want to give one or two comments. Chairperson of the Budget and Appropriations Committee, you have raised an important point and I hope the Chairs of Committees will take note of it. Every line Ministry presents to you a budget, a programme and items with targets. Those budgets will be targeting certain activities. The question is: How many of those have been achieved and up to what level? It must be a concern of this House to interrogate that. If you told us that this is what you intended to achieve, how much of it have you achieved in that respect? If you intended to roll out programmes on schools and hospitals, what have you done? We need to go deeper than just stating that this and that item has been covered. We need to show it is covered in what way. That is the message that is coming from the Budget and Appropriations Committee.

Let me hear from a Member of the Budget and Appropriations Committee, Hon. John Mbadi, the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I also want to thank the Chairperson of the Budget and Appropriations Committee for presenting this Report on our behalf as Members of the Budget and Appropriations Committee. We are all aware, as a country, that by the end of this month, we will receive a document called the *Budget Review Outlook Paper*. A number of times we receive the *Budget Review Outlook Paper*, which gives a mirror of

what happened in the previous financial year and projects what is likely to happen in the coming financial year. However, a lot of times we do not pay attention to it.

Every quarter, the Controller of Budget prepares and submits to Parliament, as required by law, the performance of the budget for the previous quarter. We realised that much as we give sufficient attention to the approval of the Budget, we do not give equal attention to its implementation. That has a negative effect on the economy. Right now, with the problems that we have had up to now, most Government ministries, departments and agencies, including the county governments, are not spending the budget on development expenditure; they are only spending the budget on recurrent expenditure. Whereas we are aware that, that is because of the stalemate that was caused by the Division of Revenue Bill, the question one would ask is: What effect will this have on the economy given that we went for three months without spending the Budget yet the projected revenue was based on the assumption that the Budget would be spent progressively, uniformly and in a *pro rata* basis for the entire financial year? Those who understand matters economics and finance and those who have knowledge of these issues based on experience, like you Hon. Speaker, will agree with me that the effect on the economy is disastrous.

I want to highlight a few things why we had this meeting last weekend and what we agreed on. I want to emphasise what the Chairman said. We agreed as the budget committee that we will hold a conference where we will meet with the Chairs and Vice-Chairs of all committees in this House, because we want the Committees to help this country in terms of implementation of the Budget. We get reports from the Controller of Budget and a lot of times they are financial reports. The non-financial aspect is usually not given attention. We do not want to see that the Ministry of Energy, for example, has spent 60 per cent of the budget allocated. No. What we want to see is exactly what you have said. The Ministry of Energy had programmes for the year. Continuously, we want the Departmental Committees to be holding ministries, departments and agencies accountable to explain how far they have gone with the implementation of the budget, so that the people of Kenya do not blame the National Assembly for sleeping on the job.

Finally, there is something which I think we are not properly addressing as a House. The law is very clear that you cannot borrow money and spend it on recurrent expenditure. Therefore, we expect the committee of finance to be asking the Treasury when they are borrowing money, whether it is from the domestic market or external market. There must be an explanation that that money being released to Ministry X is for what programme, so that we are sure that the money that is borrowed goes directly to productive sectors of this economy. That is lacking. In fact, we borrow money for general budgetary support, which therefore means that a ministry receives money and they can use it to even pay salaries or fuel vehicles and yet that money is from Eurobond or from the domestic market. I have been talking about this and when we had a meeting of the budget committee it was proved to be so. The presentation of the PBO confirmed what has always been my fear: that we are borrowing money to cover recurrent expenditure. That is the sad reality. We need the committees of this House to help us in this.

Hon. Speaker, before I sit down, if you allow me, we had a meeting which I thought was very crucial. Whereas there were a number of Chairs of Committees – I know they are also busy with other things – I think it is important to plead with them to prioritise meetings with the budget committee, especially when we will discuss implementation. I am not trying to demean the capacity of Vice-Chairs; they were there in their numbers. The responsibility still lies with the Chairs of Committees. We know how they are important. We want to plead with them that the next time we have a meeting we would want to see more Chairs of Committees, not just the

Chair of Agriculture as it was the case. He was diligently there throughout. The Chair of the Special Funds Committee, Hon. Kathuri, was there throughout, and one or two Chairs. The rest were Vice-Chairs. Next time, I want to plead with the Chairs, let us come together and engage. Hon. Pukose wants me to recognise him. I want to recognise Hon. Pukose, that he was there throughout as the Vice-Chair, but not as the Chair of the Committee. I am sure he had full authority. I was wondering how my Chair could forget Hon. Amos Kimunya, who was actually seated next to him and who was acting any time he walked out. Our Vice-Chair was absent, I think with permission. Therefore, with those many remarks, I want to plead with our colleagues that committees are formed to help the House run its affairs.

Hon. Speaker, there is something, if you allow me. I know I have asked for your indulgence a number of times. We spend so much time in this House discussing Motions urging the Government, which have no effect in law. I am not trying to demean these Motions, but I thought, as a House Business Committee, why do we not prioritise quarterly discussions of budget implementation of all MDAs, so that we spend less time discussing Motions urging the Government? We can discuss Motions instructing or making resolutions, but limit the number of Motions urging the Government and we go direct to discussing Budget implementation. Just the same way we discuss during the Committee of Supply, we also have time every quarter to discuss Budget implementation.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, that is a good suggestion. Hon. Eseli.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD-K): Thank you, Hon. Speaker, for this opportunity. I would also like to add my voice in thanking the Chair of the Budget and Appropriations Committee for the statement he has given to the House. I belong to the Health Committee and the Chair of the Budget and Appropriations Committee has talked about monitoring and overseeing the agencies under our care. We do that diligently. And I am happy the Chair also acknowledged that the Committees worked very hard during the budget-making process, sometimes burning the midnight oil and even missing going to our constituencies. But when we presented our recommendations to the budget committee, none of them were taken up. In fact, one of the recommendations we had made was that some money was to be moved and put to paying personnel at Kenyatta National Hospital (KNH). This was refused.

Recently, those health workers went on strike. I think the budget committee needs to give the other committees respect. When we have done all that work, we have monitored the Ministry of Health; we know what is going on there and we recommend this money be moved from here to where it is more necessary, and it is ignored that is bad. I think the outcome of what they are saying that they had very few Chairs is just an outcome of the fact that the Budget and Appropriations Committee ignores Chairs when they make recommendations to it. If the Chair of the Health Committee presents certain things that the committee has recommended *vis-à-vis* the Ministry of Health and it is ignored and ends up with almost a national catastrophe, that healthcare workers at KNH go on strike yet this is something that the Committee had overseen and we had put it in that Budget, then that is not good.

Therefore, it is not good enough to say the Chairs have not turned up. I suspect they are demotivated because the budget committee ignores the recommendations of committees, at least from the point of the health committee where I sit. That is what we have faced. If that is to continue, then I am afraid it will demotivate us. Whatever we recommend and the budget committee does not take into consideration, then what are we there for? This is a budget-making House. It is not just a rubber stamp like the previous Parliaments. Under the new constitutional

dispensation, this is a budget-making House. If the committees' recommendations cannot be taken into consideration, then what does the budget committee want us to do? Attend meetings with them and then they do not implement what we recommend? I think we need to re-examine this.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I rise to support the statement made by the Chair of the Budget and Appropriations Committee. Indeed, it represents the deliberations of the conference. I also want to thank the Clerk of the National Assembly for ably representing the leadership of the House and highlighting some of the issues, especially from an accounting officer's perspective, so that it is not just we looking but we had live input from an accounting officer. I also want to add onto what Hon. Mbadi mentioned. The conference was not just a meeting of Vice-Chairs and Chairs but included accounting officers, so that there is concurrence across the board in terms of how oversight will take place.

Hon. Speaker, as you rightly mentioned, I have been in this House for the last two years in this new dispensation and one of the things to note is that there has been total lack of oversight of the Executive except on operational matters. We would be happy to ask the CS for Education why a child was killed in school and not what they have done in terms of education to achieve impact and to ensure that educational standards go up. Similarly, from the questions and petitions coming on the Floor, you will see clearly that the direction we are moving to is not in checking what the trillions of money are doing to change the lives of Kenyans in this country. From how you quite ably put it, we start by talking about the inputs and not the activities that are then captured in the financial statements.

However, we have been missing out on what outputs were promised and whether they have been achieved. What impact have they made on the lives of Kenyans? If we could start re-thinking that way as a House, within the next three years, we could inculcate that in all the Members, that is, the culture of interrogating not just how much money has been spent or the absorption rate, but the impact it has had. For example, how many kilometres have been constructed? When we were looking at the Budget earlier in the year, the Budget Policy Statement (BPS) was wholly mainstreamed to the Big Four Agenda. In fact, the question all the agencies were asking us during the reviews was that we show them how we had mainstreamed the Budget into the Big Four Agenda.

Changes are made in the National Treasury and now we hear that agencies will be going back to review the Budget in order to mainstream it to the Big Four Agenda. What kind of Budget did we pass? The BPS and the Budget had the Big Four Agenda and now we are talking of the Big Four Agenda! So, there is a disconnect even at the Executive. If we do not capture it and oversee it well, we will come back here for the Supplementary Budget II, to then review and mainstream it into the Big Four Agenda. That is assuming the rest of the Government is in limbo.

