

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 1<sup>st</sup> August, 2018

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

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

#### PRAYER

#### COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM THE NATIONAL COUNCIL,  
PARLIAMENT OF THE REPUBLIC OF NAMIBIA

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation from the National Council, Parliament of the Republic of Namibia, Standing Committee on Habitat.

I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

They are:-

- |                                    |   |                       |
|------------------------------------|---|-----------------------|
| (1) Hon. Sipapela Cletius Sipapela | - | Committee Chairperson |
| (2) Hon. Betty B. Kaula            | - | Vice Chairperson      |
| (3) Hon. Weich Mupya               | - | Member                |
| (4) Hon. Lotto Kushomwa            | - | Member                |

They are also accompanied by:-

- |                         |   |                                     |
|-------------------------|---|-------------------------------------|
| (5) Ms. Naomi T. Simion | - | Deputy Director, Habitat<br>Namibia |
| (6) Mr. Simataa Silume  | - | Chief Parliamentary Clerk           |
| (7) Ms. Priskila Kulula | - | Parliamentary Clerk                 |

On behalf of the Senate and on my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay.

I thank you.

*(Applause)*

VISITING DELEGATION FROM KENYA RELIEF  
ACADEMY SCHOOL, MIGORI COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of students and teachers of Kenya Relief Academy School in Migori County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate, and on my own behalf, I welcome them to the Senate and I wish them a fruitful visit.

I thank you.

*(Applause)*

Next order.

**PAPERS LAID**

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we have several Papers to be laid today. The first one will be laid on the Table by the Senate Majority Leader.

REPORT ON THE FINANCIAL STATEMENT OF  
COG FOR FY 2017

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 1<sup>st</sup> August, 2018.

Report of the Auditor-General on the Financial Statements of the Council of Governors Secretariat for the year ended 30<sup>th</sup> June, 2017.

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

REPORT ON THE 2018 COMMONWEALTH GAMES

**Sen. (Dr.) Milgo:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 1<sup>st</sup> August, 2018.

Report of the Standing Committee on Labour and Social Welfare on the 2018 Commonwealth Games held in Gold-Coast, Australia, from 4<sup>th</sup> to 15<sup>th</sup> April, 2018

*(Sen. (Dr.) Milgo laid the document on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Dr.) Milgo. Finally, we have a Paper to be laid by Sen. (Dr.) Langat.

REPORT ON THE TVET CONFERENCE HELD IN  
VICTORIA, CANADA

**Sen. (Dr.) Langat:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 1<sup>st</sup> August, 2018.

Report of the Standing Committee on Education on the TVET Conference held in Victoria, Canada, from 27<sup>th</sup> April – 2<sup>nd</sup> May, 2018.

*(Sen. (Dr.) Langat laid the document on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will discretionally allow the laying of two other Papers that do not appear on the Order Paper for today.

Kindly, proceed, Sen. Khaniri.

REPORT OF THE PSC ON THE APPOINTMENT OF  
A NON-MEMBER COMMISSIONER

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I thank you for your indulgence. I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 1<sup>st</sup> August, 2018.

Report of the Parliamentary Service Commission on the Appointment of the Parliamentary Service Commissioner who is not a Member of Parliament.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Khaniri! That Paper should have been a Petition report---

*(The Deputy Speaker, Sen. (Prof.) Kindiki, consulted the Clerk-at-the-Table)*

Very well, Sen. Khaniri. I confused it with something else.

Sen. (Dr.) Mbito, we have already called out the order on Petitions. However, you can lay your report now.

**PETITION**

REPORT ON PETITION: DECRIMINALIZATION OF MARIJUANA

**Sen. (Dr.) Mbito:** Mr. Deputy Speaker, Sir, I beg to lay the following Petition report on the Table of the Senate, today, Wednesday, 1<sup>st</sup> August, 2018.

Report of the Standing Committee on Health on a Petition to the Senate by Mr. Gwada Ogot concerning the decriminalization of marijuana.

*(Sen. (Dr.) Mbito laid the document on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. We have a notice of Motion by Sen. (Dr.) Alice Milgo.

*(Sen. (Dr.) Milgo stood up and gestured)*

Order, Senator. There is a microphone in front of you. Why are you using gestures?

**Sen. (Dr.) Milgo:** Sorry, Mr. Deputy Speaker, Sir. I was not sure, but I am now ready.

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

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT ON THE 2018 COMMONWEALTH GAMES

**Sen. (Dr.) Milgo:** I wish to give notice of the following Motion-

THAT, this House adopts the Report of the Standing Committee on Labour and Social Welfare on the 2018 Commonwealth Games held in Gold Coast, Australia from 4<sup>th</sup> to 15<sup>th</sup> April, 2018.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. The next Notice of Motion is by Sen. (Dr.) Lang'at.

#### NOTING OF REPORT OF THE TVET CONFERENCE HELD IN VICTORIA, CANADA

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

THAT, this House notes the Report of the Standing Committee on Education on the TVET Conference held in Victoria, Canada from 27<sup>th</sup> April to 2<sup>nd</sup> May, 2018.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Vice-Chairperson, Senate Standing Committee on Justice, Legal Affairs and Human Rights.

Sen. Cheragei is not in? The notice of Motion is deferred.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order! Very well. Senators, we have come to the Order on Statements.

We will have two Statements today under Standing Order No.46(2)(a) and we will keep to the tradition of spending adequate but measured time on this item so that we can also address other issues on the Order Paper for today.

There are two Statements and I will call out the first one in a short while. There is a 10 minute-limit but given the public interest in both Statements which are being issued, I will allow not more than 15 minutes for comments in each case but nothing more than that. I will allow 15 minutes for each of the Statements outside the time used by the Senator reading the Statement.

## STATEMENTS

SLOW RATE OF ABSORPTION OF DEVELOPMENT FUNDS  
BY COUNTY GOVERNMENTS

**Sen. Khaniri:** Mr. Deputy Speaker, pursuant to Standing Order No.46(2)(a), I rise to make a Statement on a county issue relating to the underutilization of development funds at the counties, massive corruption and alleged diversion of public funds to personal accounts by some county officials.

