

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 16<sup>th</sup> October, 2019

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

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

#### PRAYER

#### STATEMENTS

##### DANGERS POSED BY ABANDONED AND DISUSED PITS IN ROAD CONSTRUCTION SITES

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I welcome you today's sitting. We will start with the Statement by Sen. (Dr.) Milgo. She is not present. We will stand down that Statement for now.

*(Statement deferred)*

Sen. Seneta, you are seeking a Statement on the current status of affairs at the Maasai Mara University. Proceed.

##### CURRENT STATE OF AFFAIRS AT THE MAASAI MARA UNIVERSITY, NAROK COUNTY

**Sen. Seneta:** Mr. Deputy Speaker, Sir, yesterday, I requested that this Statement be dropped.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You did?

**Sen. Seneta:** Yes, I did.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yesterday, I was in the Chair and I did not hear you requesting for it to be dropped. Are you sure you did so?

**Sen. Seneta:** Yes, I did.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Sen. (Dr.) Kabaka, you may proceed with the next Statement.

## IMPENDING EVICTION OF MAVOKO RESIDENTS

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to seek a Statement on the impending eviction of a section of residents of Mavoko from their land by the East African Portland Cement Company in Machakos County.

Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the impending eviction of a section of residents of Mavoko, Machakos County, from their land by the East Africa Portland Cement Company (EAPCC).

In the Statement, the Committee should-

(1) Explain why the EAPCC and the Government agencies have resorted to have a section of residents of Mavoko evicted from their land known as LR.No.8784/4, LR.No.8786 and LR. No.10425.

(2) Further, explain why the said cement company reneged on its Board of Directors resolutions of 30<sup>th</sup> September 2010, that to surrender back the said land to the Government free of charge, for the benefit of the local communities, upon exhaustion of the raw materials used in manufacturing of cement from the said land.

(3) Explain why the said company has reneged from its Board of Directors resolution dated 23<sup>rd</sup> July 2013, that it would give irrevocable option to purchase of the said land to the local community (Mavoko Community Association), occupying land known as LR.No. 8784/4 which was a sub-division of LR.No.8784/146 measuring about 1,329.95 acres. As well as LR.No.8786 measuring 745 acres; and LR.No.10425 measuring 4, 256 acres, respectively.

(4) Explain why the national Government wants to repossess part of the said land known as LR.No.10425 measuring 4,256 acres in pretext that it wants to utilize the land for construction of affordable housing projects under its Big Four Development Agenda yet the land is occupied by the local community who have built their homes and businesses as evidenced on the grounds upon any visit.

(5) Explain why the residents of Mavoko Community Association are being discriminated in the sale and disposal of the aforesaid parcels of land when the said cement company has previously sold part of the land to foreign companies known as Superior Homes Limited and other two persons.

(6) Explain why the national Government is not looking elsewhere as an alternative land, including repossession of part of the vast and empty parcel of land in adjacent neighbourhood for the affordable housing projects.

(7) Explain what plans the national Government has put in place to either resettle or compensate the Mavoko Community Association for anticipatory laws and damage to their property and livelihoods upon eviction from the said parcels of land.

(8) Explain why the national Government has refused to release to the public, the outcome of the Mavoko Land Task Force setup to look into the state of ownership of land and invasions by squatters in Mavoko, Machakos County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is an important matter. I will therefore exercise my discretion under Standing Order 48(3) and ask the Committee on

Lands, Environment and Natural Resources to get seized of the matter, liaise with Sen. (Dr.) Kabaka and advice the House on the way forward.

Let us move to the next statement.

DANGERS POSED BY ABANDONED AND DISUSED  
PITS IN ROAD CONSTRUCTION SITES

**Sen. (Dr.) Milgo:** Mr. Deputy Speaker, Sir, pursuant to Standing Order No.47(1), I rise to make a statement on an issue of general topical concern regarding dangers posed by abandoned and disused excavated pits in road construction sites across the country.

Mr. Deputy Speaker, Sir, it has become common nowadays that behind every road construction, there is a disused excavation site abandoned by road constructors. The road contractors usually excavate stones and murrum for construction but after they are done, they do not bother to reclaim the land or put in place safety measures to prevent exposing people and animals to danger.

Last week, in Siongiroi, Kelichek area of Bomet County, two people perished after falling into a deep excavated area filled with water. A few months ago, a high school student also fell in another excavated area around Ndaraeta area of Bomet County and lost her life.

Mr. Deputy Speaker, Sir, such cases happen frequently not only in Bomet County but across the country. The trend of contractors abandoning excavated sites without reclaiming them should be stopped. The Ministry of Transport, Infrastructure, Housing and Urban Development and all other responsible State agencies should formulate stringent measures to ensure road construction companies bear a heavy responsibility for environmental degradation. My concerns are-

(1) Why do the road contractors abandon disused pits after they have excavated murrum for road construction without reclaiming them back thus posing danger to locals across the country? Is it due to lack of policy on environmental restoration?

(2) What measures have been taken against road construction companies in Siongiroi, Kelichek and Ndaraeta areas of Bomet County that excavated murrum for road construction and abandoned the sites leading to the death of the three school children who fell in the water filled pits?

(3) What measures have been put in place to compensate families of the victims who get injured or lose their lives as a result of the hazard posed by the disused excavation sites?

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Dr.) Milgo. Kindly, proceed, Sen. Dullo.

CHALLENGES EXPERIENCED IN THE  
IMPLEMENTATION OF THE UHC PROGRAMME

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No. 48 (1) to seek a statement from the Standing Committee on Health concerning challenges

currently being experienced in the implementation of the pilot Universal Health Coverage (UHC) programme.

In the Statement, the Committee should-

(1) Clearly outline the difficulties being experienced by counties in the implementation of UHC.

(2) Explain reasons for the problems and the possible solutions.

(3) Outline the steps that can be taken to address emerging issues ahead of the national rollout in 2022.

(4) State how to enforce transparency and accountability measures in the implementation of the UHC Programme.

(5) Ascertain what impact the UHC Programme has had in the four counties in which it is currently running.

(6) Expound on how the UHC can be made equitable, affordable and sustainable in the long-term.

(7) Outline what performance indicators can be put in place to measure the progress of the UHC Programme.

(8) Explain how to increase capacity in participating hospitals to avoid interruption of healthcare services resulting from industrial strikes, supplies shortages, poor sanitation and infrastructure constraints.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, Committee on Health, kindly liaise with the Senator for Isiolo County to address the issues raised in her statement.

**Sen. (Dr.) Mbito**: Mr. Deputy Speaker, Sir, the statement from my colleague, Sen. Dullo, is noted. I wish to point out that the Committee on Health had visited Machakos County, which is one of the pilot counties and made observations on the same issues that have been raised by Sen. Dullo. However, we will undertake to look at the issues that she has raised together with what we had tabled before this House on 7<sup>th</sup> August, 2019 and get a comprehensive report from the Cabinet Secretary responsible for the Ministry of Health.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Dullo, do you have something to say?

**Sen. Dullo**: Mr. Deputy Speaker, Sir, I did not understand what the Chairperson of the Committee on Health has said. This is a specific statement from me. I would like it to be treated separately. Just because they visited one county, it does not mean that it will address my question.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, Committee on Health, the UHC pilot programme is being piloted in four counties including Isiolo. I believe the experiences are not the same. Therefore, even if you had visited one of the four pilot counties, that should not suffice.

**Sen. (Dr.) Mbito**: Mr. Deputy Speaker, Sir, I am obliged. I will look into Sen. Dullo's Statement.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Chairperson, Committee on Health.

Let us proceed to the Statement by Sen. Halake.

#### JOBLESSNESS AMONG NYS GRADUATES

**Sen. Halake:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order 48(1) to seek a statement from the Standing Committee on Labour and Social Welfare regarding joblessness among graduates of the National Youth Service (NYS). In the Statement, the Committee should address the following-

(1) To confirm that in February 2018, authorities arrested Mr. Stephen Wachira Ngariko, a former NYS recruit, in Dable at the Kenya-Somalia border attempting to join the Al-Shabaab militants.

(2) To what extent has the National Youth Service Act that was enacted in 2018 been implemented to ensure that persons who graduated from the NYS with paramilitary training are recruited into the Military and other disciplined forces as provided in that particular Act. Noting that we have disciplined forces recruitment for 2019 now, it is timely that the issue of NYS having paramilitary training be considered. The Committee should look into that and let us know what is being done to which is in line with the Act.

(3) What is the status of the different NYS programmes that are designed to engage recruits in income generating ventures?

(4) Can the Committee state how many ex-NYS service men and women are jobless and how many have been employed by different state entities and indicate how the agencies monitor the service men and women after training?

(5) Could the Committee also clarify whether or not the Government can compel or encourage other state agencies and public institutions to contract NYS graduates with the skills to provide security instead of private security companies in order to deal with the issue of joblessness among NYS graduates which is a major concern to some of our counties and most of us?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, Committee on Labour and Social Welfare, kindly address that issue.

Sen. (Dr.) Milgo, kindly give a response on behalf of the Chairperson.

**Sen. (Dr.) Milgo:** Mr. Deputy Speaker, Sir, we shall take up the issue.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Please, do.

Order, hon. Members. I direct the Majority and Minority whips to keep the Chairperson informed of the possibility of numbers. We have some divisions to transact in the course of this afternoon.

That is the end of Statements. I will now direct that the Order on Petitions be called out again.

## PETITION

RISING INSECURITY IN LAIKIPIA WEST  
CONSTITUENCY, LAIKIPIA COUNTY

**Sen. Kinyua:** Thank you, Mr. Deputy Speaker, Sir. I am standing to read a Petition on behalf of the people of Laikipia County.

I, the UNDERSIGNED on behalf of the residents of Laikipia County, draw the attention of the House to the following:-

THAT, the residents of Laikipia County, Laikipia West Constituency, have existed peacefully in minimal cases of insecurity.

THAT, in the recent past, groups of armed bandits have emerged, terrorizing residents of Wangwachi, Ol-moran Ward, Kamwenje, Lubere and Eighteen in Githiga Ward.

THAT, these bandits have continued to rain havoc in many parts of the vast Laikipia County with unabated impunity.

THAT, the presence of the bandits has led to escalated insecurity and conflict, especially in the two wards of Ol-moran and Githiga.

THAT, on 20<sup>th</sup> January, 2019, the same bandits attacked residents of Wangwachi Village, stealing 14 cows and nine goats.

THAT, further, on 12<sup>th</sup> February, 2019, the same bandits shot Ann Cheptoo of Matwiku Village leaving her with serious injuries.

THAT, further, on 16<sup>th</sup> March, 2018, the said group allegedly stole livestock at Kamwenje; that is four cows, two donkeys and 19 goats.

THAT, efforts to resolve this matter have been futile.

THAT, on 13<sup>th</sup> October, 2019, more than seven cows were stolen belonging to Maina at Wangwaci in Sipili, and two people were seriously injured.

Mr. Deputy Speaker, Sir, the matter presented in this Petition is not pending before any tribunal or court of law.

THEREFORE, your humble Petitioners pray that the Senate, through the Departmental Committee on National Security, Defence and Foreign Relations-

(1) Recommends the immediate deployment of more security personnel to enforce law and order in Laikipia County.

(2) Recruitment of more National Police Reservists and that they should be equipped.

(3) Ensure the petitioner's plight is addressed.

(4) Makes any other direction that it deems fit in the circumstance in the case.

The Petitioners are assigned below.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kinyua. Committee on National Security, Defence and Foreign Relations, the issue of insecurity has resurged in very many counties, especially in counties whose police reservists were withdrawn. Therefore, you should take up that Petition.

In accordance with Standing Order No.232, I commit that Petition to the Committee on National Security, Defence and Foreign Relations. Within 60 days, the Committee is directed to report to the Petitioner and file or table that report in the Senate.

Very well. Please, call out the Order on Statements once more.

## STATEMENT

### INSECURITY IN SAMBURU COUNTY

**Sen. (Dr.) Lelegwe:** Thank you, Mr. Deputy Speaker, Sir. I rise, pursuant to Standing Order No.47(1) to make a statement on a matter of countywide, intercounty and national concern; namely the general state of security in Samburu County and the greater northern Kenya region in general.

Mr. Deputy Speaker, Sir, there has been a serious escalation of banditry attacks on residents of northern Kenya, particularly in Samburu County. Statistics from police records indicate that from 2012 to date, over 115 persons have lost their lives. Among them are 42 National Police Service officers, eight National Police Reservists, while approximately 78 persons have sustained injuries related to the attacks over this period. Additionally, 5,838 heads of cattle, 187 camels; 3,666 goats and sheep and 93 donkeys have been stolen from the largely pastoralist communities in Samburu North Constituency.

Mr. Deputy Speaker, Sir, it is regrettable that, recently, firearms in the custody of police reservists in the region were withdrawn by the National Police Service, thereby leaving the communities in Samburu County vulnerable to banditry attacks.

Mr. Deputy Speaker, Sir, there are still many illegal firearms in the hand of civilians in the Northern Kenya region, which are largely to blame for the escalation of banditry, with the resultant loss of lives and livelihoods and increase of orphans and widows, particularly in Samburu North Constituency. The Government should put up interventions to mop up the illegal firearms permanently to address the long-standing problem of banditry in the area.

Mr. Deputy Speaker, Sir, the House will also recall that to date, no conclusive action has been taken to address the killing of the 42 police officers who were killed in Baragoi, Samburu North Constituency, in 2012. This may be the reason police officers are reluctant to pursue bandits.

Mr. Deputy Speaker, Sir, my concern is the fact that there still seems to be little or no Government will or action to address the security situation in Samburu County, more specifically in Samburu North Constituency, whenever these attacks happen.

Mr. Deputy Speaker, Sir, I will highlight the regrettable events in Samburu County from 1<sup>st</sup> February, 2018, to date as follows-

(1) On 1<sup>st</sup> February, 2018, where Mr. Lesiamito and Mr. Lepoora were killed, three other persons injured and 2,000 livestock stolen in Suyian area, Elbarta Ward;

(2) On 2<sup>nd</sup> December, 2018, where 130 camels were stolen following an attack in Kilepoi area, Nachola Ward;

(3) On 3<sup>rd</sup> December, 2018, two persons were injured, 30 camels and 300 goats were stolen in Bendera village, Elbarta Ward;

(4) On 24<sup>th</sup> April, 2019, a police inspector was killed in Marti area, Nachola Ward;

(5) On 13<sup>th</sup> August, 2019, Mr. Lemagas, a local resident, was killed and 30 head of cattle stolen in Ndoto Ward, Samburu North Constituency;

(6) On 1<sup>st</sup> February, 2018, Mr. Lesiamito and Mr. Lepoora were killed, three other persons injured and two thousand livestock stolen in Suyian area, Elbarta Ward;

(7) On 2<sup>nd</sup> September, 2019, an attempt to steal cattle near Lorubae Water Point was made in Waso Ward, Samburu East Constituency;

(8) On 20<sup>th</sup> September, 2019, Mr. Ekatapan, a local resident, lost his life in the Parkati attack, Nyiro Ward, Samburu North Constituency;

(9) On 25<sup>th</sup> September, 2019, Mr. Lewuano, Mr. Leurere, and two cousins from the Letipo family were killed; three other persons injured following an attack in Kawap area, and more than 600 goats and sheep stolen in Elbarta Ward, Samburu North Constituency;

(10) On 28<sup>th</sup> September, 2019, the Ngilai Primary School Deputy head teacher, Mr. Abdi Ali, was killed in Baragoi Town, Elbarta Ward, Samburu North Constituency;

(11) On 4<sup>th</sup> October, 2019, a cattle herder, Mr. Lalaishim, was assaulted by local security forces for letting the cattle cross the Maralal-Baragoi Road at Kampi Nyoka area, Elbarta Ward, Samburu North Constituency;

(12) On 5<sup>th</sup> October, 2019, a businessman, Mr. Euren was killed on his way from Latakweny Trading Centre, Ndoto Ward, Samburu North Constituency;

On 5<sup>th</sup> October, 2019, Mr. Lalaigwanani was killed, and one person injured following an attack at Mbukoni area, Elbarta Ward, Samburu North Constituency; and,

(13) On 8<sup>th</sup> October, 2019, Mr. Lolpirdai and Mr. Lesharana were killed and three other persons were injured at Lamirog area, following a banditry attack where an estimated 1000 cattle were stolen in Elbarta Ward, Samburu North Constituency.