So, let us rethink as the 12<sup>th</sup> Parliament and purpose that our legacy should be to create a House that oversees the Executive; the Judiciary and all other agencies. It would rather be, than just flowing with the activities of the day and being seen in such a way that you cannot tell the difference between the Executive and the National Assembly. When we lose, then we become redundant and initiatives such as *Punguza Mizigo* would want to water down what we do because they cannot actually see what we are doing. So, let us reassert ourselves. The current threats you see on reducing Parliament is partly borne by the fact that people have not seen the effectiveness of Parliament. Let us assert ourselves and every one will respect the fact that we

can hold the Executive and all other agencies to account and ensure that the money we give them translates not just into spending but also impacts the economy, the lives of people, and poverty reduction. That way, we will make Kenya great.

I thank you, Hon. Speaker.

**Hon. Speaker:** Finally, let us have Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. Let me also join my colleagues in appreciating the resolutions because they will take us far. However, before I go to the details, I would like to inform the House what the Leader of the Majority Party talked about Senate *Mashinani*. Indeed, the Senate is sitting in my county. He has only seen the negative reporting. I want to confirm that very many good things are happening in Kitui County.

It is unfortunate that, as usual, our journalists believe that if you report positive things, they will never find their way in the media. So, they only focus on the negatives. Yesterday, I spent the whole day in Kitui and I want to confirm to this House that very many good things are happening. Our business people are very happy with the Senate *Mashinani* being in Kitui.

On the resolutions, I am happy to hear my Chairman say that the Parliamentary Budget Office will work on a framework in terms of how to implement these resolutions. We require a lot of data to implement those resolutions. We require evidence on what has been done.

Hon. Speaker, you are aware we have a caucus in this Parliament, which I chair called Parliamentary Caucus on Evidence-Informed Oversight and Decision-making. It focuses on use of evidence to say what has been achieved or not. So, as we move forward, my appeal to the Chairpersons is that they will have to work closely with the Budget Office. At the same time, there is a department in the Executive which is critical to what we want to do. I see that we have challenge in terms of resourcing that department. I am talking about the Directorate of Monitoring and Evaluation. That is the directorate which will give us all the information we require. However, if you analyse their budget and the way their capacity is in terms of availing that information, you will realise that we have a challenge. As we move forward, I would wish that we support that directorate to get a legal framework which could be supported by a policy framework. If we had a monitoring and evaluation policy that is national and a legal framework to support that same policy, all what we are asking for would be very easy and we would do this quarterly.

The other thing you must note is that every quarter we also get budget monitoring from the Controller of Budget. However, when you look at those reports because they come to this House, it is all financial reporting. There is nothing on monitoring and evaluation from what you see. I am so happy when you talk about outputs and outcomes because that is the way to go. However, they never discuss them. So, there is a gap and we need to streamline and ensure we have a smooth way. All stakeholders need to be steered towards that direction.

The other day you saw the Auditor-General lamenting that his reports have so much information which we hardly use. So, we also need to bring on board the reports of the Auditor-General into all these discussions and it will make budget implementation help Kenyans. This is because Kenyans out there want to see the outputs, outcomes and the impact. Unless we show them that, they will think we are just doing routine assignments year in, year out, and that does not benefit them.

With those remarks, I thank you.

**Hon. Speaker:** Let us have Hon. Haji

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Speaker. I also join my colleagues in adding my voice to these important disclosures. I was in Mombasa and the meeting was very

fruitful. There are a lot of areas that we have seen this House needs to be brought up to speed. From where I sit as the Chair of Departmental Committee on Agriculture and Livestock, the excitement out there with regard to the Big Four Agenda is not captured in the budget-making process.

This is manifested in the Estimates for the Financial Year 2019/2020. The figures and the BPS are not talking to each other. Therefore, it is high time this House began to probe this Big Four Agenda further, than what we are made to believe. The Ministry was recently called upon to align the Big Four Agenda to the budget-making process, one month after the Budget was approved. One wonders whether these public officials got to know about the Big Four Agenda just the other day. I believe they were fully aware that the Big Four Agenda existed. They were, however, instructed to align these projects and programmes according to the estimates that were available.

Hon. Speaker, we are reading mischief from the Executive. We must resist attempts by it to change these figures through the back door. The Executive is instructing the public officers to align the approved Budget to the Big Four Agenda and yet we had already considered that.

Something interesting came out while we were in Mombasa, that is, disclosure of how much money each county was getting out of the 30 per cent development budget which remains with the national Government. The distribution of the 85 per cent which usually remains with the national Government to the rest of the 47 counties was revealing. I would like to urge the Budget and Appropriations Committee and the fiscal office to also provide the distribution of the 85 per cent according to the counties. If possible, they should even further break down how much of the development budget which remains with the national Government is used in the 290 constituencies so that this House can make an informed decision when it comes to approving the Budget.

As it is, this House appears to be approving budgets without control or being guided by a certain matrix showing how certain amounts are distributed to our individual constituencies. I was particularly impressed with the top 10 and bottom 10 counties that received the national Government support. I think the Members of this House will be very keen to get the list of who receives the biggest amount in terms of the national Government projects.

This is very critical because we always hear a lot of negative information about how much Mandera County, for example, is receiving from the shareable revenue. But, from the 85 per cent left with the national Government, Mandera County receives only Kshs2.1 billion and this is for a World Bank funded road which is underway. I think it will be fair for the Budget Office to supply us with the distribution of the 85 per cent resources from the national Government so that we can engage different ministries and get what is right for our counties.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, promise to take two minutes each because there is no resolution on this so that we can go back to business. This is important because it touches on what matters to the people you represent. It is important we begin to appreciate the need for us to do more than we are doing. Hon. Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I will go straight to the point and thank the Chair of the Budget and Appropriations Committee and those who attended the meeting.

In the spirit of going forward, one of the most critical lessons we are learning from the discussions is the issue of public debt. The House needs to be alert to the fact that public debt is not just approved when there is formal request before the Departmental Committee on Finance

and National Planning, but also as we approve the Budget. If we approve the Budget with the huge deficit we are essentially saying when it is implemented it will include deficit and then borrowing will take place.

We need to be a lot more critical on the revenue estimates. The Kenya Revenue Authority has been getting off the hook and the National Treasury has been grandfathering them for too long. Therefore, we need to critically look at their performance levels in the Budget of getting the numbers for revenue with a high probability of success. I think the numbers we use have huge disparities running to hundreds of billions sometimes like Kshs300 billion in one year and more. This usually ends up being funds which will have to be borrowed during implementation.

I strongly support the idea of Third Quarterly Implementation Review using the Office of the Controller of Budget, but also using numbers from our own Budget Office. I think there will be more details suited for our needs.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker. I was also present in that meeting as clearly stated and I want to support the Statement by the Chair of Budget and Appropriations Committee. As Hon. Bunyasi has rightly put, one of the things is the issue of public debt which this House gives the National Treasury a blank cheque. I think it is very important for us to recognise that when we pass the Budget in this House with deficits indicating, for example, negative six or negative three, we are giving the National Treasury a blank cheque to borrow without coming back to this House for approval. That is what is getting us into the public debt we are in.

During orientation we normally have the Speaker's round table and Members felt that we need to discuss issues concerning the Budget as one of the agenda items. As Hon. Kimunya has put it, Members sometimes are more concerned about the input. But, in terms of activities, output and impact, they do not understand. Therefore, it is important for this issue to be included in the Speaker's round table so that the whole of Parliament is taught about this matter.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ODM): Thank you, Hon. Speaker. I think the presentation by the Chair of Budget and Appropriations Committee was so good. It woke up my mind on the many reasons why some Kenyans sometimes demean Parliament. Partly, why we are demeaned is because we look like we lack the capacity to oversee the monies which remain with the national Government, other Government agencies and departments. That is why they fight us.

This discourse is very good for us and because of time limits, I will deal with one aspect. Could we as Parliament in this discussion look at how the money is remitted to the different ministries and departments, whether they are the county governments or other Government agencies? A lot of this money is remitted towards the end of the financial year and this leads to terrible wastages. The line ministries get involved in seminars and other quick fixes when the financial year is ending.

Hon. Speaker, as we speak now and as Hon. Mbadi has alluded to, three months have ended and we are not spending the money. Then, the last minute all the money will be used leading to wastage. Currently, the Gross Domestic Product (GDP) is way over Kshs10 trillion, but the Budget is about Kshs3 trillion. I was talking to some economist who told me that we

should scrutinise this Budget properly. Do we have the capacity to consume Kshs3 trillion in 12 months? It could just be a...

**Hon. Speaker:** Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker for giving me this opportunity. I also thank my colleague, the Chair of Budget and Appropriations Committee who has just visited me for bringing up this issue. This is particularly on the issue of reviewing the Budget quarterly. What we will achieve will be very fundamental and I think it is better for the people of Kenya to hear. There is a new implementation at the National Treasury called the Budget Review. Budget is about the people and the representatives of the people are in this House. The Constitution has given us power to make the Budget, but they have also introduced something to also alter it using the terms 'Budget Review'.