Mr. Deputy Speaker, Sir, the Constitution of Kenya, 2010 has established two levels of Government, namely the national Government and the 47 county governments. Under this arrangement, there is a bicameral national Parliament made up of the Senate and the National Assembly and the 47 county assemblies. Experiences the world over show that such arrangements improve the quality of the legislative output and enables better service delivery.

In our case, service delivery in the country has improved to some extent and Kenyans can attest to closer, better and expanded political leadership since 2013 when the provisions relating to the legislature under the current dispensation started being implemented in earnest. Since the inception of county assemblies after the election of 4<sup>th</sup> March, 2013, there have been both strides towards entrenching operations and improving performance of these important legislative bodies in the country.

The 11<sup>th</sup> Parliament Senate rolled out numerous programmes towards capacitating and entrenching county assemblies. The leadership, staff committees and members of the assemblies were involved in benchmarking visits to the Senate. The Senate Speaker then ensured the establishment of the Senate Liaison Office, an exchange programme, for the induction of various county assemblies to the legislative operations of a legislature.

Mr. Deputy Speaker, Sir, the County Assembly of Vihiga in particular, is one of the beneficiaries of the Senate programmes. During the 11<sup>th</sup> Senate, five delegations from the County Assembly of Vihiga visited the Senate for benchmarking. Senate records which I have had the benefit of seeing, bear evidence that many other county assemblies benefited through the Senate Programme.

The Senate has also initiated and operationalized the Annual Legislative Summit whose central objective is promoting engagements between the Senate, county assemblies and the relevant stakeholders in devolution agenda.

Further, I have established that a good number of Senators have also taken the initiative to address their county assemblies pursuant to Standing Orders No.241(1) of the Senate Standing Orders and the relevant provisions of the rules of procedure of the respective county assemblies. For Vihiga, I have personally made it an annual engagement.

These engagements collectively have ensured the improvement and growth of not only the county assemblies' performance but also county governance as a whole.

Mr. Deputy Speaker, Sir, challenges abound and at some point, county governments were accused of having embraced corruption as if it was one of the devolved functions. The county assemblies were also entangled in the corruption world where governors were alleged to have bought their loyalty and crippled oversight.

Today, I stand here proud of the County Assembly of Vihiga as the Members have performed their oversight role extremely well. At the county, my constituents refer to me as “Baba County” because they understand the fact that the Senate is the House that debates and passes the County Allocation of Revenue Bill that outlines how counties share the total allocated revenue from the national Government.

Mr. Deputy Speaker, Sir, the Senate has always ensured counties get the best bargain in the allocation of revenue when considering the Division of Revenue Bill. Senators may recall that the last 11<sup>th</sup> Parliament, the Senate went up to the highest court in the land; the Supreme Court, to fight for the involvement of the Senate in the division of revenue between the two levels of government.

On my part as the Senator for Vihiga, I have on numerous occasions personally raised questions on the delayed disbursement of funds to the counties and the National Treasury has responded, in most cases, favourably.

Mr. Deputy Speaker, Sir, it pains my heart when reports emerge that counties are mismanaging the money disbursed to them. It is very wrong for a majority of citizens in the counties to continue enduring poor sanitation, poor rural roads, infrastructure, below standards health services and increasing poverty levels, yet county governments receive billions of shillings every financial year to tackle these problems.

I commend the County Assembly of Vihiga for setting in motion the process of investigating corrupt county executive members at the county on Monday, 23<sup>rd</sup> July, 2018. I stand proud of my county assembly for being steadfast in pointing out corruption. For the record, in the 11<sup>th</sup> Parliament, the county forwarded a petition to the Senate which was deliberated on, concluded and reported its findings to this House and in addition forwarded the recommendations to the Ethics and Anti-Corruption Commission.

I call upon the current Director of Public Prosecutions to have a look at both the Petition and the Senate Report and take necessary action to implement the recommendations.

Mr. Deputy Speaker, Sir, as I stand here today, I want to encourage Members of the Vihiga County Assembly to remain steadfast in ensuring accountability of the county executive. The fight against corruption will not be easy. It is bound to continue being complex, tough, messy and dangerous, given that corruption is tempting and fights back viciously. I urge the MCAs not to give in to compromise. Above all, they should be fair and just in the committees as they carry out the investigations.

I want to urge my colleagues, individual Senators, to take time and investigate the absorption of money allocated to their county governments. I have noted with dismay that majority of the counties fail to utilize development allocation with some managing to utilize a paltry 20 percent. In my case, Vihiga County managed to utilize only 23 percent of the development funds of the 2017/2018 county approved budget while at the time utilizing above 95 percent of the allocated recurrent budget. Such instances provide opportunities for corruption as is the case currently in Vihiga County.

Mr. Deputy Speaker, Sir, Article 96 demands that in addition to determining the allocation of national revenue among counties, the Senate is also tasked to exercise oversight over the funds allocated.

The Senate basically exists to represent counties and protect their interests. As a Senate, we struggle to ensure that counties get their deserved allocation and the national

Treasury releases the funds on time, but the governors fail to ensure the funds allocated for development are utilized. This is a shame to say the least.

I want to call upon the Senate to collaborate with the county assemblies to ensure that development money is utilized properly despite the fact that the National Assembly denied this House its deserved Monitoring and Evaluation funds as part of the national Government. I urge the County Public Accounts and Investments Committee to vigilantly and diligently execute its oversight role and bring timely and regular reports to this House for consideration.

Mr. Deputy Speaker, Sir, lastly, it is no secret that the fight on corruption has picked momentum in the recent times. This is encouraging and I congratulate His Excellency President Uhuru Kenyatta and the former Prime Minister Raila Odinga for demonstrating their personal commitment to this process during the famed “Handshake” on 9<sup>th</sup> March, 2018.

The offices of the Auditor-General, the Director Public Prosecutions and the Criminal Investigations Department, the Ethics and Anti-Corruption Commission and all the other agencies involved have now received the political goodwill that has been lacking for the longest time, hence they will have no time or excuses under the guise of lack of support from the top. I call upon them to do their work without fear or favour. All levels and sizes of corruption must be investigated, punished and the money reimbursed to the Government for the benefit of Kenyans.

This fight on corruption is a fight for all Kenyans and, for once, we have the opportunity to cut off all this cancer from our country and be on the right side of history. We all have a role to play; we all must play that role.

Thank you.