Mr. Deputy Speaker, Sir, in light of the numerous cases highlighted above and many more which may have gone unreported, the Government should put in place safeguards to mitigate against banditry attacks in the region, particularly, in the notorious Baragoi area, Samburu North Constituency, and Northern Kenya region in general.

In addition, the Government should engage local residents, including Non-Governmental Organizations (NGOs) and professional bodies in Samburu County in sensitizing and creating awareness on the security situation to mitigate against banditry attacks and possible loss of lives and property.

Considering the seriousness of this matter and the frequency with which these banditry attacks are happening in the region, I urge you to refer this matter to the Standing Committee on National Security, Defence and Foreign Relations, pursuant to Standing Order No.47(3), which should inquire into the matter and table its findings in this House.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I will allow one or two Senators to say few things on that Statement.

I see a request from Sen. Kirinyaga.

**Sen. (Eng.) Maina:** Thank you, Mr. Deputy Speaker, Sir. I rise in regards to these two Petitions, one by the Senator for---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): One is a Petition which is closed. However, you cannot comment on it in the context of the Statement made by Sen. (Dr.) Lelegwe.

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, I rise because of the importance of the subject matter raised here which involves Samburu and Laikipia belts. I wish to draw the attention of this House to the utmost importance of the Laikipia belt which has the only area that has been left for conservation. It has had security threats because there are people who think that they are above the law. This is a not a case of cattle rustling; this is a matter which is inherent in tribal profiling. They want to chase people out of where they are dully and legally settled.

Mr. Deputy Speaker, Sir, I draw the attention of this House to a lady who has been living on a certain parcel of land in Maralal for many years and was committed to conserve it. However, she was attacked, killed and her place burnt down. So, as you refer this matter to the Committee, you should direct that we are looking at a bigger issue of insecurity in the country which can lead to tribal conflicts. In fact, in some areas, people have been killed not because of cattle rustling; cattle are taken after people are killed. This is trying to drive people out of areas where they have settled.

Mr. Deputy Speaker, Sir, yesterday, we mentioned an incident that happened in some part of North Rift. Therefore, your direction to the Committee should be a clear statement that Kenyans have a right to own property and live anywhere they want. The Government should also protect the lives of the people and their properties.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. I wish to support this Statement. I suggest that as the Statement goes to the relevant Committee, they should look at the issue of the law that was enacted on cattle rustling which criminalized it with the hope that certain actions will be taken. It would be good to know what impact that law has had since it was enacted. From both the Statement and Petition, it seems like what we had about three years ago is coming back.

I know that the Joint Committee on National Cohesion and Equal Opportunities did a lot of work. They went around the various communities and created many initiatives to create peace within these communities. There was a time where there seemed to be some improvement. So, there could have been a gap somewhere or something is resurging again. Therefore, it is important to contextualize along a

continuum what could be happening and the effect of the law that should have been put in place.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That which is being referred to as cattle rustling is actually robbery with violence and is punishable by death under the law. So, Sen. (Dr.) Zani is right. We would like to know why despite these heavy sanctions in the law the problem does not seem to go away.

**Sen. Poghio**: Mr. Deputy Speaker, Sir, I join my colleagues in supporting this Statement. There is a situation where the fight is within Samburu and not from outside. It is people who live in the same county that are attacking each other. With that kind of situation, this is not inter-county but intra-country fights and rivalry. Therefore, we need to think of how to deal with this situation where people who live together and are from the same county are fighting.

In Laikipia County, it is both of inter-county and intra-county fights. This matter should be put to rest. I do not know how many laws we will have to pass on this matter. We have enough laws. Therefore, what we need to address is why the laws are not implemented. We should seriously think about why we make more laws and not implement them. Therefore, I ask the Committee to take this seriously. There is nothing new; everything that it needs is already in existence.

**Sen. Mutula Kilonzo Jnr.**: Thank you, Mr. Deputy Speaker, Sir. Reading this Statement, a person gets a bad impression about the status of security in Samburu.

As Sen. (Dr.) Zani mentioned, in Samburu, West Pokot, and parts of Baringo, where Sen. Moi, comes from, cattle rustling has become a game of polo where people steal, kill and it is business as usual. The statistics that are here are troubling.

Mr. Deputy Speaker, Sir, it appears, like Thomas Hobbes used to say life in Samburu has become nasty, brutish and short. For example, cattle rustlers kill two people and steal 600 herds of cattle, *et cetera*.

Sen. Murkomen addressed the issue of picking arms from police reservists and others. However, the solution should be that cattle rustling must be a capital offence.

I think that is the only way, so that people can stop making it a sport, that one can steal cattle and then kill people. Maybe that way, we can help. However, if the Committee on National Security, Defence and Foreign Relations should find a solution because the killings have been going on - according to the Statement of Sen. (Dr.) Lelegwe - for a year-and-a-half. It is going on randomly. It is the same thing that was happening in Kitui. It appears the death of a camel and a Kenyan is treated in the same way. In Samburu, the death of a goat, a camel and a human being are treated in the same way. Something is wrong with this country the way it takes the lives of people so casually. We support you, but we ask the Committee to find a good method of resolving this.

I saw the leaders of Kitui County going to visit the Cabinet Secretary for Interior and Coordination of National Government and afterwards, for some strange reason, the insecurity stopped. Perhaps, that is one of the solutions, but there needs to be a permanent solution to loss of lives---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is sit, Sen. Farhiya? Are you on a point of order?

**Sen. Farhiya:** Mr. Deputy Speaker Sir, it is a point of information.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Sen. Mutula Kilonzo Jnr., would you like to be informed by your sister?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, do you want me to say “no”? However, I have no problem with that.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof. Kindiki): I have to inquire. The rules require that I inquire whether you are interested in the information.

Proceed, Sen. Farhiya.

**Sen. Farhiya:** Thank you, Mr. Deputy Speaker, Sir. Thank you, Sen. Mutula Kilonzo Jnr. for allowing yourself to be informed. To a pastoralist, a camel, a goat and a cow are much more important than a human life. The death of these animals can start a conflict more than the killing of a human being. It is our way of life.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker Sir, I do not know whether you heard the information that I have been given. Maybe I should have taken your offer.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof. Kindiki): I did not offer anything, Sen. Mutula Kilonzo Jnr. I just asked you whether you were interested in the information and you said yes.

**Sen. Mutula Kilonzo Jnr.:** Yes, Sen. Farhiya has said that in some places in this country, the life of a camel or goat are more important than that of a human being. This means that there are some people in this country who are living in a jungle.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Very Well. I think the interest is very high. We will not be able to accommodate everybody, but let us hear from Sen. Halake.

**Sen. Halake:** Thank you, Mr. Deputy Speaker Sir. I rise to support this Statement. This Statement could very easily apply to the counties of Isiolo, West Pokot, Wajir and all the northern Kenya counties. Therefore, I support this Statement and this matter should be dealt with very seriously. We have lost people in each of these counties, especially in Isiolo where very recently, I think it was Sen. Dullo who brought a similar Statement. The frequency, intensity and multiplicity of these things has become a bit too much. The media has been awash with this. The socio-economic aspects of this cannot be gainsaid because we have one of the highest poverty rates in northern Kenya, not because the people are lazy, but because people’s lives and livelihoods are wiped out within minutes based on this insecurity.

Also, there is a gross violation of human rights within this insecurity issue---

**The Deputy Speaker** (Sen. (Prof. Kindiki): You are not debating the Motion, just give a few comments and observations. Actually, one minute is enough. Just say one or two things.

**Sen. Halake:** Mr. Deputy Speaker Sir, please, allow me to bring the angle of the livelihoods of pastoralists. The fact that the poverty is linked directly to this insecurity, and the fact that there is violation of human rights whereby people from northern Kenya are sometimes not considered under the Constitution precisely because of this.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Very Well. Sen. (Eng.) Hargura, please, be brief. We have a short time.

**Sen. (Eng.) Hargura:** Mr. Deputy Speaker Sir, I will be very brief. However, I would like to add some information which will be of use to the Committee. If you look at that list given by Sen. (Dr.) Lelegwe, some of those people are from my county. Incidentally, when the teacher was killed, I was in Baragoi that night. A statement made by a police officer the next day actually shows what was going on. I was there together with the Member of Parliament for Laisamis and some MCAs. We followed up the issue because the four people who were killed come from Ngurnit Ward of Laisamis Constituency.

In the morning, the OCPD, said that the teacher who died was not meant to die. What he meant was that the teacher was killed outside the lodge where we spent the night. The teacher was with us but when he walked out, he was killed. What the OCPD meant to say was that the teacher was not supposed to be killed; the killing was intended for the leaders who came from Marsabit.

I would like to urge the Committee to take into account that these raids have been there. It is actually an inter-county issue because most of the affected people sometimes come from Marasbit County during the dry season. In 1972, 1976 and 1996, there were raids. To jog your memory, 1996 was when the District Commissioner for Maralal, Henry Nyandoro, was killed when his chopper was brought down by the same bandits. This happened when the Government was trying to recover livestock. When the Government tried to recover livestock in 2012, 42 Government officers were killed. It has reached a point where it appears like Suguta Valley is not a part of Kenya.

When similar situations occur in areas like Mt. Elgon, the Government dispatched the Military there to contain the situation. In Boni Forest - which is part of this country - the Military is there because there are bandits in that forest. What Sen. (Dr.) Lelegwe did not say is that none of these animals are recovered. Once they are taken into the valley, you just forget them. That creates impunity and a myth that there are parts of this country which cannot be governed. If you have that kind of a situation, then you will not be providing security.

Mr. Deputy Speaker Sir, allow me to add that the situation this year is even worse because the Cabinet Secretary for Interior and Coordination of National Government disarmed the National Police Reservists (NPRs) but he did not disarm the illegal gun holders. Now the illegal gun holders are the ones who are doing all this knowing very well that the regular police will not get out of their camps to go and follow cattle rustlers and that the NPRs who the Government has been relying on have been disarmed. It is a Government policy which is causing this insecurity. I would like the Committee to take it up very clearly with the Cabinet Secretary and establish how this policy was

implemented while illegal gun holders are still there and they are the ones causing this mayhem.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Hon. Senators, I may not be able to exhaust everyone. I know this is a matter that is affecting large parts of the country, especially the arid and semi-arid pastoral areas of Kenya. It is a grave matter, especially in connection with the disarmament of the NPRs, but this is a Statement under Standing Order No.47. In fact, we have overshot our time. Nothing prevents the leaders from the affected regions from bringing a Motion calling for concrete measures.

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

**The Deputy Speaker** (Sen. (Prof. Kindiki): What is it, Sen. Dullo? You seem to be having information that could be of help to the House.

**Sen. Dullo:** Mr. Deputy Speaker Sir, I do not have information that will give us a solution, but there is one point that I really wanted to add.

In the process of disarmament of NPRs, the NPRs at the border level were not disarmed. They are the ones that are actually terrorizing people. We want to know how they are being controlled so that they do not terrorize people.

Secondly, there was a promise regarding those who were disarmed. We were promised that the Government would come up with regulations in terms of how the firearms are going to be used. Up to now, we have not received information on the matter from the Ministry of Interior and Coordination of National Government. Could the Committee look into that? Let them at least give us NPRs so that they can complement the regular police and security.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Dullo but the last time I checked you were the Vice Chairperson of that Committee. I do not know who you are addressing when you say; “can the Committee---” I am addressing you because Sen. Haji, who is the Chairperson, is not here. This matter affects large parts of the country because lives are being lost.

The issue of disarmament is sensitive. I heard the Cabinet Secretary (CS) for Interior and Coordination of National Government making certain promises. Therefore, I will exercise my discretion under Standing Order No.47(3) and commit this matter to the Committee on Security, Defence and Foreign Relations. I direct further that the Committee invites the CS for Interior and Coordination of National Government because he is in charge of security.

I want to make this pronouncement from the Chair that I have overheard some pedestrians and gentlemen misadvising some CSs. They tell them that their mandates have nothing to do with devolution and functions of the Senate. I made a ruling here about one year ago. I am saying this because one of the CSs being misadvised is the CS for Interior and Coordination of National Government. I hope he or his officers are watching the proceedings of the House. The pedestrian argument which was being peddled was that since security is a national Government function, it has nothing to do with devolution. I have never heard of greater absurdity.

I have made a communication from the Chair before that even functions that are 100 per cent devolved, like national security, are matters that impact on devolution. This

is because, for example, a rundown of security and order makes it impossible for counties to perform their ordinary functions under the Fourth Schedule. If there is no law and order, how does a county government deliver on agriculture, livestock, markets, trade and what have you?

I direct the Committee to directly engage the CS for Interior and Coordination of National Government. If possible, they should visit the affected areas and bring concrete findings which will help this Senate create some hope in the counties affected by this problem.

Therefore, the ball is in the court of the Committee on Security, Defence and Foreign Relations. I expect you to table a report in this House within 21 days. It is so ordered. Hon. Senators, we will leave it at that.

Are you ready, Senate Majority Leader? Let us go to the next Order.

### PAPERS LAID

#### CERTIFICATE OF APPROVAL TO THE NEW DEBT CEILING

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to lay the following Paper before the Senate:-

Certificate of Approval to the new debt ceiling approved by the National Assembly

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

#### REPORT OF THE COMMITTEE ON DELEGATED LEGISLATION OF THE NATIONAL ASSEMBLY

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to lay the following Paper before the Senate:-

Report of the Committee on Delegated Legislation of the National Assembly

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

#### MEMORANDUM ON POLICY AND LEGAL JUSTIFICATION FOR PROPOSED AMENDMENT

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to lay the following Paper before the Senate: -

Memorandum on the Policy and Legal Justification for proposed amendment

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

REGULATORY IMPACT ASSESSMENT  
OF THE PROPOSED AMENDMENT

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to lay the following Paper before the Senate: -

Regulatory Impact Assessment of the proposed amendment

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, kindly, approach the Chair for a moment.

*(Sen. Murkomen approached the Chair)*

Proceed, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir, for your guidance. I should have actually tabled the Regulations because the other documents were just attachments to them. Therefore, allow me to make a correction.

THE PUBLIC FINANCE MANAGEMENT (NATIONAL  
GOVERNMENT) (AMENDMENT) REGULATIONS, 2019

Mr. Deputy Speaker, Sir, I beg to lay the following Paper before the Senate today, Wednesday, 16<sup>th</sup> October, 2019:-

The Public Finance Management (National Government) (Amendment) Regulations, 2019

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will make a communication on that report shortly. Perhaps this is not the right time for any comment unless it is on a different matter, Sen. Mutula Kilonzo Jnr. Once I issue the communication, maybe you can make some remarks on the topic.

**Sen. Mutula Kilonzo Jnr.:** Is it not a ruling?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is not a ruling but a communication.

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

Sen. Mutula Kilonzo Jnr., you are speaking to yourself.

**Sen. Mutula Kilonzo Jnr.:** Since I knew you were going to make a ruling, I thought I should intervene before you make the ruling. This is an important matter. As

the Senate Minority Whip, I request that you allow general comments on it because there are serious issues that we must talk about.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will see how much I can accommodate but you are definitely right. It is important, and I would like the House to benefit from one or two comments after I issue my communication.

Let us move to Order No.8.

## MOTION

### COMMENDATION OF ELIUD KIPCHOGE AND OTHER KENYAN ATHLETES FOR THEIR OUTSTANDING PERFORMANCE

AWARE THAT, marathon world record holder Eliud Kipchoge wrote his name into history books by becoming the first man to run a marathon in under two hours, on Saturday, 12<sup>th</sup> October, 2019, in Vienna, Austria;

FURTHER AWARE THAT, Brigid Kosgei broke the sixteen-year marathon world record for women, to become the new women's marathon world record holder during the Chicago Marathon held on Sunday, 13<sup>th</sup> October, 2019;

RECALLING the stellar performance by the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019, where the team won five Gold, two Silver and four Bronze medals, and emerged in the second position out of 206 participating countries;

COGNIZANT THAT Kenya has earned international respect in athletics over the years courtesy of the hard work and stellar performance by our athletes in both on and off-field events, which has brought us together as a country and encouraged cohesion in line with our National Anthem;

NOW THEREFORE, the Senate commends:-

(a) Mr. Eliud Kipchoge, for his history-defining fete of achieving the 1:59 target to run a full marathon;

(b) Ms. Brigid Kosgei for her excellent performance in the Chicago Marathon and specifically for breaking the women's marathon world record; and

(c) the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019 for their stellar performance.