In other words, what might happen is that what the House passes on behalf of the people gets itself in National Treasury and some mandarins there can actually erase that project. That is terrible. It means that the power given by the Constitution to this House to make the Budget is eroded. The Budget is a political process. A few people give themselves the power of Parliament to review the Budget. You know what they do. They bring it as a supplementary budget because they have erased your project. Particularly being the chair of the Departmental Committee on Transport, Public Works and Housing in terms of roads... You might have many roads for these Members and the people of Kenya which have been passed on the Floor of the House and during review you see that the road projects have been erased. There is nothing important as this review because it will cure that problem of trying to remove road projects.

I thank the Committee and urge that we maintain it so that they know that we will keep them on check. I thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. I stand to support the report by the Chair of the Budget and Appropriations Committee. As a Member of the Departmental Committee on Trade, Industry and Cooperatives, where manufacturing is one of the key agenda in the Big Four Agenda, it is always unfortunate that the manufacturing sector is underfunded to the extent that the Big Four Agenda dream through manufacturing might never be experienced or actualised.

I sincerely support the idea and I hope the Parliament Budget Office and other donors will develop a framework or a tool to enable us monitor the performance of the Budget over the year. Typically, like elsewhere, we would have key performance indicators that are financial, operational, performance and un-financial that will enable us to track the implementation of the Budget.

More importantly, the question I will continuously need to ask is: What is the multiplier effect of the Budget implementation on the economy of the people of Kenya? To what extent have we generated employment? To what extent have we increased per capita income? To what extent have we improved the general welfare of the people of Kenya? It is high time Parliament played its role because the general joke out there is that we simply come to earn allowances. We simply come to abet corruption and we are not able to nip corrupt practises in the bud before they actualise.

Thank you, Hon Speaker.

**Hon. Speaker:** Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. Budget-making is the most important function given to this Parliament by the Constitution. I am,

therefore, shocked to hear that some committee chairs do not attend those important engagements.

I have been thinking about how we can have committee chairs who are fully committed to parliamentary process. I will be suggesting to the Procedure and Rules Committee to maybe make the term of committee chairs a two year renewable term. This is because the situation we have under the Standing Orders says that the only way you remove a chair once elected is through removal and you may not want to take a colleague through that embarrassment. If we put two years renewable term without a limit, I think the chairs will take their place of privilege and push to serve harder.

There is need to clearly define the role of departmental committees around Budget. Many are the instances where you make recommendations in terms of budgeting within the departmental committee only for them to be changed by the Budget and Appropriations Committee without reference. Many are the instances where people or agencies under the charge of a departmental committee will reach there and they are asking you whether they should be serious in budget-making before the departmental committee or they take those issues to the Budget and Appropriations Committee. It diminishes that role of the committee which understands better that department under their charge. So, there is need for clear delineation.

It is being said that we largely budget corruption in our country. In addition to budget oversight, my concern is that we need to look at how to strengthen the role of Parliament around the Budget. The Budget Policy Statement and the budgeting process arrive in Parliament very late...

**Hon. Speaker:** Next is Hon. Sankok. Hon. Kaluma, we agreed two minutes.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. He was speaking about being too late and he was too late himself.

Let me start by supporting the statement from the Budget and Appropriations Committee. I also support Hon. Kaluma by saying that the chairs should up their game so that they will be attending such an important process. If not, then we change the Standing Orders so that they serve for at least one year or two years.

I also want to alert this House that as we engage, let us oversee the Executive properly because at the moment, there are a lot of wars that are happening deviating the implementation of the Budget. There is *tangatanga* and *kieleweke*. Building Bridges Initiative (BBI) is soon coming and there is the Punguza Mizigo Bill. Very soon, we will have no quorum in this House. So, I alert the House by telling it that it needs to stand firm and make sure that it is not distracted by these other wars especially from the Executive. We oversee and implement the Budget the way it is. On the issue of supplementary budget, and them having their own little budget in there, it is this House that is mandated by the Constitution to allocate funds. We should oversee and follow up to the implementation stage.

**Hon. Speaker:** Hon. Otiende Amollo.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Speaker, I support the Chair of the Budget and Appropriations Committee in so far as urging chairs of committees to participate is concerned. Chairs of committees must know that the voice of the people in the budget-making process is heard through their representatives sometimes as presented in the committees.

I also urge – and the Chair is not listening – that the Committee should listen more to Parliament and less to the Executive when it comes to budget-making because ultimately, it is Parliament that makes the Budget.

Lastly, on how to make chairs much more responsive, I think that is one of the things we have not done especially as committees. I took the points by the Whip, Hon. Washiali that we have not utilised the full spectrum of our powers under Article 125 of the Constitution. I am yet to hear of any committee that has summoned any person within the Executive or any independent office and who, on declining, has moved to summon them and then taken the measures that are contemplated. I urge that the question you posed earlier is already contemplated by Standing Order No.25A. This Standing Order authorises you to prescribe such place as may be appropriate for such persons invited to stand for us to question them if there is need. I suggest that because the bar of this House is too far, you may designate what used to be the judges row as one such place and we make an example of any one individual who may be summoned to answer to Parliament.

**Hon. Speaker:** Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you. I take this opportunity to thank the Chairman of the Budget and Appropriations Committee. I think the problem is that the committees come up with the Budget midstream. Somehow the budgets are actually cut without due reference to what the departmental committees have done. Therefore, I suggest that the way forward for this is to have monitoring and evaluation in each committee so that we can fast-track whatever is supposed to be done on a quarterly basis so that they report the progress and the achievement of whatever target we have set. I suggest that instead of waiting up to the end; let us have monitoring and evaluation in every committee to fast-track whatever targets were set. When the committee again invites the chairmen, let us have somebody resourceful from the committees who will accompany the chairman to come up with whatever resolutions that have been passed. This is because we have had cases where the chairmen go and at the end of the day, as a committee, we do not know what has been discussed.

**Hon. Speaker:** Finally, Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Speaker, for giving me this opportunity to contribute on this very important matter.

This House needs an oversight framework so that various committees can clearly oversee how the Government spends the money that we give it. This is because the oversight activities that are being done within the committees solely depend on the creativity of the chair. If you have a chair who feels like he is an extension of the Executive, then there is nothing that will happen in terms of oversight.

I want us to narrow down the occasions where state agencies would appear before the Committees to explain how they spent the money that they were given in the previous financial year before requesting for more funds. The Committee should also move around to appreciate the projects which state agencies say they have done using that money. Otherwise, if this House continues to give money to the Government and not understand how it spent the previous amount of money, that would be a complete disservice to the people of this country. We will not be doing what the law requires of us to do; completely oversee Government expenditure.

**Hon. Speaker:** Well spoken. I hope the Budget and Appropriations Committee will take on board the views expressed by a number of you because in your respective Departmental Committees, you exercise oversight over several ministries, Government departments and agencies. Therefore, you are best placed, on behalf of Parliament, to suggest how to deal with the budget issues affecting those ministries. Therefore, the recommendations that come from your respective Committees should finally find expression in the document that is presented by the Budget and Appropriations Committee so that you also do not get demoralised and demotivated

as was said by Hon. Eseli. The Chair of Budget and Appropriations Committee, there is still something for you to do. The Members also want to feel like they are doing their work and that what they bring to you finds expression. It helps them to oversee the agencies. It will be useful if the Departmental Committees as well as the Budget and Appropriations Committee follows what comes from our Parliamentary Budget Office.

Very well. For the convenience of the House and upon request, Hon. Joseph Limo, I will allow you to lay the document you intend to. Let us have the Chair of the Departmental Committee on Finance and National Planning.

### PAPER LAID

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on its consideration of the Finance Bill, 2019.

**Hon. Speaker:** I hope that you have sufficient copies for every Member because it is likely that debate on that Bill may commence even tomorrow. I hope you have produced sufficient copies of your Report so that Members can then be advised to pick them.

Next Order.

### PROCEDURAL MOTION

#### EXTENSION OF PERIOD FOR CONSIDERATION OF SPECIFIED PUBLIC PETITIONS

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order No.227(2) (Committal of Petitions), this House resolves to extend the period for consideration of the public petitions specified hereunder by the Departmental Committee on Energy by a further period of 60 days with effect from 13<sup>th</sup> August, 2019 –

- (i) Water supply constraints caused by Kenya Power tariffs in Kilifi County;
- (ii) Demolition of houses in Chokaa, Embakasi East Constituency by Kenya Power Limited; and,
- (iii) Compensation of the Naivasha – Maraigushu land owners by the Kenya Electricity Transmission Company (KETRACO).

The reason for this extension is that the Committee is still to get the Kenya Power Company, the Energy and Petroleum Regulatory Authority (EPRA), the Ministry of Lands and the Kenya Electricity Transmission Company (KETRACO) to appear before it so that they can conclude these petitions. The Committee has so far received submissions from all the petitioners and made visits to Kilifi County and Chokaa Area in Embakasi Constituency to apprise themselves of the situation on the ground and interact with the area residents. We are travelling to Naivasha next week on Monday to also see the situation in the Naivasha-Maraigushu land.