*(Interruption of Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM BARSALOI  
PRIMARY SCHOOL, SAMBURU COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have a short communication to make on the visiting students and teachers of Barsaloi Primary School, Samburu County.

I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Barsaloi Primary School, Samburu County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my behalf, I wish them a fruitful visit.

Thank you.

Sen. Wetangula, you have the Floor now.

*(Resumption of Statement)*

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I join the distinguished Senator for Vihiga in sounding an alarm too on the issues he has raised. In just a minute, I urge the House, through the Committee on Finance and Budget, whose Chairperson is sitting right in front of me, to take cue from this Statement, address three things and bring a comprehensive report to this House.

The first issue is about pending bills, which every county is now under a heavy weight of. The second one is lack of absorption capacity by counties in absorbing the little money that we give them. They get just 9 per cent of the national Budget and cannot absorb it. The third issue is gross mismanagement of resources through county activities in the name of corruption.

Mr. Deputy Speaker, Sir, I finish by lauding the renewed energy in the war against corruption. I have seen in my county that the “wheelbarrow” culprits were convicted and sentenced, although the masterminds are still walking free.

*(Laughter)*

We want to see those who aid and abet crime being dealt with in the same manner as the criminals themselves.

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

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

**Sen. Outa:** Mr. Deputy Speaker, Sir, is the Senator for Bungoma in order to tell this august House that he knows the masterminds of the “golden wheelbarrows?”

*(Loud Consultations)*

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

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, in Matthew 27:17, a question was asked whether the gentleman called Cleopas was the only stranger in Jerusalem. Is the distinguished Senator for Kisumu the only stranger in this House?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Outa, are you the only stranger in this House or a stranger in any case? If you are a stranger, you are not even supposed to be in this Chamber.

**Sen. Outa:** Mr. Deputy Speaker, Sir, I am not a stranger. The stranger that I have seen today could be Sen. Gideon Moi.

*(Laughter)*

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

What is it, Sen. Gideon Moi?

**Sen. Moi:** Mr. Deputy Speaker, Sir, it is a well-known fact, which may have eluded my distinguished colleague, that the business of the House is conducted in committees and not “*tanga tangaring*” around the corridors of---

*(Laughter)*



**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Moi. Is your insinuation that no business is conducted in this Chamber? You should have responded. The accusation against you by Sen. Outa is that you are a stranger in this House. That is the issue, because if you are a stranger, then you are not supposed to be here.

**Sen. Moi.** That is very true, Mr. Deputy Speaker, Sir. You and the Members know that I am not a stranger in this House. I was here while the distinguished Senator was jobless or before he made his way to this House. I am not a stranger, and I am happy to see you all again.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, Sen. Moi, you are still a Member of this House and the Senator for Baringo County?

**Sen. Moi:** Mr. Deputy Speaker, Sir, it is not only that; I am the Chairman of the Committee on Information Technology and chama *chetu cha baba na mama---*

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Let the matter rest there.

Sen. Wetangula, had you concluded? I will give one other Senator on that Statement because, contrary to the information I had, we had actually approved two more Statements. I will not allow more than two contributions for each of the Statements.

Sen. Wetangula has spoken, and I will give the next opportunity on that Statement to Sen. Halake.

**Sen. Halake:** Mr. Deputy Speaker, Sir, I congratulate Sen. Khaniri for his Statement, which is in support of counties. We have always talked about counties not having capacity in certain areas. The Salaries and Remuneration Commission (SRC) capped county positions in many areas, including that of research, finance officers and a lot of issues around the capacity in terms of the human resource of counties.

We also know that people need hands to implement some of these projects. I know that we are juxtaposing this with the recurrent expenditure, but sometimes recurrent expenditure does not require a lot implementation capacity or hands. However, counties are really suffering from understaffing because they do not have adequate officers that are supposed to do some of this work. Even as we say that the absorption capacity is low, this House also needs to support counties to have the requisite capacity in terms of the people to do the work and oversee some of the projects that they are supposed to implement.

Mr. Deputy Speaker, Sir, this morning, the House was discussing the Ward Fund, which are supposed to push development funds to the ward level.

*(Loud Consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. Order, Sen. (Dr.) Langat and company!

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir, for protecting me. We had legislation before this House to push funds to the lowest levels of service delivery in the counties, namely the wards. This morning, our discussion was on the fact that a lot of institutions at the national level are against this. If we had cascaded some of these funds

and provided counties the requisite capacity to implement some of these projects, perhaps, we would not be dealing with lack of absorption of funds.

Therefore, even as we talk about corruption and other things, let us not forget that this House is also supposed to support development of capacity of counties to absorb, and that includes providing them with the necessary people to do the work.

On the other hand, Mr. Deputy Speaker, Sir, we are aware that sometimes disbursements do not go out at the right time, yet big capital development projects require time to implement them. Therefore, even as we say that counties did not absorb or that they only absorbed 23 per cent or less, we should also look at the fiscal cycle and the disbursement schedules that go to counties. I know that at the beginning of this year, counties were crying for funds and they did not get it in good time, until late towards the end of the fiscal year. Therefore, the capacity to implement some of these projects, which take time, was largely affected and limited.

Therefore, as much as we all support the fight against corruption both at the national and county levels, this House has the obligation to protect counties. Oversight is not just about ensuring good stewardship and catching the thieves, but also about ensuring that measures are put in place in advance to ensure that we have proactive measures to ensure counties develop the capacity for absorption. We should not just wait at the end of the fiscal cycle and say that money was not utilized. The question is what did we do, as this House, to ensure that money was disbursed on time? What did we do, as a House, to ensure that counties have the necessary position for capacity to implement some of these programmes?

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Sen. Halake! Wind up.

**Sen. Halake:** Mr. Deputy Speaker, Sir, I support the statement and congratulate the His Excellency the President and everybody who is fighting corruption. However, let us also be fair in our fight against corruption and ensure that we look objectively at the constraints that counties are facing.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Very well. The next statement is from Sen. Chebeni.

CELEBRATION OF INTERNATIONAL YOUTH  
DAY, 10<sup>TH</sup> AUGUST, 2018

**Sen. Chebeni:** Mr. Deputy Speaker, Sir, pursuant to Standing Order 46(2)(a), I rise to make a Statement regarding the celebration of International Youth Day (IYD) scheduled for 10<sup>th</sup> August, 2018, in the National Assembly Chambers.