*(Sen. Cheruiyot on 15.10.2019)*

*(Resumption of Debate interrupted on 15.10.2019)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is a continuation of debate. I will allow a few of us who never spoke yesterday to do so. In the meantime, I request that the Whips inform the Chair if at any given time you are able to raise the required numbers for purposes of carrying out the divisions because we have several of them this afternoon.

Proceed, Sen. Poghisio.

**Sen. Poghisio:** Mr. Deputy Speaker, Sir, I rise to support the Motion on commendation of Eliud Kipchoge and others who have made us proud in the field of athletics. Last week, Kenyans felt proud and the Flag of Kenya was a common occurrence in Vienna and on television screens all over the world. The unity of Kenyans was shown at that time.

I would like to begin by commending Eliud Kipchoge for his effort and prowess and making history by being the first human being to run a marathon in a time that no one has ever done before because he ran a marathon under two hours. In my own small way, I have been organising a small half marathon in Kapenguria every year. It is known as Kalya Half Marathon.

I have run a half marathon and completed. I cannot tell you the time it took me to finish the race but I finished. I will not talk about the consequences of running. For him to achieve that in less than two hours in the glare of the whole world, Kenya gained recognition as it has always. Therefore, I congratulate him.

There was unity at that time amongst our people. I am told that when we have something like that, we become one. When we go to our homes in the evening, we separate and become tribal. Our memories are quite short-lived. Kenya can be great and we do not need to be reminded because we can be one. We can also work together to build our name and retain it internationally.

Mr. Deputy Speaker, Sir, I am a very proud person, and I want to also recognize the other athlete such as Brigid Kosgei who broke the world record in Chicago. That record had been held for 16 years by Paula Radcliffe. However, it had to be broken by a young lady who started not too long ago. Two years ago, she ran the Kalya Half Marathon in Kapenguria. She was the winner that time. Little did we know that she was going on to the international stage and break a world record. You can imagine how much we can do as a country.

I am sorry to say that the state of our training facilities is deplorable. This is the goose that laid the golden egg and yet providing for athletes has been a problem for this country. When you look at how much we have said we will prepare stadia and training places for them; these people run around their farms and still come out and win. They run around whatever hill they can find. There is no particular training facility. They suffer a lot. We, as a country, think very little of them and yet they are the ones who carry our flag every day. When the Kenyan flag is raised everywhere in the world and the National Anthem is sung, "Oh God of all Creation; *Ee Mungu nguvu yetu*," we should be proud. That brings us together.

Mr. Deputy Speaker, Sir, I want to appeal from this House that we should take seriously the matter of training facilities, provisions and healthcare for our athletes. They fight for themselves even for healthcare. We need to recognize them. The other day, I

was amused when someone said if you look of people who have gotten State Honors, the Head of State Commendations and other commendations, you do not want to put our athletes in some of them because that is what we have seen. We should raise the level of these athletes because they have denied themselves a lot to reach where they are.

The only reason I could not finish a full marathon is because, probably, I was not well prepared for it. You have to get rid of all elements called lipids from your body. To do so, it is not easy. It takes a lot of work and sacrifice.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Where is the difficulty, Sen. Poghisio?

**Sen. Poghisio:** Yes, they deny themselves quite a bit. So, I would like to commend them. Even though they are not all mentioned here, there are very many Kenyans who have done us proud this year. I do not want to belabour the point that we need to think seriously about our sports facilities in this House because sports is a devolved function. It is a matter which is within our means. We can do a lot in our counties to improve our facilities. It is not true that it is only people from this part of Rift Valley who can be champions. Champions can come from anywhere in this country if we decide to train them properly. In the past, we had champions from other parts of the country.

I do not know what is happening nowadays because we are almost zoning players. This should not be the case. We should have champions from the coast all the way to Turkana. We should have athletes who are running the marathon and participating in other sports activities across the country.

The other thing which I must say is that we are not good at commending people. I think we do not have a language for commending people. Probably, we are good at condemning rather than commending people. When I saw Kenyans commending Eliud Kipchoge, I was happy. But I wondered what could have happened if he did not make it under two hours. Would we have commended him for even trying? We should continue to encourage our athletes and help them to continue winning.

I want to commend and thank the organizations who have continued helping our athletes. There are many people who are not Kenyans, but they help our athletes to excel. They are coaches, managers and organizers of the competitions. I want to commend them for according our athletes opportunities to shine.

I know that many things have been said, and I do not want to repeat them. I am a proud Kenyan. Athletes have made us one and united country. We are more united than before. I was very impressed by Eliud's own expression of what his goal is: "No human being is limited." I am just very proud that he can express himself that way so that he can even say to Mr. Obama, the former President of America, come and let us make athletes and this world a running world because with the running world, it will be a peaceful world.

In conclusion, insecurity is still a problem in our region. If we want to bring down this insecurity, let us engage these young people in athletics. Let us take training to them

and allow them to compete in athletics and other sports activities. Instead of competing in shooting each other, they should compete on how to lower Eliud Kipchoge's time.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to make a few remarks in support of this very important Motion.

Eliud Kipchoge and Brigid did us proud. We are very proud to be associated or identified with them as a nation and as individuals. They have done very well to give us the much accolade we need. There are also other athletes in the past who have contributed positively to giving Kenya a good image. They also deserve our appreciation. There are many more sports persons who continue to give us the good image that we should have as a nation, they equally deserve appreciation.

Mr. Deputy Speaker, Sir, to attain the kind of feat Eliud Kipchoge attained for himself requires discipline, effort and not just knee-jerk effort, but serious effort, training, support and spirituality. I think that all these requirements repose in Eliud Kipchoge. Indeed, he was able to confirm that human limitations are imposed by human beings and can be exceeded or broken any time. This also goes for Brigid Kosgei for what she achieved.

Sports people, particularly young people who engage in sports and who are appreciated for engaging in sports, if you look at their general behaviour in life, you will find that they shun violence, indiscipline and all the vices that good people do not want to be identified with. The reason they do so is that the human mind likes being appreciated. Once people identify you as a hero and say that you are a good person, you begin to see how responsible you should be. You begin to appreciate the fact that human beings have identified you as a leader and you continue walking in the light being a good example to others.

One of the best ways of ensuring that young persons in this nation continue walking in the right path is to create a culture of appreciating success. If our children or our young ones who are successful in school or in any activity that they endeavour to get in are appreciated, they confer upon themselves the responsibility of behaving well.

Therefore, Mr. Deputy Speaker, Sir, I plead with colleagues that the institutionalisation of appreciating people who do well will go a long way in ensuring that young persons in this nation are inspired. It is quite timely that in the very good House called the Senate, we are taking our time to discuss the success of Eliud Kipchoge, Brigid Kosgey and other athletes. We are doing a very positive thing, and I hope that this appreciation will not just stop in the context of this Motion. We should think of tangible things that should be done or put in place to support and make life bearable for our heroes and heroines, so that we appear to appreciate heroic acts both in word and deed.

I know that one or two of our previous heroes have had stadia named after them. For instance, we have the Kipkeino or Kipchoge Keino Stadium in Eldoret, Uasin Gishu County. Recently, in this House, we discussed the success of one Joe Kadenge. It was proposed that we name one stadium in memory of that individual, but it has not been done. I hope that those who listen and take note of what we debate here will do that. We should think of what institution, memorable event or place to name them so that we appear to honour Eliud Kipchoge, Brigid Kosgey and all the other persons who have

done this nation proud. That way, we will not appear to be just coming here to make speeches.

Mr. Deputy Speaker, Sir, we should also think of how to reward or appreciate the heroes we have in a material sense. There are many people who have made our anthem to be sung in certain places. In my other life, I was the Minister for Sports, Heritage and Culture, and I traveled to Helsinki, Finland, for an event organised by the International Association of Athletics Federations (IAAF). When I visited that nation, I also had the misfortune of visiting one of our very well renowned athletes in one of the Finnish jails, Billy Konchellah. I found out that he was quite low, and there was no support that was coming from home. There was also no system that had been put in place to try and rescue him from the oblivion that was visiting him in life, after being a very successful athlete.

Mr. Deputy Speaker, Sir, there is also another athlete in the United States of America (USA), who is frequently reported to have fallen out of fortune, and he is currently on drugs and is drinking a lot. There is no system in place to support that kind of athlete so that we know that there was once a great person in that name.

We have the likes of Congestina among the ladies, and I am yet to find one of our colleagues who represent the marginalised gender talking about her. I hope that something will be done to mitigate the adversities that are visiting the life of that poor lady from Siaya County. I hope that my senior colleague, Sen. Orengo, will mobilise us to intervene, in our humble way, to make the life of Congestina bearable. She once made us proud, and to see her suffer in that neglect and poverty is very sad.

Therefore, Mr. Deputy Speaker, Sir, it is right and proper for us to appreciate our athletes, and also to support them as best as we can. There are other forms of support, like trying to provide a social safety net to mitigate their adversities in life, including even putting a pension scheme in place for them. These athletes lead a disciplined life; for example, Paul Tergat, Kipchoge and all of them. They work very hard and someday they retire in difficulty. A few of them make it in life and are quite successful. However, for the ones who do not become successful materially, I do not think that this great nation is poor to the extent that we cannot provide a general pension scheme and medical cover to take care of some of these internationally acclaimed or appreciated athletes. We have had the honour and privilege of being members of the same country with these athletes.

Mr. Deputy Speaker, Sir, if you go to a country like in Ethiopia, you will find that the respect and reverence that they give to a person like Kenenisa Bekele, they respect, support and appreciate their athletes who have done well, but who have not achieved the feat that has been achieved by Eliud Kipchoge. They give them the kind of recognition and support they are supposed to be given. I do not think that Ethiopia, as a nation, is richer than us in terms of spirit or resources. If they are able to do it and they are here in Africa, we should also be able to do it. We are in the same Africa; we drink the same coffee and tea they drink. Therefore, if they appreciate their people, who are Africans, we should also appreciate our people, who are Africans.

Mr. Deputy Speaker, Sir, I believe that these athletes do much more than we do, as politicians. You will find that when a politician is lost or is suffering, all of us come together and remember those politicians. If I am to suffer – and I know I will suffer one day – I would not want to be remembered, but to at least bear my own suffering.

However, if you can do it for Eliud Kipchoge and the other fellows, and ensure that the safety net is given to them, that should take care of their interest and that of all politicians

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Summarise and wind up.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you very much, Sen. Ochillo-Ayacko. You could have been louder, because you have made very profound remarks and contributions. I hope that next time, you will be a little bit louder.

I have a request from Sen. Seneta, but she is not here. That request is stood down. Proceed, Sen. Kinyua.

**An Hon. Member:** He is gone.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That request is also stood down.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I also join my colleagues in commending Eliud Kipchoge, Brigid Kosgey and our entire team that was in Doha.

Surprisingly, Mr. Deputy Speaker, Sir – and I want the Senate Majority Leader to hear this – Brigid Kosgey is back in the country. She just came back into the country very humbly and quietly, with no fanfare. I am just praying that Eliud Kipchoge---

*(Sen. Orengo spoke off record)*

I am told he is already at home. He came quietly. While we are commending him, he is just somewhere in Eldoret with no motorcades. It feels very sad.

Sen. Orengo and I travelled recently and came across one of the most famous stadiums. We were commending the Brazilian team for the things they have done. When France won the World cup or any other team won the Champions League, they would not go back home quietly. We would not allow them to come quietly. If this lady was from Qatar or any other country, she would not come back home quietly. It is sad that they came in quietly and it was business as usual.

Mr. Deputy Speaker, Sir, I want to agree with Sen. Poghisio that, first, Eliud Kipchoge weighs 57 kilogrammes. I do not know how many Members of this Senate weigh 57 kilogrammes.

*(Sen. Dullo Spoke off Record)*

I do not weigh 57 kilogrammes. That is why I have included myself.

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

*(Laughter)*

You have no right of audience; not in that manner.

**Sen. Mutula Kilonzo Jr.:** When Sen. Poghisio was talking---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Murkomen? Are you in defence of your deputy?

**The Senate Majority Leader** (Sen. Murkomen): On a Point of Order, Mr. Deputy Speaker, Sir. Did you notice that when Sen. Mutula Kilonzo Jnr. asked how many Members weigh 57 kilogrammes and below, Sen. Halake was struggling and lifting her hand? Considering it was a question, could she be given an opportunity to also answer?

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** I do not want to speak for Sen. Halake, but we know. The challenges that Sen. Poghio was talking about, not being able to run are real. This is because, first of all, he must lose weight and be as light as this man for him to run fast. However, it is pure sacrifice.

He is also right that we spend so much time commending so many people, but people like these do not get the commendations that this country should give them. There should be a roll of honour for people like Eliud Kipchoge. There should be a street where you can find a star, not just naming a street. I have no problem with having a street in Eldoret named after him, but is that the way to honour somebody, that when you become a hero a street is named after you? It is so primitive! I do not understand some of the things we do.

The third one that worries me is that all over the world, whether it is football or cricket the people who excel in these activities become billionaires, not from earnings of the sport, but from brand endorsements.

I was speaking to Sen. Orenge and Sen. Cherargei and wondered who knows the agreements that Eliud Kipchoge has entered with Nike and INEOS. Do we know? Are we as a country interested in the brand that he was wearing of Nike in terms of earnings? That is where Eliud Kipchoge should be making money from, and it should interest this country. The Ministry of Sports, Culture and Heritage should get involved in this person making money. Sachin Tendulkar, Wasim Akram and others who have played cricket have become billionaires for life because of endorsements by companies.

Eliud Kipchoge was our hero at 1:59:40. For purposes of the Majority side, and Sen. Murkomen is here, it would paint a better picture for me as a person if he was received also by somebody from Eastern, Isiolo, Turkana and Nyanza.

However, he was received by Gov. Sang, the Deputy President and people bearing *mursik*. We have to change. I know it is an honour welcoming people back to the country by giving them *mursik*, but we should not tribalise some of these things.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Murkomen? What is out of order?

**The Senate Majority Leader** (Sen. Murkomen): On a Point of Order Mr. Deputy Speaker, Sir. Is Sen. Mutula Kilonzo Jr. in order to reduce the Deputy President of the Republic of Kenya, who was there on behalf of the Republic of Kenya and Gov. Sang, who is building Kipchoge Stadium together with sponsors sought by Eliud Kipchoge? Gov. Mandago was also there as the governor representing Kipchoge from the area where he lives in Eldoret.

More importantly, is he aware that most of those leaders went there out of interest to be there and that no one was blocked from being there?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jr., you have been challenged.

**Sen. Mutula Kilonzo Jr.:** I am simply saying that the optics do not look right. In order to present a better picture to the nation, even if they were going on their own volition, they should have invited people from other regions to accompany them, so that it does not look like a village affair. The delegation comprised of Gov. Mandago from his area and Gov. Sang who is building a stadium. It just looks like a village affair!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jr. What is it, Sen. (Prof.) Kamar?

**Sen. (Prof.) Kamar:** On a point of order Mr. Deputy Speaker, Sir. Is the son of my friend in order---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Prof.) Kamar. We are not at home.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, with all due respect, is the hon. Senator for Makeni in order to trivialise *mursik*?

*(Laughter)*

I wanted him to be aware, for information's sake, that even people from Europe and North America go to Iten for *mursik*.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jr., you have compounded your problem. Initially, it was about those who went to receive the champion. You are now being accused of trivialising an important beverage liquid.

What is it, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, while I was making a point of order, Sen. Orenge said that I was making the point on behalf of Sen. Mutula Kilonzo Jr. When I sat, I thought that maybe I was wrong. However, when Sen. Mutula Kilonzo Jr. came here, he confirmed my worst fears.