The issues carried in these petitions are serious. It is imperative that the Committee gets adequate time to address them conclusively. That is the reason for asking for the extension. This is a Procedural Motion.

I ask Hon. Manje to second.

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Speaker. As the Vice-Chair of the Departmental Committee on Energy has said, this is an issue that needs to be scrutinised. These kinds of petitions are investigative in nature. We want to move with diligence so that we come up with objective recommendations.

I second the Motion.

*(Question proposed)*

**Hon. Members:** Put the Question!

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

### THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

**Hon. Chairman:** Hon. Members, we are now in the Committee of the whole House on the Public Finance Management (Amendment) Bill (National Assembly Bill No.63 of 2019). It will be a brief one.

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Chairman:** That marks the end of the consideration of that Bill. Let me call the Mover to move reporting.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I beg to move that the Committee do report to the House its consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No. 63 of 2019) and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT

### THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): Hon. Chair, you have the Floor.

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Public Finance Management (Amendment) Bill (National Assembly Bill No.63 of 2019) and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. Kimunya to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, we shall defer the putting of the question until the next time this matter comes back on the Order Paper. We shall move to the next Order.

*(Putting of the Question deferred)*

## MOTION

### RATIFICATION OF THE BEIJING TREATY ON AUDIO-VISUAL PERFORMANCES

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Chairperson.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Speaker, the Beijing Treaty on Audio-Visual Performances was tabled in the House by Hon Aden Duale who is the Leader of the Majority Party in the National Assembly on 8<sup>th</sup> November 2018. The Treaty seeks to maintain the protection of the rights of performers in their audio-visual performances and maintain a balance between the rights of performers.

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): Hon. Chair, you need to start again to make sure that we have it on the record that you are moving the Motion.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, the Beijing Treaty on Audio-Visual Performances was tabled in the House by the Leader of the Majority Party in the National Assembly on 8<sup>th</sup> November 2018.

The Treaty seeks to maintain the protection of the rights of the performers...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Chair, I will take you back again. Move the Motion as it is and then you can start expounding on it. That is what I want you to do.

**Hon. William Kisang** (Marakwet West, JP): That is okay, Hon. Temporary Deputy Speaker.

Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Communication, Information and Innovation on its consideration of the Beijing Treaty on Audio-Visual Performances, laid on the Table of the House on Wednesday, 26<sup>th</sup> June 2019 and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 approves the ratification of the Beijing Treaty on Audio-Visual Performances.

**The Temporary Deputy Speaker** (Hon.(Ms.) Soipan Tuya): You can now go on with whatever addition you have.

**Hon. William Kisang** (Marakwet West, JP): The Order Paper is the machine. I was reading my notes.

As I had said, the Beijing Treaty on Audio-Visual Performances was laid on the Table of the House on 8<sup>th</sup> November 2018 by the Leader of the Majority Party. The Treaty seeks to maintain the protection of the rights of performers in the audio-visual performance and maintain a balance between them and the larger public interest, particularly on education, research and access to information. If you remember, we passed the Access to Information Act, 2016 in the last Parliament. When considering the Treaty, the Committee wrote to the key stakeholders and placed an advert in the local dailies on 4<sup>th</sup> March 2019 inviting them to submit their views on the Treaty as required by the law. Thereafter, the Committee held a one-day retreat where it met four stakeholders to consider their submissions which are incorporated in this Report. A total of five memoranda were received from Kenya Copyright Board, Content Developers and Intellectual Property Trust, Creative Economy Working Group, Kenya Actors Guild, Performers Rights Society of Kenya and one, Ms. Angela Ndambuki.

The Beijing Treaty on Audio-Visual Performances is a multilateral Treaty which regulates copyright for audio-visual performances and expands the performers' rights. As content is increasingly audio-visual and its performers' rights and exploitation global, the absence of a specific World Intellectual Property Organisation (WIPO) treaty acknowledging the rights of performers in this field was felt to be an anachronistic and unfair anomaly. The Beijing Treaty carries the recognition that all performers of literary and artistic works or expression of folklore deserve to be protected, regardless of the nature. Thus, setting the record straight.

Lastly, the Treaty is encouraging countries to amend their respective intellectual property provisions accordingly. The Treaty was adopted on 26<sup>th</sup> June 2012 by WIPO's Diplomatic Conference on the protection of audio-visual performance after 20 years of negotiations. You can imagine that it took over 20 years to negotiate this Treaty. Since that time, it is only 26 countries that have adopted it. We need a minimum of 30 countries to ratify the Treaty for it to be legally

binding. Kenya will be the 27<sup>th</sup> country to adopt the Treaty. Kenya signed it and the process of ratification began immediately. You can imagine that it took us seven years from 2012 to ratify the Treaty. That is basically the 10<sup>th</sup> Parliament and we are now in the 12<sup>th</sup> Parliament. The Beijing Treaty will become legally binding only once it is ratified by 30 eligible States, including countries or certain inter-governmental organisations. I believe that lobbying is required for this Treaty so that 30 countries can ratify it for it to be effective.

Having received both written and oral submissions from the public and other stakeholders, the Committee observes that the ratification of the Treaty will:

(a) Enable the Kenyan actors and performers to earn royalties from the performances which are exploited abroad. Currently, they only earn locally where they are also exploited because they do not earn what they deserve. Luckily last week, we passed the Copyright (Amendment) Bill. I believe the President signed it this morning.

(b) Expand the scope of exploitation of audio-visual acts to new environment in the digital world.

(c) Boost investment by encouraging effective and well enforced copyright and related rights legislation which will be conducive to the development of balanced framework.

(d) Develop and maintain the protection of the rights of performers in the audio-visual performances in an effective and uniform matter.

(e) Provide a basis for the implementation of a policy on performing rights in Kenya, as well as how they should be effectively managed whether through collective management organisations or otherwise.

In the law we passed last week, we said the Collective Management Organisations (CMOs) will be collecting these rights or they can do it individually by offering performers deeper protection and digital versions of the works. These will strengthen the demands upon internet service providers and digital platforms to offer enhanced protection to the artists or works online within Kenya. Regarding Skiza Tunes and others, performers cry that they do not get true value for their works. We believe when this Treaty is passed, they will get the true value for their works both internally and externally.

The Committee, therefore, recommends that, pursuant to Section 8 of the Treaty Making and Ratification Act, this House approves the Ratification of the Beijing Treaty on Audio Visual Performance.

I beg to move and ask the Vice-Chair of the Committee, Hon. George Kariuki to second the Motion.

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

**Hon. George Kariuki** (Ndia, JP): Hon. Temporary Deputy Speaker, I rise to second the consideration and ratification of the Beijing Treaty on Audio Visual Performances.

Hon. Temporary Deputy Speaker, the ratification of this Treaty will greatly benefit and protect our artists' rights. Article 1 of the Treaty provides that the Treaty is in addition to and does not derogate the provisions of other existing treaties on copyright matters.

Article 3 of the Treaty outlines the beneficiaries as performers who are either nationals or have habitual residence in a contracting party.

Article 5 provides for a separate right for a performer with regard to live performances or performances fixed in audio visual fixations.

Article 7 provides for right of reproduction. A performer is granted exclusive rights to authorise reproduction of his or her fixed performances in any form.

Article 11 provides for right of broadcasting and communication to the public. A performer is granted exclusive right to authorise the broadcasting and communication to the public of his or her performances fixed in audio visual fixations.

Article 23 of the Treaty provides for the eligibility for becoming party to the Treaty whilst Article 27 provides for effective date of becoming a party to the Treaty.

Article 28 provides for denunciation of the Treaty and Article 29 provides for languages of the Treaty which are English, Arabic, Chinese, French, Russian and Spanish. Unfortunately, we do not have Swahili as one of the languages of the Treaty.

Finally, ratification of the Treaty is a very important step towards protecting the rights of our performers.

I beg to second.

*(Hon. David ole Sankok stood in his place)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Hon. Sankok!

*(Question proposed)*

I do not see the people on top of the request list here. Let us have Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you Hon. Temporary Deputy Speaker for giving this opportunity to support this Report. It is indeed a very good Report. I take this opportunity to thank the Chair for having written such a conclusive and insightful Report that will go a long way to assist artists in the country.

If there is an industry that has been deprived of its rights and completely impoverished, it is the film industry and artists. These are people who never benefit from their own industry. The Report will assist Kenyan artists. But even as I hail the Report as being one of its kinds and hopefully one of the best, I must raise concern over implementation of such Reports. This House should not be taken for a ride. Going forward, every report that is tabled and adopted, government agencies must implement it so that Kenyans can enjoy the fruits that come with implementation of the recommendations contained in the Report. The House has adopted very good Reports that are gathering dust in shelves in Government offices. I urge the Committee on Implementation to follow up on the very many Reports the House has adopted. By so doing, we will be appreciating men and women of the House who travel far and wide and spend most of their time coming up with similar Reports that are beneficial to the country. I would like to see a scenario where the Chair of the Committee on Implementation reports to the House how many such reports have been tabled and adopted on the Floor of the House and how many of them have been fully implemented by Government. And for those the Government has not implemented, we must be given sufficient reasons. We cannot be wasting taxpayers' money and our time as a House by coming up with such good Reports but nothing good comes out of them. The benefits of this Report are not just tabling and approving them, but also on their implementation.