Mr. Deputy Speaker, Sir, I wish to inform this House that the IYD has been set up by the Cabinet Secretary for the Ministry of Public Service, Youth and Gender Affairs to recognize the role of the youth in national building. The theme for this year's fete is "safe spaces for youth." This theme resonates well with the Government's commitment to ensure that the youth are accorded a platform to engage in meaningful discussions with stakeholders in order to better its service delivery to the youth.

It is worth noting that the youth need to be engaged in the Building Bridges Initiative and the Jubilee's Big Four Agenda discussions, where they are conspicuously

missing. This will ensure that the Government policies are inclusive of the youth, who are trustees of the future of this country.

Mr. Deputy Speaker, Sir, the event will offer an opportunity for the youth and the Legislature to engage and develop a clear roadmap towards harnessing the demographic dividends that the youth provide. Moreover, it will open up the legislature as a safe civic space for the youth of Kenya.

Mr. Deputy Speaker, Sir, it is for this reason that I seek your indulgence to make an appeal to Members of this House to sponsor at least two youth, male and female, from each county across the country to come and celebrate the IYD event that will be held on 10<sup>th</sup> August, 2018, at the National Assembly Chambers.

Finally, Mr. Deputy Speaker, Sir and hon. Senators, I thank you for your commitment towards ensuring that the IYD is not only a success, but also the start of a journey towards making Kenya a youth-friendly society.

Thank you, Mr. Deputy Speaker, Sir.

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Sen. Cheruiyot! Order, Senator for Kajiado! You cannot just walk into the Chamber and instead of greeting colleagues quietly, you are almost clapping hands!

*(Interruption of Statement)*

Hon. Senators, I have the following communications to make.

### COMMUNICATIONS FROM THE CHAIR

#### VISITING DELEGATION FROM SITOTWO PRIMARY SCHOOL, ELGEYO-MARAKWET COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki: I would like to acknowledge the presence in the public Gallery this afternoon of visiting students and teachers from Sitotwo Primary School in Elgeyo-Marakwet County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Thank you.

*(Applause)*

#### VISITING DELEGATION FROM CHOP PRIMARY SCHOOL, ELGEYO-MARAKWET COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki: I would like to acknowledge the presence in the public Gallery this afternoon, of visiting students and teachers of Chop Primary School in Elgeyo-Marakwet County. In our usual tradition of receiving and

welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Thank you.

*(Applause)*

VISITING DELEGATION FROM ST. CAMILLUS  
ACADEMY SCHOOL, BARINGO COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Finally, I would like to acknowledge the presence in the Speakers Gallery this afternoon, of students and teachers from St. Camillus Academy School, Baringo County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

Thank you.

*(Applause)*

*(Resumption of Statement)*

Very well, proceed, Sen. Malalah.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. I stand to support my colleague, Sen. Mercy Chebeni, for the exhaustive statement she has just made pertaining the IYD. First, I am a proud Senator who is a youth, and---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Senators!  
Proceed, Sen. Malalah.

**Sen. Malalah:** Mr. Deputy Speaker, I do not know---

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Sen. Malalah, I was creating order for you to proceed.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I want to repeat that I am a youth, because I was born on 30<sup>th</sup> June, 1985. I am proud to be here as a youth.

Mr. Deputy Speaker, Sir, I can already see the enemies of the youth, starting with--

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Senator! Are there enemies of the youth in this chamber or are they outside?

**Sen. Malalah:** They are outside, Mr. Deputy Speaker, Sir, but they---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Therefore, if they are outside the Chamber, you cannot see them. Just say there are enemies, but they are out of jurisdiction and they exist.

**Sen. Malalah:** Yes, Mr. Deputy Speaker, Sir; we have the visible and the invisible enemies.

Mr. Deputy Speaker, Sir, I want to appreciate that the youth form a bulk of the Kenyan population. However, it is sad that in the current dispensation, the youth of this country are not given the focus and attention they deserve. You will find, for example, that when a youth completes his formal education and wants to pursue his career, he will meet a lot of obstacles on his way.

*(Hon. Mwaura walked into the Chamber)*

Welcome, Hon. Mwaura. You will---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Senator! That is not your business. Order! Order, Senator! You are out of order!

*(Laughter)*

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I was saying that there are a lot of obstacles in the path of a youth who is pursuing his career. When the youth goes for an interview, he is asked many questions and documentation, which hinder their dreams. For instance, a youth from the university will be asked for ten years experience. How will a youth, fresh from the university, get ten years' experience to get the job? The same youth will be asked to produce the Kenya Revenue Authority (KRA) clearance certificate, yet he has not earned any money nor done any business.

Why do you demand for KRA clearance from a student who has just completed school? That youth will be required to produce a certificate of good conduct. Our youth are not criminals. Why do we ask for a certificate of good conduct from a law-abiding citizen like a youth, yet we know thieves in this country who do not produce certificates of good conduct?

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Sen. Malalah. Is it your case that anybody below 35 years cannot commit a crime?

**Sen. Malalah:** No, I am just trying to build my foundation on how the youth face obstacles before they get employed.

Mr. Deputy Speaker, Sir, even in this Parliament, youth related issues are not handled seriously. The other day, they reduced the budget for the Youth Enterprise Development Fund (YEDF) and the National Youth Service (NYS). Why do we reduce budgets for the youth-oriented organisations? There are many organisations which are riddled with corruption, but their budgets are not reduced in every financial year.

Our Constitution provided for a platform for us to nurture youthful leadership. I want to appreciate that Article 176 of the Constitution established the county assemblies. In doing so, it brought leadership nearer to the youth in the grassroots level. As a young legislator, I would want to encourage more youth to vie for the position of Members of the County Assembly (MCAs).

Mr. Deputy Speaker, Sir, yesterday while I was following the proceedings in the National Assembly, I was aggrieved by the fact that certain leaders believe that the position of an MCA is a village position. It is a position for those people who are not well informed. I want to state here categorically, that the position of an MCA is a distinguished position. It is a platform whereby young people can exercise their leadership positions.