His argument is that the people who went there should not have gone because of the community they come from. I thought his argument would have been, the rest of us who do not come from that region--- If his argument was positive---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Murkomen, you are now debating.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, please, allow me to complete. I would have appreciated if his point was to say that the rest of us who do not come from that region with the athletes should also have made an effort to be there to demonstrate that all of us support our athletes no matter where they come from.

However, when he makes the point to say: why did people from that region go there, I think that is an---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Let us hear from the Senate Minority Leader then I will make some directions because this to and fro will have no end.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I was just wondering how Sen. Murkomen heard me. I did not stand up; I have not been given a chance to speak.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Absolutely! He could not have heard you.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, he is collecting gossip and rumours, and that is not part of the official record. No doubt, that is the reason the treatment of our national hero is becoming a village affair because of how he collects what I have said, which is not part of the record. However, more importantly, he has not explained the point that Sen. Mutula Kilonzo Jr. was making; that when there is a national hero, there should be a national reception here or in Berlin.

Yesterday, we were told that even the Ambassador was not there. Even the Senate Majority Leader was not there.

The point being made---

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

**The Senate Minority Leader** (Sen. Orengo): I am saying this because there was no national organisation to receive such a hero. When Brazil wins, it is the whole country. If Eliud Kipchoge wins in Berlin or Vienna, the country should be there. I did not hear the Deputy President say that he was there on behalf of the Republic of Kenya. He made it look like an individual affair.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., you are one of the best debaters I have ever known. You were making a point, but somewhere along the line you started missing the way. If I heard you correctly, and that should be the case objectively, it is important for us to be happy and proud of our athletes across the country. This is important so that we do not trivialise it in terms of who was there and who was not there, because that is not important.

I feared that the Senate Majority Leader and the Senate Minority Leader would say that even the Speaker of the Senate was not there. That is not the route we should take. It is important for us to celebrate our national heroes across the country.

The other thing, Sen. Mutula Kilonzo Jr., is just to address the concern raised by the Senate Majority Leader. Sen. (Prof.) Kamar was more or less marketing an important product, which I do not think is contentious.

On the issue of those who attended, Sen. Mutula Kilonzo Jnr., it is not right to profile the Kenyans who attended by where they come from. It is not also right, for example, to say that other state officers, including governors and the Deputy President, were there simply because they came from a particular region. Let us just own up to a national issue that we should celebrate our heroes and not use the platform of the Senate to advance trivial agenda. It is so ordered.

I advise that the matter lies there. Kindly conclude with the beautiful remarks that you were making.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, you know me to exercise my mind and not leave my brain at home. Sen. Poghio said, and nobody disputed, that Eliud Kipchoge was a hero for Kenyans by day, but by nightfall he became a tribesperson. That is the point I was making. I was going to get to the point that there is a way we manage our affairs without knowing that we are tribalising them. That is what I was saying.

I said that it is wrong for this country because the gentleman who won eventually had a flag of Kenya, and that is the symbol of the nation. That is how it should look like in his reception and otherwise. It is a way of management. The country has a sports organisation, the Ministry of Sports, Culture and Heritage and an ambassador *et cetera*. Let us manage our affairs better, so that these matters are treated differently.

The reason I say so is because this afternoon, I met somebody who asked why leaders from Eastern region have not said something about the Likoni Ferry tragedy because the persons who died are Kambas. That is where I am coming from. The persons who died in the Likoni Ferry tragedy are Kenyans and should be treated like Kenyans, and not Kambas because their second names are “X”. In fact, the lady comes from Mombasa, but was married to a Kamba. That is the mistake we make and carry in our national duties, and treat matters that are supposed to be ideally national differently.

These people should be treated like heroes of this country. We should at some point forget their second names. It should be Eliud, 1:59:40 and Brigid. This is because they are Kenyans.

*(Sen. Murkomen spoke off record)*

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

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir. You made a good ruling that we must respect all athletes and footballers. I am not in athletics. My type is Victor Wanyama, Olunga and Mariga.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I saw you cheering Gor Mahia?

**The Senate Majority Leader** (Sen. Murkomen): I am a Gor Mahia supporter. In fact, just to buttress that point, every time I go for Gor Mahia matches or say I am a Gor Mahia fan, few tribal elements say that I am not supposed to support Gor Mahia because of their degenerated minds.

I urge Sen. Mutula Kilonzo Jnr. not to reduce such an important debate. This is because people who congratulated Kenyans in Doha, Brigid Kosgei and Eliud Kipchoge on *Twitter* and *Facebook* are from all over Kenya. In fact, videos were posted where children were crying. Family members were laughing and crying because of the happiness that he brought.

If this line is avoided, we will truly be national. The usual thing would have been for me to come here and say that we are celebrating Kipchoge because he comes from “X” or “Y” area.

Secondly, there is nothing wrong with being called Eliud Kipchoge. In fact, it should be Kipchoge Kipchumba.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Or thereabouts.

*(Laughter)*

Hon. Senators, let us not take this matter further. The point has been made and I think the distinguished Senator for Makueni County is a nationalist. Even the example he gave about the unfortunate incident in Likoni shows that he is a nationalist. Let the matter lie there.

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, it is important for us to be serious as a nation. In my view, the way the whole thing was treated is wrong.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What was treated wrongly?

**Sen. Nyamunga:** The way we treated our gallant athletes was wrong.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What in particular? You must relate it to Sen. Mutula Kilonzo Jnr.'s contribution.

**Sen. Nyamunga:** I support what Sen. Mutula Kilonzo Jnr. has been talking about. Since that was a national issue, it should have been looked at nationally and not as a Rift Valley affair. That was a national issue, but it was treated wrongly. We cannot say that we are trivialising anything if we say that, that was a Rift Valley affair because it was not.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., please, wind up your remarks.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, in conclusion, the point I made previously is that this country must find one symbol that brings us together because our second names do not. That is why I still think that Kenyans should use the flag as a symbol of national unity, because it is an important tool for bringing us together as opposed to many other issues.

I have made serious comments on serious issues that must be taken for posterity because what has happened has happened, but it should not be repeated. Sen. Poghisio said that if we have sports grounds all over Kenya, it is possible for the next athlete to win a marathon to come from Kwale County. Let us balance the country with that in mind. If there is something like athletics that can make Kenya one, then let us take that opportunity and use it effectively.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Faki, you are known to be brief because I am about end this matter.

**Sen. Faki:** Asante, Bw. Naibu Spika kwa kunipa fursa hii kuunga mkono Hoja ya kumpongeza Eliud Kipchoge, Brigid Kosgei pamoja na wanariadha wengine ambao waliipa Kenya sifa kubwa kule Doha.

Bw. Naibu Spika, kabla ya kutoa mchango wangu, mnamo siku ya Ijumaa jioni, wanajeshi wetu wa Jeshi la Wanamaji waliweza kufaulu kupata miili miwili ya Mariam Kighenda na bintiye Amanda ambao walikuwa wamezama mnamo tarehe 29 Oktoba, 2019. Lilikuwa ni jambo ambalo liliwatamausha sana Wakenya wengi. Hata hapa Bungeni tulipolizungumzia, wengi wetu walitamaushwa na hali ilivyokuwa inaendelea.

Kwa hivyo, kupatikana kwa miili hiyo kulitoa afueni kubwa kwa Wakenya wote. Juhudi za wanajeshi zilizaa matunda wakati miili hiyo miwili ilipopatikana.

Siku ya Jumamosi ilianza vizuri. Sisi Waisilamu siku zetu zinaanza jioni, yaani baada ya Sala ya Magharibi ndipo tunaanza siku ya pili. Kwa mfano, leo ikifika magharibi, kesho itakuwa tumeanza siku ya Alhamisi. Tulichanganya ushindi wa Eliud Kipchoge pamoja na Brigid, ikawa yote ni siku ya Jumamosi. Kwa hivyo, siku ya Jumamosi kwetu ilikuwa nzuri sana.

Kama nchi tuliweza sote kuacha kazi zetu na tukakaa kuangalia Mkenya huyu ambaye alikuwa Vienna akiipa nchi hii umaarufu mkubwa kwa kazi aliyofanya kwa juhudi zake peke yake. Tumeona kwamba Wakenya wengi ambao wanashiriki katika mbio tofautitofauti ulimwenguni, iwe ni Chicago, Berlin au mahali popote, huwa na uzalendo mkubwa. Wakati wanapeperusha na kujifunika bendera ya nchi ya Kenya, sisi huona fahari ya nchi yetu. Lakini jambo hilo linaishia pale pale. Hata Wizara yetu ya Utalii haijaweza kuchukua rasilimali kama hii kuhakikisha kwamba Kenya inapata umaarufu na watalii wengi wanakuja kuangalia vitu vingi vya kitalii hapa nchini.

Ni heri tutumie fursa hii kuuza na kutangaza Kenya kama nchi ambayo ina amani na talanta tofautitofauti za kimichezo. Wengi huwa tunajulikana kwa mambo ambayo hatufai kuyataja kama vile ufisadi na mengine maovu ambayo hayafai katika jamii.

Bw. Eliud Kipchoge kama Mkenya ameweza kuushinda ulimwengu na kutoa fursa kwa watu wengine ili wapate fursa ya kufikiria vile wanaweza kupunguza muda ambao unaweza kutumika kukimbia mbio za marathoni.

Nilipata fursa ya kuangalia mahojiano ya Cable News Network (CNN) na Eliud Kipchoge ambapo alisema kwamba hiyo nafasi ametwaa si kwamba yeye ndiyo bingwa. La! Lakini ameweza kuonyesha ulimwengu kwamba chochote ambacho binadamu anatumaini kufanya kwa urahisi. Ametoa changamoto kwa binadamu mwingine yeyote ulimwenguni ajaribu kupunguza muda wa 1:59.40. Amefutundisha kuwa yote yanawezekana tukiwa na imani.

Mwisho, nachukua fursa hii tena kumpongeza Eliud Kipchoge na Brigid Kosgei kwa sifa nyingi ambazo wameiletea nchi hii.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Faki. I will allow Sen. Halake just a few minutes because our time is up.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I do not need a lot of time. I rise to support this Motion. I celebrate and salute Eliud Kipchoge, Brigid Kosgei, Timothy Cheruiyot and all the other Kenyans who have ran and done us proud. I also salute all the athletics team that participated in the IAAF World Athletics Championship in Qatar between 27<sup>th</sup> September and 6<sup>th</sup> October, 2019.

As I speak, Eliud Kipchoge has been nominated for IAAF Male World Athlete of the Year Award. These are some of the things we need to be campaigning for to make sure he gets it. Of course, he will get it. Sometimes we become spectators in these kinds of things. Hopefully, this county will play its part to ensure that he, for obvious reasons, becomes the Male Athlete of the Year Award, 2019 holder.

Mr. Deputy Speaker, Sir, we have the greatest marathoners both women and men. All this is on raw talent. As my colleagues have said, we need to, perhaps, convert this by providing the right facilities and frameworks within which we can become indisputable.

Sometimes the Ethiopians run too close to us and it is not very comfortable to us. However, we know very well that if we moved from raw talent to guided, supported, well-practiced and well-nurtured talent, nobody will run anywhere close to us.

Sen. Mutula Kilonzo Jnr. said that the greatest things we should be looking at is, perhaps, endorsements and things like that. I believe very much in deeds and not words. The women movement got where it is today because of deeds and not words. I will challenge Sen. Mutula Kilonzo Jnr. that he and I should look into certain frameworks rather than seeking for endorsements. We need to think of what to put in place, so that international bodies follow certain frameworks that protects the rights of our citizens and for us to get our rightful share in the world.

In terms of the national outlook when our athletes come home, we should practice deeds not words. If we know that he is coming today, for example, what have we done individually? Leadership is about individual action to reach out to the people. Since we know the time he is coming, we need to be at the airport to welcome him, instead of waiting for somebody to call or invite us to go there and welcome him.

We are leaders in this country and free to go anywhere. I am saying this for myself, and have made a note. If we know he is coming on a certain flight because Kenya Airways had *tweeted*, we could have easily gone and welcomed him. We did not have to wait to be invited by anybody. I will take note, and next time, will be the first one to do so, because I believe in deeds and not words. That is what we need in this country.

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

*(Sen. Linturi pressed the intervention button)*

Order, Sen. Linturi! Approach the Chair.

*(Sen. Linturi approached the Chair)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I thank all the colleagues for a job well done in terms of their contributions. I congratulate Sen. Cheruiyot who came up with this Motion and for giving me the opportunity to second it.

*(Sen. Mutula Kilonzo Jnr. consulted loudly)*

I want Sen. Mutula Kilonzo Jnr. to listen. Ms. Brigid Kosgey, the Marathon World Record holder is one of the many world record holders that come from my county. For Sen. Poghio, it is at the border between Elgeyo-Marakwet and West Pokot. We are very proud to represent these very gallant Kenyans who have done us very proud.

We congratulate Eliud Kipchoge. As Sen. Halake has said, he has been nominated for the Male Athlete of the Year Award together with Timothy Cheruiyot. We can make our contribution by *tweeting* and *re-tweeting* because that is part of the voting. Faith Chepkoech, Hellen Obiri and Beatrice Chemngetich who ran the Marathon in Doha have also been nominated for Female Athlete of the Year Award.

All these great ladies and ladies have been nominated and are bound to be recognized by the world any time soon. I believe that at least the male and female Athlete of the Year Award this time round will come from Kenya.

If you remember, Faith Chepkoech ran and led in the 3,000 meters steeplechase from beginning to the end, leaving the rest with a big gap. You will also remember that in July, she broke the world record in the 3,000 meters steeplechase race. Therefore, we have so many world record holders in this country, including David Rudisha and many others, who may not have been running recently.

For the information of Sen. Mutula Kilonzo Jnr. and the rest of the Senators, the official thanksgiving ceremony for Eliud Kipchoge and the team from Doha – the likes of Brigid Kosgei – is going to be communicated to all, including this House. I want to extend a bipartisan invitation to every Senator in this House, as the Senate Majority Leader. We should take that opportunity on that day of the thanksgiving to avail ourselves.

Lastly, I made a request yesterday, which I hope will be honoured in the fullness of time. I strongly believe that if there is a leader who is not holding elective office and I would be more than happy to be given the honour to addresses this House, it is Eliud Kipchoge. That is for his inspiration in terms of what he did – running a marathon in under two hours – and more importantly because he has managed to lead a clean life, as an athlete and inspire others. He was an inspiration when he went to talk to the Tottenham Football Club and the Oxford University. He has continued to be an inspiration in many forums, and I believe given the opportunity, they would do a lot.

Mr. Deputy Speaker, Sir, I just want to confirm what Sen. Mutula Kilonzo Jnr. said here. Eliud Kipchoge just jetted in yesterday and is in Eldoret, where incidentally, he is my neighbour. If you meet him jogging around in the morning, you could never tell that he is a world record holder.

The same applies to Brigid Kosgei. Why should we wish for our athletes the vanity that is associated to largesse, motorcades, red carpets and all those? In fact, in my submission, we should reversing those things. We, as leaders, should be emulating these people by doing great things and go about doing our business in this country, without drawing attention to ourselves with motorcades, sirens, red carpets and big cars. Maybe the true order of things is how these athletes are living.

You do great, go back home; walk in Eldoret normally, associate with people as you have before, and continue helping others. Some of them have built schools, hospitals and made donations to educate children, but they never shout about it. Maybe that is the right order of things, like Jesus did. This is because the only thing we know about Jesus best is that he rode on a donkey. We also know that the Bible says that wherever he went, he did good.

Mr. Deputy Speaker, Sir, those are the things we need to do; that we do good wherever we go without drawing too much attention to ourselves. That is a lesson from our athletes.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. Thank you, Senate Majority Leader.

Hon. Senators, this is not a matter concerning counties. Therefore, we shall take a vote by acclamation.

*(Question put and agreed to)*

*(Applause)*

Senate Majority Leader, on your recommendation on the possibility of this great Kenyan addressing the House, I would advise you, as a Member of the Senate Business Committee (SBC), to perhaps canvas that issue there. I do not think people will be averse to that kind of recommendation.