I urge other chairpersons of Committees to follow the footsteps of this Committee because it has been tabling very good Reports on the Floor of the House. They should benchmark with what the Committee is doing so that we can begin to restore public confidence that, this House is a representative of the people and whatever comes out of it must be seen to improve the economic wellbeing of Kenyans and their social wellbeing, going forward.

With those very few remarks, I support and appreciate the Committee for doing a very good job. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well said, Hon. Barasa. Indeed, the Houses of Parliament should not be reduced to a talk shop. I see some Chairs. I know the Chair of the Committee on Implementation has been having a number of sessions with various agencies of the Executive. It is a very important Committee. I am sure Hon. Kisang knows the procedure under Standing Order No.209. Once this Report is prosecuted in the House, there is a duration within which the respective executive agency should take it up for implementation. I am sure the Chair of the Committee on Implementation, with the record we have here - and Hon. Kisang will pass this on - knows that this and many others should be taken up for implementation for the business of the House to be taken seriously.

Let us have Hon. David Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support such an important Treaty. Let me start by commending the Committee for having done a thorough job. In the past, whenever Members of Parliament travelled for benchmarking, people only saw how much they spent out there, but they did not see the much they learnt and implemented in this House. Kenyans should be aware that we travel outside for their own good. Sometimes we travel to learn best practices just like the Beijing Treaty, which will assist our performers and artists to earn a living. For a long time, our artists have been the poorest yet they entertain us. They have talents, but they do not reap from them. It is those who pirate their music who reap where they have not sown. The Beijing Treaty on Audio-Visual Performance regulates copyright for audio-visual performance and expands the performance rights. This is very important for us. It acknowledges that the rights of performance in this field are totally unfair and it is an anomaly that the whole world did not address at first. It is being addressed now. I urge the House to support it so that we can move forward to protect our artists.

The Beijing Treaty carries the recognition that all performers of literary and artistic works or expression of folklore deserve to be protected regardless of their nature thus setting the record straight at last and encouraging countries to amend this intellectual property provision accordingly. I know in this country, we have not implemented fully the Intellectual Property Protection Act, but if we ratify this Treaty, we will be domesticating it into our laws and it will be up to the implementing agencies to make sure that they have implemented it.

I will reiterate that our artists are suffering. There are people who are reaping huge profits by pirating their music and art. Those with talent are let down. At times, the artists would have been role models. There are people who could have emulated them and developed more talent in this country, which would even be a foreign exchange earner, but because they are living in abject poverty, no parent will allow their children to pursue art. No child in high school will tell you that they want to be artists in future, but if we protect our artists and performers, parents will encourage their children to exploit their talents. We are aware that we all cannot become doctors, engineers, farmers or Members of Parliament. If we all become doctors, who will be treating who? If we all become farmers, who will be buying the farm produce? If all of us become legislators, who will be legislating for whom?

The education curriculum is trying to exploit talents in the pupils. If we learn that some children are talented in art, we should protect that before they graduate. This education curriculum will bring out the various talents from our children, but if we do not protect these talents like musicians and performers, then we may be letting our new curriculum down.

I still commend the Committee for having done a good job and congratulate them. I urge the whole House to support, and the implementing agencies to make sure that this Treaty does not gather dust in their shelves. It should be implemented as it will benefit our country in earning foreign exchange. As I said earlier, there are countries whose artists earn a lot of foreign exchange for their countries. We can as well exploit this talent - because we do not have gold or copper to export- to bring foreign exchange to our country.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Odhiambo Akoth, you have the Floor.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I wish to thank the Departmental Committee on Communication, Information and Innovation for this Report on the consideration for ratification of the Beijing Treaty on Audio-Visual Performances.

I am happy that for once, we have a Treaty on Beijing that is not about women. Everybody assumes that whenever you talk about Beijing...

*(Hon. (Ms.) Gathoni Wamuchomba crossed the Floor without bowing to the Chair)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Wamuchomba! I am sure you know your mistake. So, just right it.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, Hon. Wamuchomba is very eager to talk about audio-visual because she was in the media industry. I am sure she is very excited to talk about it and that is why she is in a hurry.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I am sure by the time she was coming in, she knew which side of the House she wanted to sit in. I think she got waylaid and forgot.

*(Hon. (Ms.) Gathoni wamuchomba went to the Bar and bowed to the Chair)*

So, you are back to the other side. You can contribute from that side.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): The pull is strong on this side. I was just saying that I am very happy that at least for once we have an international instrument on Beijing that is not just about women. Beijing is not just about women's rights. We can also have other international instruments that do not have to do with women.

I have looked at this. Under Article 256 of the Constitution, any treaty that is ratified by the country becomes automatically the laws of Kenya. What we are basically doing now is making law. I wish sometimes Members would understand that. Sometimes people think that we are just doing a report. This is not report. It is law making. Once we pass this Treaty, it becomes part of the laws of Kenya. If there is any part of this Treaty that we are not happy with, then we need to recommend a reservation or we can pass it with reservation, so that the country deposits the instruments of ratification, that is the authority and mandate Parliament would have given.

This Treaty is very timely. I can see it was actually passed in 2012. We are still looking for signatures for it to come into effect. I congratulate Kenya because we are giving it the push that takes it towards getting the necessary life that it requires. I have looked at it and I would like

to say that it is also important for this country, especially in this digital era. There are so many issues coming up. I cannot broadly see them in the treaty. Even after this Treaty is ratified by us, as a country, it challenges us to look at providing a comprehensive law or amend some existing laws to look at issues of digitalisation. Access to the general public has become so easy because of the digital era. We have so many experts. It has its benefits. It also pains.

I think all of us recently saw this young boy who was speaking from the Consolata Primary School. I can imagine this young boy thought he was speaking to a small group of his class, but then all these things suddenly turned viral and the next thing he knows are the police in his school. What he thought was a joke, from what he observes, became a serious issue. You can see from what that boy was doing. He was watching a movie, but he thought he was acting one. He suddenly discovers that this is not a movie. It is real life. In the same manner, you can extrapolate this and see that we have young people who would wait for a big event for them to be discovered or known. Now, every young person who is able to get a gadget can dance, sing and be discovered. They can also be exploited. There is a part of the treaty that talks about moral rights. When I was looking at it, it grants moral rights; the right to claim to be identified as the performer except where such an omission would be dictated by the manner of the use of the performance and the right to object to any distortion, mutilation or modification that would be prejudicial to the performance reputation, taking into account the nature of the audio-visual fixation. I think that is very positive. We know, especially with the internet, that you put in one thing and it comes out a totally different thing. One woman Member of Parliament was sharing with me something that I wrote on my Facebook account, but it was a totally different thing by the time it was reaching the woman Member of Parliament. It is okay because she can talk to me. What about when it is audio-visual? It may be dancing and I am singing in a choir in church, but somebody distorts it and I look like I am dancing naked with witchdoctors? So, this protects the performance from distortion.

My only concern is that it is one thing to protect the performers. What about the right to protect the public? It is like the older generation and those in the middle ages like me are against the younger generation. I want to speak in relation to one artiste called Akothee. She has been very controversial. When she performed, I cannot remember in which country, everybody was like “this is totally immoral. She should not have performed dressed this way” yet we celebrate Beyoncé when she dresses in a similar manner. I know it talks about our moral crisis as a nation. What I would want us to see, maybe not to address it as a moral issue, is probably what we consider modest. I do not say that we stop Akothee from doing her act. I am fairly liberal, but it is because of the nature of our society. How far can we go and how far can we not go? I am saying this because we had a very interesting debate about *disco matanga* earlier on. I can use that as an example. When I walked in, the Speaker said, “You want to talk and you have just come in”. What I had wanted to say then, which relates even to the matter before us now, is that, because we are an evolving society, some things that would have made sense in the past may not make sense to us now. An example is *disco matanga*, which people have corrupted because that is not what they were meant to be. It was actually the African traditional way of therapy. People would sit with somebody who was bereaved.

**Hon. David ole Sankok** (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is out of order, Hon. Sankok? What is it?

**Hon. David ole Sankok** (Nominated, JP): Is it in order for Hon. Millie Odhiambo to discuss somebody like Akothee, who cannot defend herself in this House? Akothee is a renowned artiste in our country. For your information, we will have lunch with Akothee here in Parliament tomorrow. She is a very respectable lady and artiste in our country.

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

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I think Hon. Sankok was a little bit asleep when I was talking. I want to tell him...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Millie. You know he has raised it with me. So, I did not hear any derogatory statement from Hon. Millie that would warrant a point of order. I think she is giving examples of artists. You may need to clarify because if it is anything that would put any individual who is not here on the defence, you know that would not be in order. I think, if I heard right, she gave an example of two female artists.

Hon. Millie, clarify. Just be clear.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I will clarify.