Yesterday, hon. Aden Duale, the National Assembly Majority Leader---

**The Deputy Speaker** (Sen. Kindiki): Order, Senator! You are aware about the Standing Orders.

*(Sen. Malalah spoke off record while standing)*

Order, Senator! Resume your seat. I have not asked you not mention anybody. However, you can do so, but within the Standing Orders.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. I know that if I mention a name of an hon. Member, I am duty bound to substantiate. Yesterday's HANSARD of the National Assembly is very clear. I went through it today morning. It is a public document. I want to make reference to it.

Hon. Aden Duale demeaned Sen. Cleophas Malalah, the Senator for Kakamega County, by calling him a mere MCA and that he was elected to the Senate by mistake.

Averagely, an MCA in Kenya is elected by 3000 to 4000 votes. I am proud to have served as an MCA from 2013 to 2017. However, I want to remind him that he was voted in by 3000 people while I was voted in by 312,000 people. So, between Sen. Cleophas Malalah and hon. Duale, who is an MCA?

*(Laughter)*

Mr. Deputy Speaker, Sir, it is sad that hon. Duale---

**The Deputy Speaker** (Sen. Kindiki): Order, Senators! You can proceed, Sen. Malalah. You have one more minute to wind up your contribution.

**Sen. Malalah:** Mr. Deputy Speaker, Sir---

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

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

**Sen. Haji:** Mr. Deputy Speaker, Sir, is the hon. Senator in order to attack---

*(Sen. Nyamunga spoke off record)*

It is not tribal. Keep quiet.

*(Laughter)*

**The Deputy Speaker** (Sen. Kindiki): Order! Both of you are out order! Sen. Nyamunga, you are out of order! Similarly, Sen. Haji, you are out of order!

What is out of order, Sen. Haji?

**Sen. Haji:** Mr. Deputy Speaker, Sir, I understand.

**The Deputy Speaker** (Sen. Kindiki): You can raise your point of order, but do not shout across the aisle to Sen. Nyamunga.

**Sen. Haji:** I oblige, Mr. Deputy Speaker, Sir. She provoked me. I am not a tribal leader at all.

Is Sen. Malalah in order to attack another Member of this Parliament who is not here to defend himself?

**The Deputy Speaker** (Sen. Kindiki): Order, Senators! Sen. Malalah, I had hinted to you that, ordinarily, the Standing Order No.88 does not allow a Member of this House--

**Sen. Khaniri:** It is Standing Order No.90.

**The Deputy Speaker** (Sen. Kindiki): Yes, it is Standing Order No. 90. Thank you, Sen. Khaniri, although you did it irregularly.

Standing Order No.90(5) is clear that you should not question proceedings before another House. That is exactly what you did by mentioning who spoke, where and the content of their speech.

Sen. Malalah, you can say what you want to say, but differently and achieve the same results. So, I would rather urge that this matter lies there. I give you a maximum of two minutes to summarise your contribution.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I want to warn Hon. Duale that he shall not use his privilege as the National Assembly Majority Leader to abuse the Members of the Senate. He said that the Members of this Senate are old and retired people. Shame on hon. Duale! I will not tolerate this. I am also the Deputy Senate Minority Leader. I can answer him in my capacity.

Mr. Deputy Speaker, Sir, I think the Holy Spirit---

**The Deputy Speaker** (Sen. Kindiki): Order, Senator! Sen. Malalah, stick to the issue of the International Youth Day. I also direct you to Standing Order No.88 on irrelevancies. So, please, stick to the issue of International Youth Day. You have one-and-a-half minutes to conclude.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. As we approach the International Youth Day, I would like to encourage leaders to respect youthful leaders. Let us not be intimidated because we are newcomers in this House.

I want to warn those leaders who keep on abusing young leaders that their time has come. We have emerged as young leaders. We will deal with them perpendicularly and thoroughly. Let it be a warning to hon. Duale that I will not tolerate him again.

**The Deputy Speaker** (Sen. Kindiki): Very well. Order, Senators!

*(Sen. (Dr.) Kabaka and Sen. Mutula Kilonzo Jnr. shook hands with Sen. Malalah and hugged each other)*

Order, Sen. (Dr.) Kabaka and Sen. Mutula Kilonzo Jnr.! This is not a place for greetings and hugs.

*(Laughter)*

Order, Senators! We have two more statements and I will be very strict on time. Proceed, Sen. Seneta. Be as brief as possible.

DEATH OF 11 BLACK RHINOS IN TSAVO  
EAST NATIONAL PARK

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to request for a Statement.

Mr. Deputy Speaker, Sir, Pursuant to Standing Order 46(2)(a), I rise to issue a Statement on the death of eleven rhinos that were translocated from Lake Nakuru and Nairobi National Parks to Tsavo East National Park.

As you may be aware, black rhinos are the most endangered wild animals in Kenya today. According to statistics, there are only about 700 black rhinos in the country and the number keeps on decreasing day by day.

The question that begs to be answered is: Did the Government through its agency, the Kenya Wildlife Service (KWS), in resolving to translocate the 11 black rhinos from Nairobi and Lake Nakuru National Parks to Tsavo East National Park, properly planned and think through the process of translocation in order to cushion the animals against dangers?

Mr. Deputy Speaker, Sir, from the reports in the public domain, it appears that this was not properly planned, hence it failed miserably and resulted to the deaths of the animals.

Since the death of the animals, many theories have been adduced to try and explain the cause of the death. Some experts claim that the relocation which covers the entire process from planning, transfer, release, monitoring and post-release management of the animals was not carefully executed.

Others claim that lack of careful analysis of environmental and ecological factors is to be blamed, while others claim that the type of species of the rhinos was not adaptable to the new habitat.

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators!  
Proceed, Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir, for protecting me.

The Government has not been forthright on the cause of the death and measures that are being undertaken to avert future deaths. The Cabinet Secretary for Tourism has been heard and seen blaming the Kenya Wildlife Service (KWS) and its Board for the deaths. It is very sad that such a big number of this much endangered species of animals are dead and nothing is coming forth from the Government in form of explanation, except a blame game on who is responsible for the deaths.

There is need for an inquiry into the factors that led to the death of the animals. The inquiry should extend to KWS to establish why, in addition to the death of the animals, there are many other issues including human-wildlife compensation that still remain unresolved.

The inquiry should also look into the process that led to the need to relocate the animals. A report on research findings of the new habitat should be availed and the translocation process and whether the process including that of monitoring after relocation was done in accordance with the recommended procedures.