What is it, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr:** Mr. Deputy Speaker, Sir, is it possible that the HANSARD of these good words of the Senators be forwarded to these good Kenyans as a way of honouring them? That way, they will know that we have spoken about them. Even if nobody else honours them, they should know that the Senate of this Republic has very kind words for them.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Is that the mood of the House, as proposed by Sen. Mutula Kilonzo Jnr.? Will as many of that opinion say 'Aye?'

**Hon. Senators:** Aye!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Will as those of the contrary opinion say nay?

*(Silence)*

The 'Ayes' have it.

Hon. Senators, I direct that a letter be issued to the Kenyans involved in this Motion, not only congratulating them, but also forwarding excerpts of the relevant parts of the HANSARD, informing them that this House and the country is proud of them. We should do that so that when they have some free time, they can look at the great things, statements of support and goodwill that have come from this august House. That should be done in the next two weeks. It is so ordered.

Very well. Hon. Senators, in exercise of Standing Order 40, I will reorganize the business for the rest of today's Sitting as follows. The following Orders are deferred; Orders No.9, 10, 11, 12, 13, 15, 16, 17 and 18.

## COMMITTEE OF THE WHOLE

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

*(Committee of the Whole deferred)*

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**COMMITTEE OF THE WHOLE**

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)  
BILL (SENATE BILLS No.3 OF 2019)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE COMMISSION ON ADMINISTRATIVE JUSTICE  
(AMENDMENT) BILL (SENATE BILLS No.6 OF 2019)

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

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

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE ELECTION LAWS (AMENDMENT) BILL  
(SENATE BILLS No.33 OF 2018)

*(Committee of the Whole deferred)*

**MOTION**

ADOPTION OF THE CPAIC REPORT ON ACCOUNTS OF  
COUNTY GOVERNMENTS FOR FY 2013/2014

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Nandi, Elgeyo Marakwet, Baringo, Laikipia, Machakos, West Pokot, Tharaka Nithi, Siaya, Embu and Nairobi City County Executives for Financial year 2013/2014 (1st July, 2013 to 30th June, 2014), laid on the Table of the Senate on Wednesday, 9th October, 2019.

*(Motion deferred)*

**MOTION**ADOPTION OF THE CPAIC REPORT ON ACCOUNTS OF  
COUNTY GOVERNMENTS FOR FY 2014/2015

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties for Financial year 2014/2015 (1st July, 2014 to 30th June, 2015), laid on the Table of the Senate on Wednesday, 9th October, 2019.

*(Motion deferred)*

**BILL**

*Second Reading*

THE REGISTRATION OF PERSONS (AMENDMENT)  
BILL (SENATE BILLS NO. 14 OF 2019)

*(Bill deferred)*

**BILL**

*Second Reading*

THE CARE AND PROTECTION OF CHILD  
PARENTS BILL (SENATE BILLS NO. 11 OF 2019)

*(Bill deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, all those Orders are deferred, meaning that after I make the communication I am about to make – after which I will allow one or two comments or observations – we shall proceed to conclude the debate on the Motion appearing as Order No.15. Thereafter, time allowing, we will proceed to Orders No.19 and No. 20.

In the circumstances, I now direct that the Order on Communication from the Chair be now called out.

**COMMUNICATION FROM THE CHAIR**

MESSAGE FROM THE NATIONAL ASSEMBLY ON THE APPROVAL OF THE  
PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT)  
(AMENDMENT) REGULATIONS, 2019

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. I will like to communicate to the House as follows. I am in receipt of a Message from the National Assembly conveying the decision of the National Assembly approval of the Public Finance Management (National Government) (Amendment) Regulations, 2019.

This is a delegated legislation under the Public Finance Management (PFM) Act. The effect of those regulations is, on the overall, to provide oversight mechanisms and accountability on sustainable levels of public debt. In particular, those regulations provide for a numerical limit to the total public debt of Kshs9 trillion in place of the current public debt limits set at 50 per cent of the Gross Domestic Product (GDP) in net present value terms, which is approximately Kshs6 trillion at the moment.

These regulations also accordingly allow the Government to access concessional funding sources both at multilateral and bilateral levels, facilitating public sector investments supportive of inclusive economic growth and development up to the said figure of Kshs9 trillion, as opposed to the prevailing figure of Kshs6 trillion. It is also stated that the regulations are proving greater borrowing space for the Government of Kenya to cater for potential guarantees for borrowing by county governments and state owned enterprises.

Hon. Senators, in a nutshell, these regulations are reviewing the debt ceiling of our country from Kshs6 trillion to Kshs9 trillion. Therefore, in accordance with our procedures and Standing Orders, and having looked at the extent and magnitude of the regulations, their coverage and considering these are delegated legislation, I have determined that this being a grave matter of national importance touching on delegated legislation and the country's resources, including budgetary issues--- I have determined that this matter be committed to two Committees of this House to work together namely; the Senate Standing Committee on Finance and Budget as well as the Committee on Delegated Legislation.

The Committees are directed to get seized of the regulations that had been tabled earlier this afternoon by the Senate Majority Leader, so that this House can in the shortest time possible, expeditiously deal with this issue and make a pronouncement for the approval or disapproval, as required by the law of our country and the Constitution.

I thank you.

What is it, the Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I would like to congratulate you for the important Communication you have made and further agreeing to submit this matter to both the Standing Committee on Finance and Budget as well as the Committee on Delegated Legislation. Ordinarily, it would have been committed to the Committee on Delegated Legislation only, but because of your wisdom, this House will need to tap from the wealth of experience that is in the Standing

Committee on Finance and Budget. In substance, this is not just a normal financial issue; the issue of debt ceiling is of immense national importance.

Mr. Deputy Speaker, Sir, some of us are not financial experts because our training is not in finance. I am sure that the two Committees will do their best to call for experts and listen to presentations from various Kenyans and separate the facts from the myths, as well as propaganda from the truth. The Committees should come back to this House with information that will help the country.

I know that the National Assembly did their part. However, if you ask any citizen of this Republic what they really did, people only know that something was passed, but there is no public conversation about what was said, what it means and in reference to what. If we say that we are enhancing the debt ceiling, what is it in reference to and to achieve what targets when?

Mr. Deputy Speaker, Sir, those are some of the explanations that I am hoping the Committees, in their joint sittings, will expound and come back to this House to educate us. This is so that even if we agree with the National Assembly to enhance the debt ceiling or reduce it, we will do it with scientific information that has been contributed by the citizens.

I challenge Kenyans to get out of calling themselves 'Kenyans on *Twitter*' (KOT) and become Kenyans on the ground. Kenyans should get out of the social media platforms and appear before these Committees and assist this country to make the right decision. I will be happy with the editors of the media houses who have made tremendous editorial statements about debt in this country to also seize this opportunity to tell the citizens of Kenya that there is an opportunity for them to influence the decision on the debt ceiling through the Senate of the Republic of Kenya.

This opportunity must not be wasted because even those of us seated in this House would like to know what the truth is and what propaganda is, so as to separate the wheat from the chaff for the better of this country.

I look forward to a report that when tabled in this House, will help us make a decision that is not just for the immediate benefit of this generation, but the generation of our children and the children of our children.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Senate Majority Leader, in line with the remarks you have made, I would like to further direct that given the gravity of this matter, the two Committees should ensure serious verifiable public participation, so that their report can be based on the thinking and the pulse of the people of our country, when it comes to whatever recommendations they will come up with.

I can see requests from Senators to comment on this Communication. However, the requests should come as interventions and not requests to speak, because this is a Communication from the Chair. Meanwhile, kindly proceed Sen. Linturi as the other Senators organize themselves.

**Sen. Linturi:** Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity and congratulate you for the great wisdom. That the National Assembly found it wise to send this Message to this House is something that we must appreciate because in the past things that affected this country, whose effect had serious

implications on the running of the counties, were done without them sending a message to this House. Therefore, this Message having found its way here, means that the great God is intervening in different ways.

Considering the regulations that are before this House, I do not want to be speculative because I have not read or seen them. I do not want to anticipate the kind of report that will be brought in this Committee, but if the net effect of these regulations is to open or widen the debt ceiling of this country, the two Committees should seriously look into them and make appropriate recommendations.

This Committee should appreciate the mandate of this House in terms of protection of the interest of counties and their governments, especially, under Article 203(2). When revenue is being shared, one of the criteria is to look at the national interest.

Mr. Deputy Speaker, Sir, the sharing of the equitable share, is something to do with the provision of public debt. Therefore, whatever we do, if we have to increase that debt, it must come into our minds that we may require to do it. Otherwise, we will be doing it, but the effect is that before the revenue that is supposed to go to our counties is given or shared, then that aspect of the increased difference of the debt that we want to increase has to be factored in before the sharing of the money.

The meaning of that is that the money that is expected to go to the counties will be less. Considering the back and forth that we have had this financial year in terms of the sharing of revenue and the attitude that we have had from the Executive, it is like we have to beg permanently from them; it is a favour. I think we have to be very conscious of this, bearing in mind that we are giving the Government an open cheque to go and commit this country to spend money carelessly and in a way that, in my view, may not require approval of the National Assembly. This is because in rare cases we would then be able to stand tall and oppose any suggestions that come from the Executive, which would not be very good for this country.

Mr. Deputy Speaker, Sir, I thank you for that decision that you have made.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Please, there is no Motion before us. Therefore, reference should be on the Communication. Given the gravity of these issues, I will allow a few more interventions before we move to the next Order.

Senate Minority Leader, Sen. Orenge, kindly proceed.

**The Senate Minority Leader** (Sen. Orenge): Mr. Deputy Speaker, Sir, I rise in response to the Communication that you have just made and appreciate the fact that you have made it possible for us to make some comments on it.

Mr. Deputy Speaker, Sir, if you look at the old Constitution, the issue of debt and borrowing was not quite regulated as it is in the current Constitution. It was dealing with a mischief that was experienced in the past, where the Government would borrow or incur loans or debt without accountability and supervision of Parliament, except in regard to limits.

Therefore, when this part has to come us, we are performing one of the most important roles that this Parliament should perform, and the Constitution made it very clear that the Senate must be involved in the process of approving such regulations.

Mr. Deputy Speaker, Sir, I think there is one of the provisions of the Constitution that probably we are not using as often as we should. This is Article 211, where this House can actually call upon the Cabinet Secretary at any time to explain the amounts of debt, why it is there, how it is being serviced and the structure of that debt. If we just leave it to the Executive without supervision from Parliament, this country may not be able to live to the spirit and principle of the Constitution, which requires that the burden of debt should not be visited to the future generations without some element of responsibility and accountability.

Therefore, I fully agree with the Communication that you made that this matter should go to the two Committees, and particularly, the Committee on Finance and Budget. Although we are not dealing with the regulations or substance of the regulations, it is important to point out that there is a legal notice already out there. This means that the state of affairs may have actually changed on the ground and somebody is assuming that we are going to approve this delegated legislation in terms of the limit, whether it is being measured numerically or against Gross Domestic Product (GDP).

That is a very important question. Why is that change being made? This is one of the things that when it goes to that Committee - we are not saying we are going to say no to it - they should explain to us because, internationally, debt is measured against GDP. This Senate then should be able to explain to the public why that change is necessary.

The two Committees can talk to experts in the manner which was suggested by the Senate Majority Leader; confer with experts so that this change is made in a way that is consumable and understandable to the Senate and the country as a whole.

I just want to speak the words of wisdom from the former President of the Republic of Kenya, President Hon. Mwai Kibaki, where he used to say that one of the most important responsibilities of Parliament in being the institution that should oversee the National Treasury, is to look at the level of borrowing, particularly in the domestic market and look at the levels of expenditure. This is because financial problems that sometimes visit the country arise out of issues of debt and borrowing.

Mr. Deputy Speaker, Sir, I, therefore, fully support the Communication that you have made; that this matter should go to the Committee. When this matter comes, I believe that we will be given opportunity to discuss it thoroughly because whichever decision we make should be well understood by the members of the public.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senate Minority Leader.

What is it, Sen. Wetangula? You are all on points of order because I just made a Communication.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, when you made the Communication, it came as a tremendous relief to me. This is because when this matter was passed in the National Assembly, I took an opportunity to call the Majority Leader and ask him if he had heard what I was hearing, and if things were going to be different. He appeared to assure me, although I was skeptical about it, that it was going to end up here.

The former President Hon. Mwai Kibaki resisted temptations to recklessly drive the country into heavy public debt, and he left a very sound economy. If you look at the

Constitution - although we do not want to go into a lot of merits - Article 201 is so clear. Article 201(c) (d) and (e) states as follows:-

“(c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;

(d) public money shall be used in a prudent and responsible way; and,

(e) financial management shall be responsible and fiscal reporting shall be clear.”

The borrowing that we do is not for the Government of the day; it is for today and the future generations. Debt and the burden of debt is a trap that can lead the country into what we saw Greece go through.

A European Union (EU) Member of first world country was technically insolvent because of reckless borrowing. The Europeans had to come together to salvage Greece. This country has no members of the African Union (AU) that come together to salvage us if we go into terrible headwinds. Therefore, I urge this House and the leadership on both sides that this will be a patriotic duty.

We have seen angry reactions from the members of the public. I would like to inform the Senate Majority Leader to forget about the angry people who abuse each other on *Twitter*. There have been radio call-ins, television talk shows and editorials. Unfortunately, this House is carrying the sin committed in the other House. This is because the people out there do not know that the Senate was not involved in this reckless decision.

I asked one Member of the National Assembly why they voted for this, and he told me that they were instructed to vote. I hope that we will give the two Committees time bound direction that this matter must be done within the next one week.

I also urge your office, because there are many Committees including *ad hoc* ones, that you give them two days and freeze the activities of other Committees, so that these Committees can sit on this matter, do public hearings where necessary, analyse this matter and talk to financial analysts and Commission on Revenue Allocation (CRA).

Mr. Deputy Speaker, Sir, as a House that represents county governments and their interests, we know that the first charge to public resources and revenue is public debt. So, with a ballooning public debt going to Kshs9 trillion, it means that the sharable revenue will shrink more, our counties will get less and development will freeze. I am not a prayerful person, but prayers are necessary to save this country from the direction we are undertaking. After this term, the next two or three terms will be extremely difficult.

We have now reached a situation like where the former President of Cuba, Fidel Castro, told the Americans: “Cannot pay and will not pay.” He told them that if they recklessly lent money to Fulgencio Batista when he was the President of Cuba, it was up to them. He said that he could not pay and would not pay because it was not possible to pay.

Mr. Deputy Speaker, Sir, there is no way a country can spend close to 70 per cent of its annual revenues on debt service, yet we must pay because we are obligated. The World Bank that is the lender of last resort has already raised several red flags on our country and said we have burst the debt ceiling. However, the Chamber that prides itself in dealing with financial matters and says that money bills are its preserve and should not come to the Senate, is the same one that is not debating, but acclaiming this recklessness.

Mr. Deputy Speaker, Sir, it is a terrible distortion of thinking process to see these things happen. I want you to freeze other Committee activities and let the two Committees sit for two days and bring the report, so that we debate with the sobriety, intellectual capacity and facts as they attend to this matter.

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

I had already directed the Committee to treat this as an urgent matter of national importance. As we are informed, there is already a legal notice around these regulations and, perhaps, initial steps towards borrowing with the new ceilings in mind.

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

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

**Sen. Wetangula**: Mr. Deputy Speaker, Sir, it is also important to put on record that immediately these regulations were passed in the National Assembly, there were widely circulated press reports that the National Treasury is borrowing Kshs350 billion in furtherance of this. Therefore, it is extremely important that this House must pronounce itself to this as quickly as it is practically possible.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct Members of the Committee on Finance and Budget and the Committee on Delegated Legislation, respectively, to be freed from other Committee commitment for the next seven days, to ensure enough public participation and urgent conclusion of this matter. Therefore, I expect the report to be tabled within seven days. The other matters that these two Committees are dealing with can only be put on hold, only in cases where there are emergencies until we dispense of this matter.

It is so ordered.