First of all, I would be the greatest defender of Akothee because my home name is Akothee. We have a shared thing with her. Other than that, I love her free spirit - she is quite a free spirit; she is such a go-getter. She is a very strong spirit. So, I support her. What example I was giving is that there was a controversy at one point. I do not know where she was performing. It sent the whole country on fire. Some people thought she had danced semi-naked before her parents. Others were saying it was okay because even Beyonce does it. What I am saying is that, as a country, we are actually at a point where we have to grapple with issues like that. Even though this treaty protects the moral rights of the performer, it does not talk about the moral rights of the public. I guess it is because of all these challenges that we face. What is moral to one person is not necessarily moral to another. Is it acceptable in Kenya when we have wardrobe malfunctions like Janet Jackson did? Is it acceptable in Kenya, for instance, to have a wardrobe malfunction? When you talk about culture, and that is why I was talking about the example of *disco matanga*, being naked in one area of the country may look anathema in another part of the country. Where I come from, we all bath naked in the lake and it is not a big deal. I am sure they would all run away where Hon. Sankok comes from if I walked naked amongst fellow women. It is not a big deal where I come from. We bath together. We even borrow soap and bath in the lake with each other while naked. It is not a big deal. I was giving that as an example with *disco matanga*. When my father died, I remember there was something akin to *disco matanga*. It was therapeutic. We used to sit every night, very long time ago when I was a kid, and watch people coming, dancing and singing. It was extremely therapeutic. What we have done is modernise ourselves, remove traditional norms and left nothing in their stead. What do we do to people when they are bereaved? That is why we even have mental illness cases on the rise. People are committing suicide because they cannot cope. There is no *disco matanga* to help them cope. Yes, we are saying *disco matanga* is bad, but what is there to help people cope that is akin to *disco matanga* now that girls get pregnant and people have distorted them?

I was giving that example so that we really talk about the moral dilemma we are facing as a country, so that even when we bring a law to domesticate this Treaty, we find a balance that acknowledges that people are getting extremely innovative. Part of my exercise regime is dancing. I learn a new dance every day. Sometimes it is *Vimbada*. *Vimbada* have their dance styles and *Inama* has its own dance style. My age does not allow me to do some of them. What I

am saying is that from the treaty, every dancer that brings a new style can now be guaranteed that we will protect their new dance styles.

Dancers that bring a new style can now be guaranteed of their protection. However, when you talk about the intellectual properties right, maybe we will say that you have a right to a specific dance style. If you look at some of those dance styles, they are the same from our time. For example, there was a dance style that came when I was young which was called “metal”. It faded and came back as “breakdance”. When I was watching the *East Africa Has Got Talent Show*, I saw some young dancers doing it using another name. So, these are the things that we will be looking at when we are domesticating this Treaty. Otherwise, this is an excellent piece of legislation. I thank the Committee because it has been doing a good job, and this is evidence yet again of another good job.

I support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sankok might be suffering from culture shock. Hon Millie is artistic and she is a performer. What she is trying to say is that we make sure the performers and artists like her are protected. She is a good dancer. I have seen some of her videos that have gone viral. Luckily, they were not distorted. Maybe you should benchmark in Suba, so that some of these things that are happening do not shock you culturally. You will be used to them. On the issue that Hon. Sankok raised, as long as the statement is not adverse or unfair on the person mentioned and if there are no falsehoods, they are substantiated, but what Hon. Millie has said on the artists is a fair comment. This is just to support her argument.

Let us have Hon. Kibiwott Melly.

**Hon. Julius Melly** (Tinderet, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Motion on the Treaty brought before us by the Departmental Committee on Communication, Information and Innovation. This is an important Treaty to us, as Kenyans, being part of the international community. This Treaty is trying to assist the audio-visual performers across the globe. As we speak, a number of our local performers, especially the creative young men and women, have lost their talents and incomes to individuals who prey on their efforts specifically the people who do copywriting. This Treaty is going to address issues that touch on intellectual rights. This Treaty was passed in 2012. As Hon. Millie has said, immediately these performers perform, all the people in the world get their performances because of technology like YouTube. Unfortunately, a few people will get what they have done - which took them long to practice - pirate and sell it for monetary gains. Because the performers have no means of doing the same formally, they do not earn a lot. Many of our local artists die poor yet most of the good things that they produce benefit other people, who do not deserve.

Article 3 of this Treaty outlines the beneficiaries of the performers who are either nationals or have habitual residence in a contracting party. We have performances by individuals in various countries. For example, a Kenyan can perform well here, but if he goes to a country that is not party to this Treaty, his or her rights will not be guaranteed. When nations sign to this Treaty, those individuals’ rights will be taken care of.

Article 5 of this Treaty provides for a separate right for a performer with regard to live performances or performances fixed on audio-visual fixation:

(a) To claim to be identified as the performer of his performances.

(b) To object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

I have seen this in many instances where some individuals distort an otherwise good performance to a different thing. Because of technology and the digital era, we have seen good art being distorted. Distortion can ridicule the performer and portray the performer in bad light yet, in essence, the performer did not mean to do anything wrong. So, this Treaty is important. It is going to protect not only the performer, but also our children and the society. In essence, it will stop others with bad intentions from mutilating and portraying the audio-visual performance in bad light.

As a country, we have issues with our artists. They have performed well. However, they have not been protected from international pirates who have sophisticated technology. When you look at Article 12 of the Treaty, it provides for transfer of rights. From Articles 7 to 11, it allows a contracting party to provide in its national law for the transfer of all exclusive rights of authorisation to the producer of an audiovisual fixation. The law may require that the contract be in writing and signed by both parties to the contract or by their duly authorised representatives. This is essential if you look at the rights of the performer in a foreign nation or a performer who has done well, but a contracting party wants to short-change them. If this Treaty will be ratified in this country and other countries, the rights of our performers who reside in this country and outside this country will be protected.

I want to thank the Departmental Committee on Communication, Information and Innovation because this Treaty is not only going to help the audio-visual producers in Kenya, but it will generally protect the intellectual rights across the globe. As we speak, we have the Kenya Intellectual Properties Organisation (KIPO). However, we have no World International Protection Rights Organisation. This Treaty will, therefore, act on that lacuna to protect the interests of all performers across the globe. As you may know, YouTube is real. For example, whatever I am communicating right now can be viewed globally. The audio-visual performances or an individual, whether for good or for bad, have to be regulated and protected.

There are a number of benefits from this Treaty. If this House approves it, it will benefit and assist us. It will boost investments by encouraging effective and well enforced copyright and related rights legislations. In Kenya, we have the Copyright Act which is assisting the local industry. At the same time, it will boost other producers globally. Those who have ideas, talents and intellect will be encouraged to invest. It will also offer performers deeper protection of the digital versions of their works. Today, one of the expensive things in the world is data. Data in our phones and other forms of storages is important. This will encourage performers. They will be protected. They will sleep knowing that their talents are taken care of.

So, this is a very good Treaty. I want to urge that this Parliament ratifies, approves it and makes it part of our laws, so that it can protect the interest of our national performers, others in the region and, therefore, promote this important art of audio-visual.

I beg to support.

Thank you.

**The Temporary Deputy Speaker** (Hon. Soipan Tuya): Hon. Mogaka Kemosi.

**Hon. Vincent Kemosi** (West Mugirango, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Treaty. Under Article 2(6) of the Constitution of Kenya, any treaty or convention ratified by Kenya shall form part of the laws in Kenya. This Treaty, once Kenya ratifies it, will definitely form part of the laws of Kenya.

Most important is the enforcement of the Treaty. Under the existing laws and more particularly under the Copyright Act, which has been in operation for several years, we have seen the agencies mandated to enforce those laws doing little work. More particularly, when you

talk about piracy, which is quite rampant in Kenya, various artists have come up with some content and instead of them being produced in original form, there is a lot of piracy. Time and again, we have seen various agencies, including the police arresting people who pirate, but most of these people end up being freed from the police stations. They never face the law in courts, which could be deterrence. Therefore, as we ratify this Treaty, it will be most important that respective agencies implement the provisions of the Treaty because it will form part of the laws in Kenya.

The Treaty, as it is, grants performers various rights. Some of those rights are economic rights for their performance in audio-visual fixations. It also gives rights of reproduction, distribution, rental and right of making available the work which they produce in original form. The Treaty will also have concrete and positive effects on all member States, both developing and developed countries and Kenya is included. In essence, if, indeed, the works of performers are produced in original form, then the country stands to benefit in terms of economic development, because whatever works they produce will earn this country some revenue.

The Treaty further grants performers moral rights, which give identification to the performer, the right to object to any distortion, mutilation or modification of their works. If the works are maintained in the original form, they will definitely benefit the performer and the country at large. Most of the artists perform, but all of a sudden, you find that people have already mutilated or modified the works and the artists are not able to earn the income which they would have earned if the works were produced in the original form.

The Treaty further obliges each contracting party to adopt it in accordance with the legal system. Each contracting party, which Kenya is, must ensure that the enforcement of the Treaty as ratified by Kenya is strictly adhered to, so that the culprits are brought to book. Finally, the Treaty has established an Assembly of Contracting Parties to address matters that may arise from this particular Treaty.

For those few remarks, Hon. Temporary Deputy Speaker, I rise to support this Motion.