Mr. Deputy Speaker, Sir, KWS is bedeviled by many wolves which could have been part of the cause of this rhino fiasco. I would appeal to you to direct the relevant Senate Committee to look into the state of affairs at KWS including how the service is being managed because there are reports of demotivated staff due to low salaries and poor working conditions which might have contributed to this rhino saga.

There is also need to ascertain whether there are policies on moving animals from one sanctuary to another and, if so, whether the relevant policies were applied in the current rhino issue.

Lastly, since the current CS came into office a couple of years ago, there has been no improvement in service delivery in KWS which begs the question about his contribution to the improvement of service delivery. It is, for instance, open knowledge that so many cases of compensation for loss of human life, livestock, crops and properties and other losses arising from human-wildlife conflict have been pending for too long, some dating back to 2016. One wonders why the Cabinet Secretary (CS) has not taken any action to ensure the victims are compensated and indicate when the backlog will be cleared.

I, therefore, wish to bring this matter to the attention of the Senate and specifically the Standing Committee on Land, Environment and Natural Resources. I request the Committee to carry out an enquiry with a view to establishing the cause of the death of the rhinos and the matter of delayed compensation to victims of human-wildlife-conflict all over counties, after which appropriate recommendations should be brought to this House.

I, thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Seneta, with or without the direction of the Chair, nothing prevents you from sharing your Statement with the relevant Committee. Also, nothing prevents the Committee from moving *suo moto*.

So, we want to make it clear that it is not always the case that you ask the Chair to direct a Committee to do its work.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM UASIN GISHU COUNTY ASSEMBLY

Hon. Senators, I have a communication on visiting staff from Uasin Gishu County Assembly. I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting staff from Uasin Gishu County Assembly.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

They are:

1. Mr. Aaron Sitienei
2. Ms. Zeddy Tanui
3. Ms. Gloria Kigen
4. Ms. Rose Jeruto

They are all from the Legislative Department.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and my own, wish them a fruitful visit.

Thank you.

Hon. Senators, we are not doing so well. We have overshot our time on Statements. The Statement by Sen. Musuruve will be deferred to tomorrow.

THE STATE OF MATERNAL HEALTHCARE  
IN THE COUNTRY

*(Statement deferred)*

On the Statement which has already been issued, I will only allow Sen. Sakaja not more than three minutes and thereafter, I will allow an equal amount of time to Sen. Wetangula because he had a similar Statement that arrived seconds after the request by Sen. Seneta.

So, I will allow him to also have an input and then we close that Order.

Sen. Sakaja, proceed.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Seneta for bringing this matter to the attention of the Senate. Indeed, it is disheartening to learn what happened to the rhinos while being transported. We only have 700 black rhinos in our country and the loss of 10 is unfortunate. Somebody must be held to account and there must be responsibility for this.

As the Committee looks into this issue, I would like to advise the CS in charge to be a bit more conscientious and sensitive with the remarks and actions that he makes. He is reported to have told all of those who have been asking about this to take a trip to a location that none of us can take ourselves.

Some people said that he meant: “Go to Hells Gate, *Tembea Kenya*”. This is the same CS that we have a lot of respect for but just previously, he arbitrarily and unilaterally cancelled sponsorship for the Kenya Rugby Sevens Team because of failing to display the “Brand Kenya” on their T-shirts. We had to tell him that Brand Kenya is not a logo. The rugby team itself, is brand Kenya. Cancelling sponsorship of Kshs20 million was out of term and he later apologised. We ask him to be a bit more careful so that he does not have to keep coming back to apologise for actions that he makes and such outbursts.

Finally, we need to preserve these animals because, indeed, they are the heritage that we are leaving for our children and for the young people. This is timely as Sen. Chebeni has given us a Statement on the International Youth Day that is coming. I thank her for that but I do not think it was very clear.

Next Friday, 10<sup>th</sup> August, 2018, we will have young people from across the country. We would like Senators to nominate at least two and even sponsor them to come so that they are taken through the procedures of Parliament. There will be a session and a debate in the National Assembly Chamber where they will be taken through this year’s theme which is; *Safe Spaces for Young People*. They will then go into committees at 11.30 a.m. and bring reports in the afternoon for debate and adoption. That is meant for

them to understand how the Senate and the National Assembly operates and how Parliament works.

The young people of this country are the trustees of the posterity of this country. Unless we make them front and centre of all our policy discourse and what we do in this House, then we will be legislating in vain.

It is unfortunate that Sen. Malalah, my good friend, had to respond to the infantile and juvenile outbursts from the other House. It is *infra dig* for any Member of the Senate to go to the level of the National Assembly. Whenever they come up with such statements or if they insult us, let us not play the same game. This is a House that Kenyans look up to for decorum. It is a House that is respected.

I can say this with authority, having been a Member of the other House and now in this House, that it is not an insult to be called an MCA. MCAs are very respectable people and they are part of our governance structure. MCAs are the guardians of devolution in the counties and they must be respected. If I were to be called an MCA, I will be grateful. Even is the Member who said that got 3,000 votes, some of us got close to a million votes but that does not make us better leaders than others who are in this or the other House.

I urge my colleague, the Deputy Senate Minority Leader, to take some of the comments in stride and let them roll off. He should take the dirt off his shoulders and walk with confidence because House he is not less of a Senator because of infantile outbursts by the National Assembly.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I had sought an opportunity to talk about our rhinos and I thank Sen. Seneta for having walked ahead of me to your Office to get the opportunity. I support fully what she said.

The committee that will look at this must establish the following facts. They need to tell us why rhinos were being removed from Lake Nakuru and Nairobi national parks where there is more vegetation and taken to Tsavo East National Park which is Arid and Semi-Arid Land (ASAL). The second thing is that rhinos are an attraction to tourists and therefore part of the economy of the counties where they are domiciled. Was public participation undertaken for the public in Nairobi and Nakuru to allow their rhinos to be taken elsewhere and therefore lose revenue?

The facts are as follows. Those rhinos were sedated and crated and moved to Tsavo East National Park. Upon arrival, they were maintained in the crates and fed for five days but I do not know whether that was right. After five days, the rhinos were released into a sanctuary that had not been properly analysed scientifically to see whether they could survive or not. More importantly is that boreholes had been drilled in the sanctuary. Their waters were taken and tested and found to be 30 per cent more alkaline than is required for bovine consumption. So, as the rhinos were released to go into the bush, they were going to actually drink poison because the water from the boreholes had 30 per cent alkaline content, over and above the required level for animals to consume.