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

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, some of the Members of these two Committees are in the *Ad hoc* Committee on Impeachment of the Governor of Taita/Taveta County. Therefore, I request that in your discretion, you make it 14 days, so that they can play around the 14 days.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Minority Whip, what do you say? What the Senate Majority Leader has said is important as well because that process is time bound.

**Sen. Mutula Kilonzo Jnr.** Mr. Deputy Speaker, Sir, I want to assist on this particular issue.

**The Deputy Speaker** (Sen.(Prof.) Kindiki): I assume that you are also on your point of order, which you had requested.

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

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

**Sen. Mutula Kilonzo Jnr.:** What Sen. Wetangula has said is true. We will fall in the danger of falling foul of the law. Therefore, it is important for purposes of timing in so far as the Public Finance Management Act is concerned, that the date it was submitted is recorded, so that the last date of approval is known.

Section 205(6) of the Public Finance Management Act states that:  
“If a House of Parliament does not make a resolution either approving or rejecting any regulation”---

*(Sen. Murkomen consulted loudly)*

Sen. Murkomen, pay attention.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. Address Sen. Murkomen through the Chair.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, Section 205(6) of the Public Finance Management Act states:

“If a House of Parliament does not make a resolution either approving or rejecting any regulation within 15 sitting days after submission for its approval, the House shall be deemed to have approved those regulations.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., could you take us back?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, let me repeat.

It states that:

“If a House of Parliament does not make a resolution either approving or rejecting any regulation within 15 sitting days after submission for its approval, the House shall be deemed to have approved those regulations.”

So, it is important, for purposes of your Communication that the date of submission, and the 15 days in this Section, are included. The reason is that the Public Finance Management Act is peculiar. It is the only law where a *gazette* notice is published before approval.

Our experience in the past, as the Committee on Finance and Budget, is that our recommendations on regulations on the Equalization Fund are never considered or amended once they have been gazetted. So, your Communication is important. If the Cabinet Secretary (CS) for National Treasury proceeds to borrow on the basis of these regulations before the approval or rejection by this House, we are in a position to challenge him. It is important from my experience.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): While at it, before I allow you to make your other remarks, can I pronounce myself on that issue?

**Sen. Mutula Kilonzo Jnr.:** Okay.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let me dispose of that issue. You have brought out an important aspect. Ordinarily, the regulations ought to have been tabled simultaneously in the two Houses on the same day. However, that was not done. They were tabled in one House and after making their decision, they conveyed a Message to the Senate. My understanding is that such nature of submissions should be done simultaneously.

Today, the Senate received the submission of the Regulations. I determine that the Regulations have been submitted to the Senate, as a House of Parliament, today, 16<sup>th</sup> October, 2019. Therefore, the 15 sitting days that Sen. Mutula Kilonzo Jnr. is referring to,

which amount to five calendar weeks, start today. However, despite what I have said, the urgency remains.

We need a report of the two Committees within 14 days, considering the submission by the Senate Majority Leader, because we have another constitutionally time-bound process of impeachment of the Governor of Taita-Taveta County. How many Members of the Committee on Finance and Budget are in the Select Committee to look into the impeachment of the Governor of Taita-Taveta County?

**Sen. Mutula Kilonzo Jnr.:** Two.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Only two?

**Sen. Mutula Kilonzo Jnr.:** Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That cannot cause lack of quorum.

**Sen. Mutula Kilonzo Jnr.:** We have Sen. (Dr.) Kabaka and Sen. Farhiya who are Members of the Committee on Finance and Budget and the Committee on Delegated Legislation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That should not have quorum problems. Let us listen to the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, in my honest opinion, if you make it 10 days, the impeachment process will end on Friday. It might take a lot of time. We have 35 days in total. If you remove 14 or 15 days, the Senate will still have a balance of 20 days to make a decision in Plenary.

Considering the seriousness of what they will be doing, including public participation, I am convinced that you might need to make it 20 days to allow them to listen to members of the public. We only need one or two days to make a decision here, but they need more time to make a quality presentation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The danger of stretching it beyond two weeks is that we may be overtaken by events in term of borrowing, where steps have been initiated as reported. Going by my earlier direction, now that impeachment is not one of the activities involved, unless emergencies of the activities of the two Committees are put on hold--- I say so because the Speaker has given other directives on Statements or other House businesses. Unless they are emergencies in the opinion of the Committee, they could hold and the extension is applied *pro rata*.

**Sen. Wetangula:** On a point of order, Mr. Deputy Speaker, Sir. Sen. Mutula Kilonzo Jnr. has brought out an important point. I suggest two things for purposes of our operation. First, in giving direction on time, we know that it should be 15 sitting days. However, they can operate on calendar days, so that we are safe with time. If you say that they report back within two weeks, we have 14 days of ordinary calendar days, but will have some reserve time in accordance with the law.

Secondly, there is a real temptation of the mandarins of the National Treasury thinking that once the matter has passed in the National Assembly, it has no room anywhere else. The Speaker's Office and the Clerk should write to the National Treasury informing them that we have received these regulations and the law provides that time runs from today for 15 sitting days and give a specific date. We expect them not to act in any manner in purported conformity with these regulations because they are not regulations until we pass them.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I accordingly direct that a letter be issued tomorrow in the terms suggested by Sen. Wetangula.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I have one more addition. In the letter, it is appropriate that we tell the National Treasury that the law contemplates that these regulations must be tabled in both Houses simultaneously. That is why they will suffer the cost of waiting because they submitted them separately and, therefore, timelines apply separately. It is amazing that the country is getting into the question of borrowing so much money, but we want to amend the regulations and not the Act. Those issues must come to the Plenary.

Thirdly, is what either Sen. Wetangula or Sen. Orenge said. In moving the ceiling to Kshs9 trillion, the fundamental question is how we moved from Kshs1 trillion to Kshs6 trillion, and what we were borrowing for. This offers us an opportunity under the Constitution to request for those documents.

We will ensure that the information reaches the Committee, where Sen. Wetangula and I sit, in 14 days. Please, allow us to ask those questions. If we get any bottlenecks about the documentation on why Kenya is borrowing and why the debt has reached Kshs6.7 trillion, we will come back and tell you they have refused. We will, therefore, not table a report until they comply.

**The senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir. For the comfort of everybody, since the letter was copied to me and it came to your office, it is important for everybody to note that the letter by the Principal Secretary for the National Treasury was written today, and it reached us today. In terms of determining what time period we have, they are bound by the documents they submitted.

Secondly, it is expected that when the Committee meets, the first people to invite will be officers of the National Treasury. Therefore, any possibility of one borrowing without following the procedures can be dispelled. The Committee can even use that opportunity to ask the Cabinet Secretary whether he is attempting to do so before the passing of these regulations, so that we have a record of what is happening across.

**Sen. M. Kajwang':** Mr. Deputy Speaker, Sir, of late I have been quite cynical, but your statement has reassured me. Initially, when I talked about some of these matters even in the public domain over the weekend, I came under a barrage of insults. I was told that the Senate does not know what its duty is, despite the fact that Section 50 the Public Finance Management (PFM) Act says that the thresholds shall be set by Parliament, being the National assembly and the Senate.

Out of that cynicism, I had even prepared a statement that was to be read in the House today. In your wisdom, which I commend, you directed that because this Communication was coming today, the Statement was therefore not going to be valid. I appreciate that and will not push any further for that Statement.

Some of the issues that I wanted to emphasise have been emphasised. The one that needs to be repeated many times is that Parliament has not yet made a decision on the debt ceiling. Maybe we need to find a way of making this information go out to the public.

The editorials in the major dailies from early this week were about Parliament's irresponsibility in adjusting the debt ceiling. Let the message go out that Parliament has not yet concluded the process. The process is only concluded when the Senate agrees with the National Assembly or when the Senate renders an opinion on the matter. When the two Committees that you have rightly appointed to look into this matter report back to this House, I beg that we shall get an opportunity to debate. In the other House, the matter was put to vote without very serious debate.

I beg that in this particular case, even if we will be required to sit here until midnight like we have done in the past, the country will have an opportunity to hear what the elected representatives are saying about this issue of debt. There is an American philosopher who said: "Blessed are the young for they shall inherit the national debt".

If this matter will not infuriate the young people of this country, then it is not enough for them to congratulate Kipchoge. Every other day when we are sitting here, the National Executive is piling debt. For them to get away with that, what they do is that they set us up so that the two Houses are fighting.

There are Members who had assured me that this matter would not come to the Senate. I want to congratulate the leadership of the House for making sure that this matter has come to the Senate so that it can be given the depth and clarity that this House is capable of.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for those great statements, Sen. M. Kajwang', and also thank you for understanding that the context determined that we step down your Statement and subsume it to the greater issue of what we are doing today.

Thank you so much for being vigilant and proactive. Yes, Sen. Ochillo-Ayacko, Senator for Migori County.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. I want to thank you for the opportunity to say two things: First, I was equally skeptical about the marginalization this House has been suffering in the hands of our younger brothers and sisters in the other House.

In your ruling, you have indicated that you will communicate to Treasury the fact that they should not act on the regulations until this House approves. I want to plead with you to ensure that in the communication you will issue, you will capture the fact that we have five calendar weeks and not 14 days. This is to ensure that they are aware that they should not take any precipitate action earlier than five calendar weeks, not 14 days. They should be aware that it is what the law requires.

Secondly, I want to plead with you to share the same Communication with the Attorney-General (AG). There is a tendency and we are correctly apprehensive that Treasury might misadvise itself to do certain things. We should as a House share with the AG the same communication so that in the event that the Treasury seeks to misinform the office of the AG, your communication will also be there, so that the AG shares the responsibility.

Thank you.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir. First, I think I am one of the few Members who will be handling this matter because I serve in the Committee on Delegated Legislation. I want to thank you for bringing on board the other Members of the Committee on Finance and Budget.

I think we are between a rock and a hard place because this is one of those issues where we will either affirm or reject. According to the law, we have no room to amend this subsidiary legislation once it comes to the House.

This is happening at a time when the debate out there is that, Parliament is under the capture of the Executive. Most People out there have the feeling that it could be right or wrong, that we vote depending on instructions we receive from either the Executive or leadership of respective parties.

I think this gives us an opportunity as a House to look into this matter very objectively, putting the interests of this country first, more than anything else. I do not mind if the National Assembly can pass this even without any debate because they do not represent counties and their governments.

We all know that the more we borrow, the more we shrink allocations to counties. Before we do any allocations, the first charge is to take care of our public debt. The more we borrow, the more we must warn ourselves that next year, allocations to our respective counties will shrink. That is a fact that we must bear in mind as Senators. I think that is why under Article 96, our first duty is to protect our counties and their governments. I agree with you that we need to ensure that this matter is given due attention. There should be adequate public participation.

Secondly, we need to understand why there is substantive policy shift. Initially, we had been saying that we will base our borrowing on our Gross Domestic Product (GDP).

We are introducing figures, meaning that we are doing away with those considerations of GDP. Although I am not an economist, GDP is used to measure the ability of our country to repay debts. If we are making this substantive shift, we are doing away with GDP, how are we going to mathematically arrive at a conclusion that we will be able to pay what we are borrowing?

This is a matter that is of serious public interest. We need to warn ourselves that we should allow this country to place itself at risk of being unable to make future repayments of the money we borrow. We need to ensure that we are not placing ourselves in a situation where we are not only mortgaging ourselves, but even the future of our generations.

We need to ensure that we do serious public participation and not understand from the Treasury. What are we projecting in terms of our collection? The Government of Japan can borrow because their liquidity is good. How is our liquidity as our country? We should not compare ourselves with countries like Japan because they have better liquidity than us.

I want to hear the concerns of us the representatives of the people. We should avoid this rapid rise in public debt in the pretext of pushing up public sector development. Is there good value for money? We have borrowed before and we do not know where this money goes.

This is the moment for us as Senators, to prove to the country that we are the “Upper House” and that we can act in public interest. Our public interest will begin with the interests of our counties. I really hope that we will stand up to be counted and that Kenyans can, for once, see that there is a Senate; the “upper House” and acts in the public interest.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done Sen. Omogeni. Sen. Mutula Kilonzo Jnr., your reference to 15 days was under which Article of the Constitution; is it under Public Finance Management (PFM) Act?

**Sen. Mutula Kilonzo Jnr.:** PFM Act Section 205 (6) under part 8 of miscellaneous provisions.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senators. That brings us to the end of those comments. For the record, the Committee has a maximum of 14 days to dispose of this matter.

Secondly, the Committee within the limitations of time and resources must ensure there is maximum public participation from all walks of life and spectrum of the Kenyan society.

Thirdly, that the activities of those committees in other businesses of the Senate that are not emergencies, in their opinion, can be put on hold, and the timelines that have been given by the Speaker can be extended *mutatis mutandis* in each case.

Hon. Senators, I just want to emphasize from the Chair that, if there was a matter that is so important to not only the present, but the future of our country, it is the matter of debt. Therefore, the future of the present generation and the future generations of this country is relying on the kind of work the two committees will do.

Finally, that a letter will be issued acknowledging receipt of the submission of these regulations by the Treasury today to the Senate. That letter shall also be setting the legal and statutory parameters upon which we shall act. It shall also be asking all those involved not to take any action until the Senate, as a House of Parliament makes a determination on this issue as per the law.

Thank you.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I have never made this request before, but in view of the sentiments made by Sen. Kajwang’, Sen. Omogeni, Sen. Wetangula and others, once that letter is issued, it should be circulated to all of us.

I have never made this request before, but it is a matter of public interest. That way, it answers the question by Sen. Kajwang’ that Parliament has not made a decision yet. That letter should be circulated to us.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I find no difficulty in acceding to that request, Sen. Mutula Kilonzo Jnr. You have never made such a request because perhaps there was no need to. However, now there is a reason, and that letter will be written on behalf of the House. I see no prejudice in it being shared to the owners of the communication.

I, therefore, direct that once the letter goes out and is received, it be shared to the hon. Senators. In fact, it will even guide the deliberations of the Committee, especially if the Committee chooses – as I hope they will – to engage the Cabinet Secretary (CS) for the Treasury so that they can also clarify the contents of that letter when they engage face to face with the CS.

*(Applause)*

Yes, what is it, Sen. Wetangula, as we wind up?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, allow me – we rarely take the opportunity when such a matter is disposed of – to appreciate the Chair. I want to record our appreciation to you personally, and to the Chair in general, for the patriotic attitude, tenacity and the manner in which you have guided this very delicate matter.

This is because out there, we are all carrying the original sin; that we have put an additional burden of Kshs3 trillion of public debt on the shoulders of Kenyans, when it is not true. You have allowed the House to ventilate on this issue in the manner we have ventilated and the sound directions that you have given behooves upon all of us to appreciate that the Chair is guiding the House well; he is well informed and is abreast with what is going on.

Above all, he is also conscious of the fact that it is part of the Kenyan issues that we must deal with and protect our country.

*(Applause)*

**Hon. Senators:** We agree.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you for those very kind remarks, Sen. Wetangula. Thank you and God bless you.

Next Order.

## MOTION

### ADOPTION OF THE CPAIC REPORT ON ACCOUNTS OF COUNTY GOVERNMENTS FOR FY 2013/2014

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Nandi, Elgeyo Markwet, Baringo, Laikipia, Machakos, West Pokot, Tharaka Nithi, Siaya, Embu and Nairobi City County Executives for Financial year 2013/2014 (1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014), laid on the Table of the Senate on Wednesday, 9<sup>th</sup> October, 2019.

*(Sen. M. Kajwang' on 15.10.2019)*

*(Resumption of debate interrupted on 15.10.2019)*

We are resuming debate of the Report of CPAIC, which is Order No.15. Sen. Ochillo-Ayacko, have you requested to talk?

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

*[Sen. (Prof.) Kamar in the Chair]*

**Sen. Ochillo-Ayacko:** Thank you, Madam Temporary Speaker, for the opportunity to speak.

This House has a very onerous responsibility to oversight and ensure that public funds are properly used, as allocated to counties by us. We also have a responsibility to ensure that members of the public in the counties that we represent get value for the money that they give us the privilege to allocate to them. This duty is constitutional and constitutional duties are solemn duties.