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

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. I want to very briefly support the ratification of this Treaty, recognising the need to make sure that all treaties signed by the Government are ratified by Parliament for the obvious reason that before there were many treaties that were ratified by the Executive, only that Kenyans did not come to know of them and even the benefits that accrued could not trickle down. One of the most important things about ratifying these treaties in this House is that in the debates that we have, we also make it known to Kenyans that this opportunity exists and, if for nothing else, they would know that those who are gifted in this area can benefit from it, especially our young people. It will guarantee them some form of employment. So, I want to commend the Committee and the Executive for bringing it to the attention of Parliament, so that we can do what is expected of us.

I think it is important to note that this Treaty was acted upon by the World Intellectual Property Organisation (WIPO) on 26<sup>th</sup> June 2012. That is a good seven years. You would wonder why it would take seven years for the Executive to get the Treaty to the Floor of the House for us to ratify. I see that it was tabled in Parliament on 8<sup>th</sup> November 2018. So, we cannot quite be blamed for the delay because since it was tabled, we are now acting on it in a short while. So the Executive will need to do better. There is another treaty, I cannot remember its title, which also came to the Floor of this House after quite a number of years. I see that we need 30 eligible parties to ratify. I may not have gone through the whole of the document. I do not know how

many parties have ratified, but I am told 26. They would have been 27 if it had come to us much earlier. Most likely the other three parties would have been encouraged and by now it would have some legal binding. I want to again thank the Committee that has made it possible for us to debate the Treaty.

There are very important provisions in this Treaty including the fact that it protects performers from discrimination on the basis of nationality or any other such grounds. It ensures that they are paid and paid well and paid like other persons of other nationalities would be paid. That is very important for us as a country. It also makes sure that the original version of a performance is not distorted. There is that protection that is being given to ensure that there is no distortion, mutilation or other modification of the performance, which otherwise would be prejudicial to the reputation of the performers. Further and crucially, this now forms part of the estate of a deceased person. So you can actually see what kind of losses our people may have gone through when we did not have this Treaty. It is important that we finalise on this and encourage the other three members who are likely to ratify to do so quickly, because in so doing, it will have economic benefits to our people. It creates employment, engagement and encouragement. It gives a person a purpose to be alive, because every Kenyan was given life by the creator with a purpose and with a way to provide for himself. Failing to have ratified or identified this kind of a gift before denied those people the opportunity to exercise the gift that was given to them by God.

With those few remarks, I support and thank the Committee that has made it possible for us to come and discuss this Treaty.

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

**Hon. (Ms.) Eve Obara** (Kabondo Kasipul, ODM): Thank you, Hon. Temporary Deputy Speaker. I, too, would like to add my voice to support the Committee for a job-well-done. This Treaty is timely, particularly coming on an area that would be considered grey for a very long time. We are not new in this House to the problems that our artists have gone through. I am happy that within the Treaty there is provision to cushion the artists' rights. It has very clear provisions. It gives the outline of who the beneficiaries are. There is provision that they, too, have the right of reproduction of their performance in any form. This is one big step in curbing the unnecessary bureaucracy that we have had in this country. I also note that there is an exclusive right to authorise broadcasting. The effective date is also very clear and so is the exit. So, there will be no ambiguity in any form.

Hon. Temporary Deputy Speaker, I was looking at something, but I noted that Hon. Millie has gone. She said that *disco matanga* allows people to cope with stress. That was an interesting point. Finally, the artists in Kenya will take control of their talents. We have waited for this for a long time. I thank the Committee as it looks like it is going to come to fruition.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Today, I see a lot of blue making the rounds. Hon. Obara, the Majority Whip and a few other Members who left... It almost looked like there was a memo to that effect. I did not get the memo, but it seems like there is a memo for royal blue. Even the Vice-Chair of the Departmental Committee on Justice and Legal Affairs seems to have got the memo as she walked in. It is quite interesting. Let us have Hon. Mabonga Mwambu, who evidently did not get the royal blue memo.

**Hon. Mwambu Mabongah** (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker. I wish to also give my comments on this Treaty, which is very important and timely. I am a Member of the Committee responsible for Information, Communication

Innovation. At times when you sit with the public, you get to understand what most of the young local artists are going through in the hands of the so-called managers or international people who are making business out of them.

This Treaty is very important because local artists take hours, days and sometimes even years to come up with content that can earn them some income, only to realise that people come in between and take advantage of them and make millions of shillings out of it. The other day, when we were doing public participation on the Data Protection Bill, there was a submission on this aspect. A creative young lady was taken advantage of by her who made millions of shillings out of her. This Treaty is going to protect the creator of content and ensure that what the person has struggled to come up with enables him or her to earn a living or develop the talent that God deposited in them. In this era of copyright and piracy, it is very difficult to protect some of these people if we do not have this kind of treaty in place. This way, we are going to protect our young artists who are talented in this industry. If you turn on your television today, you will realise that West Africa is doing very well. If properly managed, this industry can provide employment to our young people. It will give us room to tap more talents from young, upcoming artists. Similarly, once we ratify this Treaty, we will be able to protect our local artists from being exploited at the international level. They do their work here and once they get a privilege of getting out of the country through their own means, some partners from the developed world claim ownership of whatever belongs to our upcoming local artists.

This Treaty will ensure that there is proper framework for working in this industry. We will have proper management. This will ensure that even if a person spends hours trying to come up with something that is going to be beneficial to the society, should it be taken out of this country, the owner will always remain respected having been the original producer of the content that may have acquired an international outlook. Therefore, this is a very important Treaty and we need to ratify it very fast. Countries out there and within the continent are ahead of us. We have taken time to look at it and ensure that this House ratifies and makes it part of our laws, so that our young artists and any other talented young people are protected.

Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to also contribute on this noble Treaty.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Gathoni Wamuchomba.

**Hon. (Ms.) Gathoni Wamuchomba** (Kiambu CWR, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. Indeed, I have come running because I was not in the House. When I realised that this Treaty is being discussed this afternoon, I made every effort to be here, first, because I belong to the Information, Communication and Innovation Committee, which has been handling this matter. Secondly, because I am an artiste having practised in the media for the last 23 years... Therefore, I felt I needed to make my contribution on this Treaty.

This Treaty could not have come at a better time than now, when we are heavily burdened with fund raisings geared towards supporting some old artists who were once swimming in glory, but today are languishing in poverty. I happen to have personal friends who were composers of music, dancers and singers and I have listened to their stories about the early 1980s. They actually share their stories with us. I want to quote some parts of their narrations because it is important to give facts in this House. I happen to have personal relationships with a few musicians like CDM Kiratu of Limuru, DK wa Maria of Gatanga, Muranga, and the late

Joseph Kamaru. The three artists always narrate to us how they swam in money when the copyright issues in this country were respected. In fact, I remember the late Joseph Kamaru at one time told me how he could afford to hire a helicopter from Nairobi to Mombasa for a performance. Unfortunately, today, I do not think our Kenyan musicians can afford such kind of lifestyle because their work has been copyrighted and pirated.

Just the other day, we had a young boy who was featured in every social media platform in Kenya called *Mathwiti*. I am sure you probably got to experience the kind of flamboyance the boy was swimming in. Unfortunately, I visited his home a few days ago and was saddened to realise that this boy requires a pair of shoes to go to school in. Yet, his voice has been used in almost every new song produced in Kenya. This is why we need such treaties, not only put on paper, but also implemented.

I was once a radio presenter and the kind of radio presentation involved my own intellect knowledge and practice. I would do a radio show for four hours. At one time, I was driving from Nairobi to Nakuru and was shocked to find someone selling my work which I had presented in that morning around 1.00 p.m. in the streets of Nakuru. It was my voice and content and somebody was listening to me on radio in the morning and by 1.00p.m., this content was on the streets.

Unfortunately, I was not in a position to follow-up because I did not know what to do. I imagine there are many other artists who have issues with their copyrights going through what some of us have gone through in the past. Now that we are privileged to be in this House, the onus is on us. We should ensure that such treaties are implemented and followed-up to ensure that people who have been victims of these kinds of scams are protected and given a dignified life.

With that, this afternoon, I support this treaty.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well-spoken Hon. Wamuchomba. Let us have Hon. David Gikaria.

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Speaker.

**Hon. David ole Sankok** (Nominated, JP): (*Inaudible*)

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You are out of order, Hon. Sankok. It does not matter when he walked in. My list shows he is next in line and that is the preserve of the Speaker.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Temporary Deputy Speaker, I totally agree with you. Sometimes these *monos*...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Gikaria, if you are not ready, we can give somebody else.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Temporary Deputy Speaker, I want to add my voice to the debate on this very important treaty which the Departmental Committee of Communication Information and Innovation has looked into and come up with a very good Report. A lot has been said about people copyrighting. This is very unfortunate for the young upcoming artists. They are trying to make a living as artists yet they do not get the full benefit of their talents and what God has given them.

Another day, I was watching a young famous musician from Tanzania on television and looking at him, I sympathised because just less than three years ago, he was a daring of everyone. One day he came to Nakuru to perform in one of the big hotels and you could not get a ticket yet they were charging over Kshs5,000. The other day on the *Wako Wapi* Programme on

television, I saw what he is going through. I think this Treaty will address some of these issues which will go a long way to assist artists economically. I have attended funerals of few important artists particularly from Central Province and it is very unfortunate that people have to contribute funds to support their families after their death because they were unable to make a living out of their talents.