When the rhinos died, we have now heard a charade like a theatre of the absurd. The Cabinet Secretary has said all manner of things including, but not limited to, lying to Kenyans that the Board of the Kenya Wildlife Service (KWS) was responsible when he knows that the term of KWS board expired on 17<sup>th</sup> April this year but the rhinos were relocated on 26<sup>th</sup> June this year. So, which board is he referring to?

Secondly, the Cabinet Secretary, in a fit of impatience and arrogance, moved quickly to sack employees of KWS. We know under the law that a Cabinet Secretary cannot sack employees of a board. So, under what authority was he purporting to dismiss the employees of the board?

The excessive display of raw authority and power is what is destroying this country. When Kenyans got angry with the Cabinet Secretary, he said, "Go to hell". He thought that Kenyans have got brains the size of a pinhead but swung round and started saying that he did not say "Go to hell" but "Go to Hells Gate". What a shame! I am sure every Kenyan, even the infantile one, knows the difference between "Go to hell" and "Go to Hells Gate".

In comparable jurisdictions, given that rhinos are endangered species world over but we are lucky that we have just about 700 of them, the Cabinet Secretary should not wait to be sacked but he should reconsider his position. You do not get your hand in the till and brush up and say it was not you when everybody can tell.

The Committee must go deep into this. We need to know why the reckless behaviour against a resource that attracts tourists to this country brings resources and sustains our economy can be handled in such a callous and reckless manner but then you get even a more reckless response from a person who is supposed to be responsible.

I thank you, Mr. Deputy Speaker, Sir.

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

Hon. Senators, I have two communications to make.

#### COMMUNICATIONS FROM THE CHAIR

##### VISITING DELEGATION FROM MATUNDA PRIMARY SCHOOL, MURANG'A COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Matunda Primary School in Murang'a County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf wish them a fruitful visit. Thank you.

*(Applause)*

##### VISITING DELEGATION FROM GATANGA PRIMARY SCHOOL, MURANG'A COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon of visiting students and teachers from Gatanga Primary School in Murang'a County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, I wish them a fruitful visit. Thank you.

*(Applause)*

Let us go to the next Order.

### MOTION

#### ADOPTION OF REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have the Chairperson of the Committee, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, with your permission, I beg to move the Motion in an amended form under Standing Order No.51:

THAT this House adopts the report of the Select Committee on the Solai Dam Tragedy, laid on the Table of the House on Thursday, 26<sup>th</sup> July, 2018.

I am waiting for your leave to proceed.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., have you moved the Motion?

**Sen. Mutula Kilonzo Jnr.:** Yes, I have requested for your leave to move the Motion in an amended form.

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

**Sen. Mutula Kilonzo Jnr.:** First, may I begin by mentioning---

### POINT OF ORDER

#### DETERMINATION ON WHETHER DEBATE ON THE SOLAI DAM TRAGEDY REPORT IS *SUB JUDICE*

**Sen. Moi:** On a point of order!

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

**Sen. Moi:** Mr. Deputy Speaker, Sir, I rise to seek your guidance and ruling since the subject matter is actively in court. Standing Order No.92 states that no Senator shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret. It continues to say:

“A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination”.

Mr. Deputy Speaker, the characters, who are in this Report, have been charged in a criminal court and are facing over 24 counts. Some of them are facing murder charges, which if found guilty, will constitute life sentences, if not death.

In light to the above, the doctrine of the presumption of innocence is anchored in Article 51 of the Constitution, which gave birth to Standing Order No.92. I want to seek your guidance and ruling. Can we proceed with this matter in light of the fact that it is *sub judice* and in court?

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

**Sen. Olekina:** Mr. Deputy Speaker, Sir, as you prepare to give your ruling on this matter, this is a matter of national interest. The characters that my good friend, Sen. Moi,

refers to appeared before the Committee that I sit in. This matter was raised by the lawyer and eventually---

**The Deputy Speaker** (Sen. (Prof. Kindiki): Sen. Olekina, I would rather you use the word “persons” as opposed to “characters”. The word “characters” is dramatic and more of drama.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I am guided. I was taking cue from my good brother, Sen. Moi, who actually referred to them as ‘characters,’ because of all the drama in this matter.

This is a matter of public interest and the HANSARD will bear me witness that this House began deliberating it so that the people of Solai could get justice, way before the Director of Public Prosecutions (DPP) initiated the proceedings that he did.

Mr. Deputy Speaker, Sir, looking at issues, we have to think about everything we do in this country. I sit in the County Public Accounts and Investments Committee (CPAIC) and we are considering matters to do with Ruaraka land. That issue has not been brought here and suggested that it is *sub judice*. The matters we are dealing on Ruaraka touches on broad issues, some bordering on legislations and authorities like the National Environment Management Authority (NEMA), National Construction Authority (NCA) and the Ministry of Water and Sanitation. Therefore, this matter does not only focus on criminality. There are laws that guides---

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

**Sen. Olekina:** Mr. Deputy Speaker, Sir, as you make a ruling on this matter, I want you to consider public interest.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Are you assisting me to decide?

**Sen. Olekina:** As a Member of the Committee, these are the issues that we shared. I request that you put in mind the lives of those poor people in Solai.

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

Sen. Mutula Kilonzo Jnr., respond to the point of order raised by Sen. Moi.

**Sen. Mutula Kilonzo Jnr:** Mr. Deputy Speaker, Sir, when I was younger, I used to represent Sen. Moi. During that time, he was in good stead with the law.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Order, Sen. Mutula Kilonzo Jnr! Are you trying to say that Sen. Moi is not acting and behaving in accordance with the law?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, for this particular point, he is misadvised legally. When I used to advise him, he would not have raised this point, and I will elaborate.

In a matter like this, Sen. Moi should have disclosed his interest. What is Sen. Moi’s interest? Is he a business partner of Mr. Patel or any of the accused?

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

**The Deputy Speaker** (Sen. (Prof. Kindiki): What is it, Sen. Moi? Sen. Mutula Kilonzo Jnr. is responding.

*(Loud consultations)*

Order, Sen. Khaniri! I have not asked you to help the Chair to run the House.