Madam Temporary Speaker, as representatives of counties, we have been lampooned, lambasted and attacked both by the Executive and by our younger sister House, the National Assembly. This is because of sitting on our laurels as money is lost or plundered by those to whom we give such monies annually to expend on our behalf, and to do development in the counties we represent.

It has been said that we sit here idling and insisting that more monies be allocated to counties, yet we do nothing when there is evidence of enormous wastage of the resources that we allocate.

Therefore, I want to take this opportunity to congratulate the CPAIC, led by Sen. M. Kajwang', who is my neighbor. We share Lake Victoria, we share 'Subaism,' and also very many other things. I also want to congratulate the galaxy of Members of the CPAIC for coming up with a Report that has now occasioned or triggered the debate that will hopefully culminate in oversight.

Madam Temporary Speaker, if you look at oversight of parliaments, the effectiveness of such oversights is premised upon the timeliness within which the oversight is carried out. Unfortunately, we have not been timely or expeditious. If we were to be appraised or assessed on the score of being expeditious and timely, we do not rate very well, but there is room for improvement.

I am saying so, so that my colleagues, led by Sen. M. Kajwang' and future colleagues who will continue in this very lovely Committee will understand that we need timely and expeditious generation of reports. That is so that we tighten the noose round the necks of the thieving governors and county executives, including assemblies. We need to do that, and we are happy that something has been done. I know that the Committee has good reasons for the delay, but I hope that there is room for improvement so that we are current when it comes to carrying out this function.

Madam Temporary Speaker, another parameter upon which to assess the effectiveness of oversight is compliance. When reports are churned out – reports that indict, sanction, and propose or prefer sanctions against wayward public officials, we

need to see action. Those who are charged with the responsibility of ensuring that there is implementation of these reports need to act upon them. If investigations are recommended, we need to see people getting investigated.

If prosecution is preferred in the reports, we need to see prosecutions happening. I am sure that lawyers inside and outside this House will get good briefs, and courts will get busy. Consequently, the Director of Public Prosecutions (DPP) will get a lot of work to do.

I am sure lawyers inside and outside this House will get good briefs and courts will get busy. The Director of Public Prosecutions (DPP) will get a lot of work to do and justify the budget that his office is given. We will also see how the Judiciary behaves when it comes to actual matters that are brought before them for prosecution.

Madam Temporary Speaker, on the issue of whether reports of the Committee on County Public Accounts and Investment (CPAIC) are acted upon, my armchair assessment is that - I have not done scientific survey - on that score we are also not doing well. There is very little implementation out there. When we look at reports that were done by the previous Senate and are already known, it appears that oversight, as a constitutional and solemn duty of this House on the account of whether the reports are being implemented, is also an area where the score should be up-scaled.

I know that that is not the absolute mandate of this House. However, it is the absolute duty of every Kenyan and the nation to ensure that an institution so revered as the Senate or Parliament - in other places, it is called the "High Court of Parliament" - makes a resolution that some people should be dealt with, that resolution should be taken seriously. This is the "High Court of Parliament" and when such a resolution is made, it is made by distinguished and honourable people and it must be honoured by being implemented.

On that score, we are not doing pretty well. I hope we have, in our regulations, Standing Orders, practice and other procedures an in-built mechanism for follow-up and also holding to account those who are charged with the responsibility of implementing.

Madam Temporary Speaker, in previous the Parliaments that I served in, there used to be a last meeting by the Big Five: the Head of Public Service, Attorney-General, Auditor-General, a representative from the Treasury and other investigative agencies to give a report as to the state of implementation of reports of the Public Accounts Committee and Public Investments Committee.

They should clearly indicate the state of implementation of such reports and that would give encouragement to Members of the Committee who sit for hours without end that they do not sit in vain. It would give encouragement to the House that we do not gather here to be a talking shop.

Sen. Githiomi and I had the distinguished honour of serving in previous Public Accounts Committee and Public Investments Committee and we were also chairs of those committees. We were happy that a few things were implemented. However, we were disappointed that there were many things which others found politically convenient not to implement. I hope the implementers of this report will not hide under political correctness to fail to implement the reports.

Madam Temporary Speaker, the third parameter of assessing whether oversight functions of Parliament or parliamentary committees are effective is the sufficient time that is accorded for the reports of the Committee to be debated. It is important that a House of this kind that brags or thinks that it is the “Upper House” should accord sufficient time, attention and skill and apply itself when debating these matters.

If all of us were to run away from this House so that only Members of this Committee talk to empty benches, then oversight suffers. Oversight is not just about talking in the House; it must also gain sufficient publicity out there and be amplified in all media houses, including social media.

Oversight by the public arises from the fact that there is a robust debate and that there is sufficient time and proper engagement by Senators when debating this matter, such that the public out there are able to relate with what the Senate is doing. When they do so, they also help in oversight.

Most of the persons we oversight are elected officials and the best overseer of an elected official is a voter. So, the voter out there in Migori County should know that the Senate discussed the activities of the Governor of Migori, Homa Bay, Kisumu, Makueni, Nyamira or Laikipia County so that at the end of it all, the rating of the Senate regarding the performance of that particular Governor is also known to the voter. When the voter becomes the judge in 2022 or sometimes earlier as is being requested in Taita Taveta County, the voter can carry out the ultimate oversight.

Madam Temporary Speaker, we need as a House to give sufficient time. As Members of this House, we need to be all available and robustly contribute to the debate of oversight report from our very good Committee.

There was a suggestion by Sen. Kibiru, which has gained traction in a group where we were informally discussing, that for this House to be taken seriously, we need to relook at our Standing Orders and redefine our business, so that out of the three sittings in a week, at least sufficient time is given daily to look at reports that relate to a particular county so that what we discuss and what is reported out there is relevant.

Oversight is a very important thing. If we are to be appraised on the basis of the time that we give for matters relating to oversight or on our personal engagement as Senators with regard to the passion and commitment that we give to discussing matters oversight, in my appraisal, we also do not do well. I know there is room for improvement. We need to do better than we are doing.

As a Chamber, we need to relook at the Standing Orders and accord sufficient time for debate. As Members, we also need to be engaged so that we are here and read what our committees do on our behalf, discuss them and give them the punch that is required. Hopefully, the media and the civil society as institutions that are out there to amplify the views of the Senate regarding the assessment of individual county executives will also get engaged.

Madam Temporary Speaker, we also need to specifically look at financial expenditures of county assemblies. I have had the opportunity to discuss with Sen. M. Kajwang', our able Chairperson of CPAIC, how they have been able to carry out oversight and to discuss with county executives. He shared with me information that, due to time constraints, they have only been able to look at the accounts of expenditures of

county executives and that they have not been able to summon speakers and clerks of County Assemblies.

Madam Temporary Speaker, you may have had the occasion to look at the newspaper today and other previous reports. You will see the kind of financial misbehavior by county assemblies. We have seen how Taita-Taveta County which is represented by Sen. Mwaruma is expending public resources that they do not have.

We have seen how other counties spend monies they should have used for development on unnecessary activities. When they are asked to account for the same or when there is an attempt at counterbalance by the county executive, a threat of impeachment or a standoff, they decline to approve the budget. These are things that are happening.

I wish to propose that, perhaps, in future, we should relook at the Constitution in terms of the constitution of Members of the County Public Accounts and Investments Committee (CPAIC) so that we have enough numbers that can be divided into subcommittees. This is to ensure that we have a subcommittee that gives attention to reports of the county assemblies. We should also have another subcommittee to give attention to reports of the county executives.

Ultimately, as the Senate, we will satisfy ourselves that we carry out a thorough and comprehensive oversight report of activities that touch on all the funds given to our counties. That is the fourth yardstick used to assess whether we are effective in our oversight. Have we covered all the terrain, all the yardstick or all areas that we are expected to carry oversight on? If we have not, then it appears that our oversight is not comprehensive, timely and a few people depending on the constraint of work and our ability to cover the area escape and do not do what they are supposed to do.

Madam Temporary Speaker, with those very many remarks, I want to conclude by commending the Committee for sitting for long hours and coming up with reports. I hope that Members of the Senate, including myself, will listen to the debate and hopefully the Senators whose counties' accounts have been reported will be here to help us drill down the details of this matter.

I thank you.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I rise to support the Motion to approve these reports. From the outset, this House has the privilege of having Sen. Mwangi and Sen. Ochillo-Ayacko who used to sit in the Public Investments Committee (PIC). I had the privilege of appearing there as an intern and I saw real grilling of a Government in terms of public accounts.

Recently Sen. M. Kajwang' and his Committee visited my county to audit the County Government of Makueni. I saw terror in the eyes of that government. I also saw a weapon in the Senate of ensuring that we ask the questions that are supposed to be asked. They have done something very important. I would like Sen. M. Kajwang' to know that one governor who appeared before the Committee on Finance and Budget today was appreciative of the work they have done particularly by looking at audit reports of FY 2017/2018.

For us from Makueni, we are happy that the audit report of FY 2017/2018 was looked at so that they address historically how they arrived at unqualified opinion. From

the little that Sen. M. Kajwang' and his team did in Makueni, I can say on the Floor of this Senate that the unqualified opinion that Makueni County got was not a correct one. This is because certain fundamental questions could not be answered in the meeting. If those questions could not be answered at the beginning of the meeting, it then begs the question of how the Auditor-General gave Makueni County an unqualified opinion.

It led to this important aspect because we are not all auditors and we will not go to school, now that we are Senators, to study audit. What are the criteria for an unqualified opinion, qualified opinion, adverse opinion and disclaimer? We Senators must be informed so that we know how to ask appropriate questions.

I would like to suggest one more thing: Sen. M. Kajwang' noticed that we tackled audit reports of Makueni County because I had reports of the Controller of Budget (CoB) and letters showing how much money they have received and the disbursements that have been sent every quarter. Therefore, I was able to tackle them.

I suggest that the resolutions of every county in respect to audit reports should be sent to the respective county executives and copied to the Senators. That is the only way we will use that platform politically or otherwise, to challenge our governors on the use of public resources.

This afternoon, we were talking about debt. There are two things that will kill counties; corruption and national debt. Therefore, we must take the bull by its horns. We have a very limited period. Unfortunately, in another one year from now, people will be campaigning for different positions. Others will climb down while others will climb up. Therefore, we will not have adequate attention to detail. People will start concentrating on elections.

I suggest to Sen. M. Kajwang' - I will put this to Senate Business Committee (SBC) - that every day we sit for the next one year, until that time that I envision that we will be campaigning, there should be a report here. If you have 50 reports, you should table one. Let us have one report every day. We can set aside 2:30 p.m. to 3:00 p.m. every sitting day for a report to be tabled.

If we cannot finish, I will suggest that we make a sacrifice and sit on Wednesday mornings to tackle this business. Let us not go to our counties at the end of this term with pending reports of the CPAIC. I would like to carry a dossier about misuse of resources and take it to Makueni County. The way they reacted in Makueni about what Sen. M. Kajwang' did for just about three hours gives me so much courage. I am full of weapon because I could see panic.

Something important also happened when we were in Kitui and I said it to the Governor and it is on record. I would like to say this on record for purposes of the rest of the Senators. Somebody was brave enough to approach the Members of the CPAIC anonymously as a whistleblower to point out corruption in Makueni County. That means, we the Senate have acted in such a way that people out there trust us to deal with matters in the counties.

I would also like to receive a dossier of Sen. Mwangi's county anonymously or otherwise. I congratulate Sen. M. Kajwang' for accepting an anonymous document because we should not prescribe rules.

When the Speaker asked me a question, I told him to let the Governor of Makueni County complain but we shall never prescribe rules for whistleblowers. Let them get foolscaps and write down. They do not even have to print and bring to the Senate issues about corruption happening in the counties because there are other ways of exposing corruption.

We have the Auditor-General and also the CoB. However, both the Auditor-General and the CoB can miss something. The experience in Makueni County showed that the Auditor-General missed a lot of things. He missed, did not want to see or just turned a blind eye or something.

The last thing I want to say is that, if we take the audit of Migori or your county, Sen. Mwangi, and take that document to the public and ask them if that is the audit of their county and whether they agree with it, I am sure they will have one or two comments.

We impeached Governor Wambora here. Wambora went all the way to the Supreme Court for only one question. Was there public participation in the impeachment of Wambora? He was in office for the entire term on one issue of public participation. The Supreme Court has now ruled that there must be public participation in an impeachment of a governor. If it is that important to have public participation on an impeachment on a governor, how much more would it be important to have public participation on audits of county governments?

Let us request for information the same way you request for information in public appointments. Let us send it out there and ask them whether they agree with this information.

In the case of Makueni, there were 26 stalled projects. Money was released and the projects never started, but the contractors were paid. I can assure you that if by the time we went to Makueni, we had asked the people of Makueni to give us that list, it would have been given to us. Sen. M. Kajwang' stopped the governor from answering the question. What question was he answering if the Auditor-General had not bothered to put the list on his record? He was answering a question that he had not been asked and that is why the proceeding was adjourned. There was no list.

Can we now trust the public by allowing them to give us information? This is because we will then audit the county government and put them to task. More importantly, we will audit the Auditor-General in his work. That is the way to do it because they will most likely give us that information.

When we challenge these governors in their counties and put them to the public like we did in Makueni, they shrink to dwarfs. That is the way to do this thing. I am so energised. This Committee should be given a lot of resources. They should be given additional clerks and additional Members or something that will expedite this process. Yesterday after Sen. M. Kajwang' stood here for five minutes, he got so much airtime on national television. It tells you how much the country is treating the question of corruption and audits.

I have made a proposal to you Senators and, perhaps, you will start thinking. The money that we were asking for can we find a way of hiring what I would call a Senate audit office composed of a certain number of auditors where we as Senate can do our

own independent verification of information and projects. This will help us do two things; that is financial audit and performance. This is because these county executives have become very clever, but not too clever. They have become clever with the paper work. They do it overnight, forge documents and create a beautiful rosy picture of mega grand projects that only exist in the figment of their imagination. Justice Kwach used to call it a Frankenstein of your imagination in reference to the Goldenberg scam.

Once we get the public to give you information, we must get an auditor ourselves to go to those various projects. Sen. Kibiru was talking about stalled projects and individual Senators are unable to verify anything. How would we do it? What format? If you walked into a building that cost Kshs20 million, how would you audit it? What method would we use? Sen. M. Kajwang', please, consider bringing a recommendation here to amend the law to have a Senate Audit Office that we can use.

You and I were in the National Conference of State Legislatures (NCSL) in America and we saw how they do legislative auditing. We can do it. We would use our own auditors for those petitions that are here by members of the public and the county assembly members and then we would not bother some of these Committees to do this work where we are asking Senators to become auditors, quantity surveyors, architects or have the expertise that you do not have and do not know where to source from because some of it is very technical.

I want to finish by saying that the prudent use of public resources should not be an option; it should be the norm. I travelled to Germany and the auditor who is called the president was surprised that we audit the auditor. This lady was shocked beyond belief that we, Parliamentarians, can audit an auditor. It means if an auditor tables a report, we are busy auditing.

According to her, once the auditor tables a report, it ends there. That is a report for implementation. Perhaps, we will get there.

The Institute of Certified Public Accountants of Kenya (ICPAK) said something very important today. They said that there is very little discrepancy between what the auditor tables at the National Assembly and what they finally approve. In audit terms, they say the difference is negligible. Therefore, there is no reason why the audit of National Assembly should not be a 2017/2018 on the basis that even when they audit, the differences are negligible.

They have proposed that if you do not audit or approve within the time specified in three months in the law, it is deemed approved. The same way in the PFM regulations that if we do not approve the regulations within a specific period, they are deemed approved. Perhaps, in order to improve our audit processes, that is one avenue. I hope that Sen. M. Kajwang' and we will assist him where we can by giving him the necessary support which includes and not limited to ensuring that his reports are our business every day. There is no business that we should be doing other than audits. No other business is as important as this.

**Sen. Omogeni:** Thank you, Madam Temporary Speaker. First, I want to register my appreciation and hearty congratulations to the Members of the Committee for the good work that they are doing in overseeing our counties and trying to make our governors realise that they are accountable to the people that elected them.