It is also unfortunate that the Report indicates that this Treaty was brought in November last year and almost a year later is when it is finding its way on the Floor. I want to thank the Committee because they have found time to look at it. The only thing I agree with Hon. Wamuchomba concerning this matter is about the young boy of the popular Mathwiti. I was interested in him and was following-up on him. I thought he was a grown up and he acted the video some five or ten years back. I was surprised to hear that he is a school going child whose voice is used in every other song in this country yet he is languishing and is not able to meet basic needs.

Even if he has not patented or protected his voice, this Treaty should also recognise that if the boy's voice is used, he needs to be compensated. He is a minor. Maybe his parents do not know about patents. I am happy for the young radio presenter called Bonoko. He literary speaks Kiswahili-Kikuyu in his program yet he has become so famous. At least, he has made a living out of this. It is important for us to support this Treaty. I hope the Committee will put more interest on minors.

Hon. Temporary Deputy Speaker, with those few remarks, I support and thank you because you were my able Chair. How I wish you were not appointed to that position.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Gikaria, I think you should be happy for your Chair because this is a promotion. Let us have Hon. Gitonga Maanzo.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to add my voice to this very important debate. Intellectual property is a very important matter in the world today. In fact, there is something called International Trade Association (ITA) where the Parliament of Kenya is beginning to participate. In the last occasion, our Speaker accompanied by a few Members, mostly lawyers, attended this conference in the United States of America which deals with intellectual property.

One time, the Speaker told me that in previous Parliaments he was very keen on this particular legislation because it has been missing in the country for quite some time. I am happy because this Treaty provides that Kenya can participate and protect talents. In one of the occasions, I attended the ITA meetings as a representative of the Departmental Committee of Trade, industry and Cooperatives and one of the cases illustrated was during the World Cup in South Africa where a song belonging to Zangalewa was used as the signature tune of the World Cup yet the Zangalewa people are languishing in poverty and their intellectual property had been stolen. So, volunteer lawyers went to court on behalf of Zangalewa and the singer agreed to settle the matter out of court. Today, the Zangalewa crew lives very well courtesy of a court case and international trade relations whereby this law is being applied in quite a number of countries.

It is also the same with the famous Tanzanian singer, Rose Muhando, whose music would be copyrighted. Even before she performs here in Kenya, her CD would already be selling. So, by the time she has a big performance here, three quarters of her money goes with thieves. If you ask many musicians how much they earn out of the current structure we have now, you will be very surprised. A young man who was being interviewed on radio said for the last three months, he has only been paid Kshs2,500 and yet his music is being sold all over. There are many other court cases going on right now between Safaricom and individual artists there being an issue as

to whether intellectual property belonging to them has been used for purposes of advertising and for purposes of the tunes in the phones. It is a big industry hence the need to legislate and also to have ties with the international community, so that when something happens here and in Beijing...

In China, we have a lot talent and a lot of creative young people. I saw it one time when the Olympics were in China in 2008. You cannot believe during the opening ceremony the talent in China. Similarly, Kenya has a lot of talent. We have some which are cultural, for example, the Maasai culture. A lot of Maasai artworks have been stolen and manufactured elsewhere in the world. Nobody has gone to court over this. With this sort of international treaty coming around, we are going to sue whoever has stolen even the *kiondo* from the Akamba people. It is being manufactured without our permission. Many other cultures in Kenya like the coastal cultures have been stolen by people, used and duplicated. So, this Treaty is going to cover intellectual property in a very wide manner and we will have a treaty or an agreement where if somebody in Beijing breaches or steals something from Kenya, the two countries can liaise. Even a judgement made here can be applied in Beijing and that particular artist is compensated. This includes many other countries which will belong to this particular Treaty. Many countries are promoting youthful talents. I believe as many countries as possible are going to join this to protect their youths, culture, creativity and intellectual property generally.

When we went to law school and learnt about intellectual property in the 90s, it really looked strange. However, the lawyers who picked it then are in very good practice today internationally. They work in as many continents as possible because this comes in together with when technology is transferred from one area to another. The lawyers come in ready when agreements are being made between one State and another or between people who are doing business from one continent to another. Bill Gates has really helped a lot of the young people through his foundation and they are helping in making sure this sort of treaty is implemented wherever countries have signed it, so that creative property can belong to the owner.

Recently, you saw a young girl being shown on Citizen Television on a programme by Jeff Koinange. This girl has even met the President of Rwanda. There is somebody who has been a broker for her creativity and talent. That person is paid on her behalf and allegedly the money never came in full to the family. The family has not transformed. A lot of young Americans are billionaires out of their talents and arts. At the age of 22 years, a lot of Americans are already doing very well in the theatre world, creativity and music and can pull large crowds. However, unfortunately, just like the case of Michael Jackson - and this was courtesy of stealing of intellectual property - by the time he was passing on, he was planning to perform, so that he could regain because he was running into bankruptcy yet he was a very serious artist.

So, in our own case here, we want to assist the artists that we have and even the ones who have left that property to be managed by their families upon demise like E-Sir - you know his music is still being copied in many places. I believe whoever was bestowed with his estate by the courts or by whatever method the family has used, should protect this property which belongs to their son. This runs for many years. For example, Mozart is still the most famous and the most talented classical music inventor in the world. Although he passed away at the age of 36 after a performance, his music is still being copied and stolen today. So, you would imagine what his family or his country is going through. Even a country, through these treaties, can come on board and protect what belongs to a person from their own territory.

I believe there is a lot more happening in South Africa and many parts of Africa and this particular Treaty will go a long way in helping people in the creative world and intellectual

property. It is now a very big component of what is taught in university and it is an area of law. Now, a lot of young lawyers are practising and dealing with it only. Trade backs come in and all that regime of practice where we have been doing it without a particular law, but just following certain principles or practises which were laid down many years ago when inventions began but never really transformed the creative arts.

Therefore, I am happy to support this Motion. I urge Members to support it, so that Kenya can join the League of Nations which are protecting the intellectual property of their countrymen and women. I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I do not see any further requests apart from two Members who have already spoken to the Motion. I am sure they know they cannot speak twice however passionate they are about this. Hon. Wamuchomba and Hon. Barasa, you have already spoken to it. Therefore, I will call upon the Mover to reply.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Speaker, I take this opportunity to thank the Executive for bringing this Treaty to the House in November last year. Even though they took more than six years to submit the Treaty to the House, I thank them. Secondly, I urge the Government that as soon as the House approves this Treaty, to lobby the remaining two nations to make them 30, so that the Treaty can be ratified. We are number 28. I said those who have ratified are 26, but they are 27. Kenya will be number 28.

I also thank the Committee for taking its time to move around doing public participation and coming up with this Report. Thank you, Hon. Members. I thank those who contributed today led by the Committee Members, the Vice-Chair and all the Members who got opportunity to contribute. We have taken your comments positively. Just the other day, we passed the Copyright Bill and we will ensure that when overhauling the Copyright Bill, all these comments that have been made this afternoon to help the artists will be incorporated. It is not that we do not have a law. We have a law, but there is something missing. It is like most of the artists do not know that we have a law. There are some middlemen who we call brokers. The brokers in the middle take advantage of our artists or what we call the Collective Management Organisations (CMOs). Sometimes in 2017, one particular CMO collected over Kshs1 billion and paid less than Kshs10 million as royalties. They paid royalties of less than Kshs10 million. They spent close to over Kshs950 million on expenses. Going forward, when we come up with a proper copyright law to repeal the current law, we will be very strict to ensure that expenses by CMOs are limited to a certain percentage. Just like in other jurisdictions, expenses should not be more than 30 per cent of the collection. Currently, they spend more than 90 per cent.

Hon. Temporary Deputy Speaker, I thank all the Members who have contributed for their patience this afternoon. It is now my humble pleasure to reply and ask that the putting of the Question to this Motion be deferred under Standing Order No.53(3) until the sitting of tomorrow afternoon.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Very well. The putting of the Question is deferred.

*(Putting of the Question deferred)*

Next Order.

**BILLS***Second Readings*

## THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, the report of this Bill is not yet ready. I request that you stand it down and defer it to the next available time.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Bill in Order No.11 stands deferred.

*(Bill deferred)*

## THE EARLY CHILDHOOD EDUCATION BILL

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, the same fate befalls this particular one. The Chair of the Departmental Committee on Education and Research is not ready. So I request that you defer this Order until the next available time.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order No.12 on the Senate Bill No.26 of 2018 stands deferred.

*(Bill deferred)*

## THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, the Leader of the Majority Party is not yet ready with this Bill. I request that it be deferred.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Once again, Order No.13 on the National Assembly Bill No.24 of 2018 stands deferred.

*(Bill deferred)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members. Hon. Members, be on your feet. The time being 6.25 p.m., this House stands adjourned until Wednesday, 18<sup>th</sup> September 2019, at 9.30 a.m.

The House rose at 6.25 p.m.