It is regrettable that out of the 47 governors, despite the various issues of mismanagement and corruption that are highlighted in this Report - if my record favours me - it is only three governors or two who are in court facing corruption charges. It is high time that we enhanced our accountability questions from the offices of the Directorate of Criminal Investigation (DCI) and Ethics and Anti-Corruption Commission (EACC). This is because our work as Senators who are supposed to oversight monies that are taken to counties will never be taken seriously. Unless any time we see reports like these, we need to see blood. The only people who can drop that blood from these people is either the DCI or EACC.

Nevertheless, we must also register our appreciation to the kind of passion we have seen of late from the Office of the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) in fighting corruption in this country.

Madam Temporary Speaker, my general comment would be that, first, unless we slay this dragon called corruption, as a country, we will never realise development in our counties. Devolution will also never realise its goals, dreams and aspirations. Our people will, consequently, also never see the impact of devolution unless we deal with corruption.

If you look at other jurisdictions, I was reading yesterday that the former President of South Africa, Jacob Zuma, is facing corruption charges there for offences of bribery. However, in this country, we have made it a habit that the only time you are taking a governor or any other person to court on accusations of corruption, is when he has flouted procurement laws. That should not be the case.

Most of the money that we send to counties is stolen through conspiracies that are hatched more often through kickbacks and bribery. That is why if you read the Report that has been tendered by the CPAIC, the Auditor-General is raising concerns on instances where many counties are not able to avail documents to the auditors.

There are a number of recommendations touching on several counties, where the Committee is making recommendations that, particular officers be prosecuted for failure to avail documents to the auditors. It is only by going through documents that you will unearth some of these corruption scandals.

Madam Temporary Speaker, my hope is that since we now have an officer from the EACC who sits in the CPAIC, we are going to see action. This is because criminal processes are supposed to deter and send a message that if you repeat the commission of certain offences, then you will face some action in terms of criminal prosecution.

The DPP and the EACC should, therefore, take action in terms of implementing the good work that has been done by CPAIC. If that is not done, what will motivate my good friend, Sen. M. Kajwang and other Members of CPAIC? That is because you will also not be taken seriously by our counties if, year in, year out, what you do is just to prepare such a voluminous report; table it before the Senate and it then goes to gather dust somewhere. We need to see action.

Even if prosecution is not the end result, we should see the EACC taking up some of these issues and warnings being given to some of these officers. That way, we should not see the same issues being raised the following year. We should see reports in which

issues that were raised by the Senate have been taken up by counties, improvements have been made and we move to other issues. That is the only way this Committee will feel encouraged and inspired to continue doing some good work.

Madam Temporary Speaker, I was privileged to sit in the Committee as a friend of the Committee when my governor appeared before it. I was not impressed by the performance of the officers that the Auditor-General sent to the ground. One would be excused to think that the person who has more experience in terms of audit is the Chairman of CPAIC, because he was raising more salient questions on the accounts of Nyamira County than the issues that were being raised by the auditors in their report.

We need to take up this issue with the Auditor-General, because we do not want officers who are incompetent to be the ones going to counties to undertake such very important tasks. Their reports are generalized.

Madam Temporary Speaker, an issue that was raised by Sen. Mutula Kilonzo Jnr., whereby in one financial year, one will find an adverse opinion on audited accounts of a certain counties, such as in the case of Nyamira. Thereafter, in the following year, one suddenly finds that the audit does not have an adverse opinion on the accounts. He has now taken them a bit higher to a soft level, and says that they are only 'qualified'. Yet when you look at the issues in Nyamira and compare it with another county, such as Embu, you would find that the issues that have led the auditor to return an adverse opinion on the accounts are the same.

Madam Temporary Speaker, the issue of payroll would be a good example, because we have had serious issues in Nyamira. Several officers have been recruited without following the due process, without any public advertisements, and without provisions being made in the budget that certain jobs will be available for recruitment. You will find that in Tharaka-Nithi County, that issue will be picked up by the auditor, but when it comes to Nyamira County, that issue is totally left out

Going forward, Madam Temporary Speaker, the Committee should escalate this issue to the office of the Auditor-General, once he is appointed. That way, officers who may be found to be colluding with governors to return favourable financial reports when there are issues, should be disciplined. We need officers who are men and women of integrity. These are people who can ensure that where there are issues of mismanagement of funds in counties, those issues are picked up.

Thirdly, the issue of poor record keeping is appearing virtually in all the counties. It is as if people do not take it seriously that they have an obligation to ensure that once public money is spent, then you must have proper keeping of accounts so that you can be accountable to the public on how you spent this money. If an entity that has constitutional powers such as the Auditor-General cannot be provided with documents, what about the poor citizen who this Constitution allows access to information?

How can we assure that if this citizen walks to the executive of a particular county, he can demand for documents and they will be provided? This is an issue that we should not excuse. We need to see some proactive action being taken by the officers in charge, be it the DPP or the EACC.

Madam Temporary Speaker, you will be surprised; it is not failure to keep documents where the county is spending little money. I was looking at the case of

Nairobi City County, where a tender was given for garbage collection for a whopping Kshs570 million. Payments were made, but there are no documents or records for payment totalling Kshs441 million.

Just imagine that there are no support payments totalling Kshs441 million. Honestly, if this money is ending up in people's pockets, this should attract the eyes and attention of the EACC. If you steal Kshs441 million from a county, when will this country ever attain development? We can excuse you, if you are stealing Kshs10, 000 but, surely, Kshs441 million!

Madam Temporary Speaker, there is a serious general problem in most of our counties. We have poor record keeping. Information Technology (IT) has not been embraced by the counties and this creates a very fertile ground for money to be embezzled. I hope that going forward, we will see some improvement from the counties in terms of record keeping and availing of records and documents to the Office of the Auditor-General so that we have information that is factual when the financial reports of counties are prepared.

Revenue collection is a big challenge in this country. This afternoon, there was communication from the Chair that this country wants to increase its level of borrowing from Kshs6 trillion to Kshs9 trillion. What is leading us to all this mess is poor revenue collection? We have made it a habit that any time we want to do any development, we have to borrow, yet if we put in place tight systems, we would collect enough revenue to support our development.

Madam Temporary Speaker, poor revenue collection implies that we have very weak internal control systems in our counties. There is also the problem of spending at source. We collect money and spend it at source. We ensure that they are accountable in how they collect money, bank it and swipe it back to our counties. This is not excusable. I must say that even my county is a victim of spending at source. The best way to ensure that there is leakage in revenue collection is to have analogue systems of revenue collection where people can print receipts and duplicate them.

In this day and era, why can we not go digital? Why can we not digitize our revenue collection? Why should people using public means or transport pay fare and receive manual receipts instead of using the M-Pesa system? Nairobi County was doing well when they had the digital platform to collect revenue. The revenue collected went up when the collection was digital. However, when they did away with the digital revenue collection system, the revenue collection went down. This is because we want to create weak internal systems of control so that we create a good avenue for syphoning public money out of our counties.

Madam Temporary Speaker, the Senate should be firm on the counties to improve revenue collection. If we improve our revenue collection, we reduce pressure from the Central Government. We should not have the mentality that the only way we can spur growth in our counties is through the National Government allocation.

As I draw towards conclusion, it is sad to note that from this report, the health sector is facing serious mismanagement in our counties. This is giving room to the National Government to continue introducing the debate that the counties have no ability to manage health and that the management of the health sector should be returned to the

National Government. That should not be the case. We want to take health facilities closer to the people that we represent.

However, we will never achieve this goal if we continue engaging in the mismanagement that I have seen highlighted in this report, for example, the case of Bondo Sub-District Hospital, where revenue at source cannot be accounted for. Cases of revenue missing at source is replicated in most of these counties.

Madam Temporary Speaker, if we cannot care and take issues of health that affect the people that we represent here, seriously, then we are losing it. I hope that, going forward, our governors will ensure that people who have been charged with management of our health facilities are men and women of integrity who can protect the revenue that they collect at hospitals so that they can roll it back to buy medicines for the people that we represent.

*(The red timer went on)*

Madam Temporary Speaker, my time is up. Therefore, with those remarks, I support this report.

**Sen. Poghio:** Thank you, Madam Temporary Speaker. I would like to make a few remarks in the way of supporting this report. If you look at the report for West Pokot, you might think that it was an appendix to the reports of all the other counties. It is only two pages long and it addresses the simplest of things. It raises a lot of questions on the standard used to audit.

There is no standard for auditing counties. If we were to audit the auditors, we will be surprised that the things that they have raised from West Pokot would give the county a unqualified opinion, if these were the only things to be raised as worthy of coming into the report.

If you look at Chapter 6, of the report of the West Pokot, the matters raised do not make sense.

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

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Poghio, do you want to be informed?

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

**Sen. M. Kajwang:** Thank you, Madam Temporary Speaker. I would like to inform Sen. Poghio that his observations are valid. The report of the Auditor-General for West Pokot was barely five pages long. If you look at the chapter after West Pokot, there is a report on Tharaka-Nithi County which is almost 80 pages.

So, in those first years, there were serious inconsistencies in the manner in which the Auditor-General was reporting. So, I inform the good Senator that it is not a mistake that the report for West Pokot County is that brief. It is the Auditor-General who tabled a brief report which if contrasted with that of Tharaka-Nithi, you can clearly see that there was a problem.

**Sen. Poghio:** Thank you, Madam Temporary Speaker. I clearly needed to be informed. I was a friend of the Committee when West Pokot was in discussion. I realised this at some point and I walked out because it did not make sense.

My suspicion is that some of the counties may have found a way of getting auditors to audit things that will give them a better opinion. That is why you find governors celebrating for getting a particular opinion in the streets of their counties. This is not the way we should do things.

Madam Temporary Speaker, you have heard from the Chairperson that West Pokot County was not treated with the seriousness that it deserves. So, this challenge goes to the auditors from the office of Auditor-General. It causes us to fear and suspect that the things that are more important to us are not covered in the audit.

The Committee needs to communicate back to the Auditor-General that we need to have uniform auditing standards. If they will audit one country for one thing, they should also audit other counties as well so that we know that there is seriousness.

The executive in our counties have decided that they can do what they want with the resources that we have given them. The resources that we have can make our counties great.

Madam Temporary Speaker, it would be good if we could have sessions with this Committee from our counties, so that when our county reports are being done, we can actually raise concerns that we know are true on the ground. We also have responsibilities of oversight and we know exactly what is happening in our counties. We can give views for purposes of communicating feedback to the auditor, so that the auditors can understand what they need to do.

If I may just raise one or two issues in the report, you find a query on the construction of a flat at Kapenguria Sub-County Hospital. Now, Kapenguria Sub-County Hospital is the County Referral Hospital. Already by just naming a sub-county hospital, it removes the burden of how big that hospital is. It is the main and also the referral hospital. The next issue that they raised in No.2 on page 79 is revenue at Kapenguria Sub-County, but it does not say what sub-county. It is the same hospital they are raising queries on. It just goes to show how shoddy the audit in West Pokot County was - raising two issues from the same place about the resources and the funding of Kapenguria Sub-County Hospital.

Madam Temporary Speaker, the next thing they raised is about plastic chairs for nursery schools. The query that they raised was only worth Kshs7 million. There are much more glaring issues in West Pokot County than these that have been raised in the report.

The fourth one that they raised is the purchase of bulk fuel. Can you imagine in a county where a lot of issues are going on, that these are the only issues that were raised as a matter of fact? Those are the only things that make the pages for West Pokot County.

I do not want to belabour the point, but I think our standards in auditing should be relooked. I think sometimes the Auditor-General's officers find some places to be too far for them to reach an audit. Sometimes they find the people or the places so far removed that they might not care how they audit. I just wish that with appointments that are coming with the new auditor for the Financial Year, if they have to, they should swap the auditors they have.

Maybe some auditors who have been going to some places for so long find that they have actually nothing to report; that their own reporting is wanting. They should

probably find new brooms in some of these places and find people who can go and clearly look into this.

As has been said here, sometimes it is good for the Committee to speak to us about the issues that we can raise, so that you can look at it much more clearly. Otherwise, I congratulate the Committee.

This Committee is probably one of the Committees that has done a very good job. I know that their task is to depend on the reports already given from the Auditor-General and what the management has said. However, now in foresight, they can begin to see how they will bring this accountability to bear on the executives of our counties.

Madam Temporary Speaker, I also understand that there are already some Ethics and Anti-Corruption Commission officers who are attached to the Committee. I think some of that information that we have can probably be raised with those particular people so that they can help our Auditor-General with the understanding of the overall situation in the counties.

We raised many issues including the way own-source revenue is collected, employment and the bulk of what has happened with the wage bill. We also raised many issues with how procurement, development and appointments are done.

As I have seen in other places, there was the issue of; how do you account for things which have been purchased which you cannot really put a finger on? How do you know whether fingerlings went to West Pokot County or to another county? How would you know when there are no lists? I have seen those things raised by people.

We have to be much more serious. Sen. M. Kajwang', I think you understand the situation. There are no lists and I have seen that. I have seen those things raised by people. We have to be much more serious. I think Sen. M. Kajwang' understands the situation and knows West Pokot very well. If I find that the next report is as scanty as this one, I may have to protest.

With those few remarks, I support.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, there being no other request, I now call upon the Mover to reply.

**Sen. M. Kajwang'**: Madam Temporary Speaker, I thank all the Senators who have contributed to this Motion. I also thank Members of the Committee who have burnt the midnight oil to ensure that these reports come to this House, not forgetting members of staff.

Currently, the clerks attached to this Committee are held up in Naivasha trying to make sure that the reports for FY 2014/2015 and the subsequent years up to FY 2017/2018 are prepared and brought to this House.

I appeal to the Senators whose counties have been mentioned in this Motion to take some interest in the recommendations of the Committee. I thank Sen. Poghishio for pointing out the issues that he has identified with regard to West Pokot which is the county that he represents. It is important that Senators be part of the proceedings of the CPAIC.

Madam Temporary Speaker, all Members of this Senate are qualified and allowed to sit in the CPAIC whenever it is interrogating books of accounts of their respective counties or any other county. I encourage Members to be forming part of the quorum

during our meetings. That way, they will be in a much better position to understand the issues raised by the Auditor-General, the manner in which the CPAIC deals with them and the recommendations that need to be put in place.

If we had time and the good Senator for Nairobi City County was around, we would have illustrated how Nairobi City County Government borrowed Kshs5 billion from Equity Bank Kenya Limited many years ago. The money was meant for budgetary support. The County Government defaulted on the loan raising the interest from 14 to 24 per cent. You will not believe it but Nairobi City County Government is servicing a loan at an interest rate of 24 per cent. We have 10 of the 24 per cent that the bank calls “penal interest” because the County Government has defaulted on the loan.

You can imagine paying 24 per cent of Kshs5 billion. That is a quarter of the amount. It means that Nairobi City County is paying more than Kshs1 billion every year. All the money that it collects from Gikomba Market goes to pay a loan sitting at Kenya Commercial Bank (KCB). When Nairobi City County was unable to service the loan in one bank, they sold it to another bank. So they moved it from Equity Bank Kenya Limited and sold it to KCB.

When the Governor of Nairobi City County appeared before the Committee, he proposed to sell the loan to a third bank. The Committee wrote to the National Treasury not to approve that transfer of the loan and recommended that the Nairobi City County Government must come up with proactive measures to ensure that loan is settled. That is contained in this Report. It would be of interest to the people and citizens of Nairobi City County to know how this Committee has treated that matter.

There are various issues that have been raised in the 10 reports for the 10 counties. For now, the way forward is that, once this House adopts this report, then we should move on to implementation. We have made certain suggestions on how we think that implementation can be done in a much more effective manner by this House.

Madam Temporary Speaker, in recognition of the time and considering that there are other 20 reports that are still on the Order Paper, I beg to reply. Pursuant to Standing Order No.61, because this is a matter that affects counties, I request the indulgence of the Chair to defer putting of the question to a later date.

I thank you.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you Chairperson of the CPAIC. Hon. Senators, it is true that the matter concerns counties. Therefore, I will defer the voting to tomorrow.

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

## ADJOURNMENT

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 17<sup>th</sup> October, 2019 at 2.30 p.m.

The Senate rose at 6.30 p.m.