**Sen. Moi:** Mr. Deputy Speaker, Sir, this borders on imputing improper motive on a colleague. In order to do that, he needs to bring a substantive Motion to the House.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Order, Senator! If I heard Sen. Mutula Kilonzo Jnr., he just needed you to clarify whether you have any interest. The Standing Orders provide that any interest must be disclosed. Do you have any interests?

**Sen. Moi:** I do not have any interest whatsoever, real or imagined.

**The Deputy Speaker** (Sen. (Prof. Kindiki): That is good enough.

**Sen. Mutula Kilonzo Jnr:** Mr. Deputy Speaker, Sir, that makes my life easy. Sen. Moi is raising a point of order for the sake of it. If Sen. Moi bothered to read the Standing Orders all the way to Standing Order 92 (4), it says:-

“A senator alleging a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

First and foremost, the *sub judice* objection is premature because he has not laid a basis. So, I am responding to something that has no basis. Two, the accused person who spent three days in Naivasha was seated here. He never brought up the question of *sub judice* and that is why I asked him to declare his interest.

Mr. Deputy Speaker, Sir, I know what the problem is with my colleague. He was away for too long and this Motion was moved before the charges preferred against these persons. My colleague, Sen. Olekina, said that we went wider because this Senate approved a Motion with four things.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Let me get it clear, Sen. Mutula Kilonzo Jnr. Is it your case that this matter is not *sub judice*?

**Sen. Mutula Kilonzo Jnr.:** It is not *sub judice* to the extent that we warned ourselves, as a Committee, in the Report. Sen. Moi should have read the caveat which we put in the Report that we never requested for a statement from any of the witnesses or the DPP. When he showed up here, we chased everybody and sat with him in camera, because we were protecting the fair rights of the accused persons. The person who should come and say that the discussion and report---

**The Deputy Speaker** (Sen. (Prof. Kindiki): Do you know the witnesses?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir that is why I am saying that we never requested for a statement from any of the witnesses. We do not know who the witnesses are. We never requested for evidence from any person. When Mr. Perry Mansukh sat here, he never bothered to give us any statement of any witness to state that the mandate we were given from (a) to (d) and the letters we gave him were *sub judice*.

Lastly, Mr. Deputy Speaker, Sir, what Sen. Moi does not know is that the principle of *sub judice vis a vis* parliamentary proceedings is weighed against public interest. Do we have public interest in the Solai Dam tragedy *vis a vis* the rights of one or two people? On the matter of public interest, I beg that you rule that notwithstanding the fact that Sen. Gideon Moi has not produced any evidence before you that complies with the Standing Orders; first, that you do not need direction to dismiss the *sub judice* argument.

This should be very easy for you, being a lecturer of law. However, even worse, the matter of public interest in the Solai Dam tragedy is being investigated by both Houses. It is, therefore, in the interest of the Senate to get to the bottom of this matter as quickly as possible even before the trial of the accused person starts. This is because we might help them and this country as well.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. You can resume your seat.

First, you have argued that this matter is not *sub judice*, although you have not provided me with authority, because Sen. Moi read out Standing Order 92(5). Second, you have pointed to the argument of public interest involved, which is obvious. The facts in themselves are such that the matter is of public interest, because of the number of people who died and those who were affected by this tragedy. On that point of public interest, I will require to listen to a few more interventions on the point of *sub judice* so that I can make a considered ruling.

I will start with Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I just want to add on to what Sen. Mutula Kilonzo Jnr. has said, as he considered the question raised by Sen. Moi. First, Standing Order 92 has five parts, as follows-

“(1) Subject to paragraph (5), no Senator shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.”

However, more importantly, Standing Order No. 92(2) is where the focus should be as you consider this. It states that:-

“(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

Mr. Deputy Speaker, Sir, even if and when Sen. Moi complies with Standing Order 92(4), by bringing evidence of the active criminal proceedings, he is supposed to convince you and the House that despite the fact that the proceedings might be active, any discussion is likely to prejudice the fair determination of this matter.

Mr. Deputy Speaker, Sir, as the Chair has said, Mr. Mansukh and his lawyer were before this Committee. We raised this issue and they agreed that we will not go into the matters that are actively before the court; but we will discuss matters of policy, omission and commission that occurred in Solai. Therefore, that issue was left aside.

Finally, Mr. Deputy Speaker, Sir, I do not want you to be lost on the question that Sen. Mutula Kilonzo Jnr. has asked, on Standing Order No. 93, regarding declaration of interest. It is interesting that just a few minutes ago Sen. Outa called Sen. Moi a “stranger” because he has never seen him. It is interesting that the first time he appears, he goes straight to stop discussion of such a matter---

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Sakaja! Sen. Moi is a Member of this House.

**Sen. Sakaja:** Yes, he is a Member of this House, but he is not fully in this House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You know that the meaning of the word ‘stranger’ in the context of the Standing Orders---

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I was referring to what Sen. Outa said; I am not calling him a stranger. I know very well that Sen. Moi was validly elected by the people of Baringo. However, Standing Order 93 says that-

“A Senator who wishes to speak on any matter in which the Senator has a pecuniary or proprietary interest shall first declare that interest.”



We want Sen. Gideon Moi to be clearly on record that Mr. Mansukh or his lawyers are not known to him; that he has not had any discussions with them and that he has no interest in this matter.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sakaja, I thought that Sen. Moi has already said that he has no interest; unless your claim is that he does have an interest. In that case, I will ask you to substantiate.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, on top of just casually saying that he has no interest, it will be good for the record and the integrity of this House, for him to tell us that he has not had any discussions with the lawyer, Mr. Mansukh or anybody else related to this case.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sakaja, whoever alleges must prove!

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, he is the one who has alleged---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The allegation is that the Senator may or could have an interest. Therefore, unless you have proof, that is a route that you do not want to take.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, you have not heard me clearly. I have not alleged; I have asked him to satisfy the House---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which he has.

**Sen. Sakaja:** Not that he has any interest; he is to satisfy this House that he has not been in any communication or contact with Mr. Mansukh or his lawyers.

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

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, if he has not been in communication or contact, he we will not hesitate to give this House that assurance.

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

**Sen. Sakaja:** He will---

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

Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. I also noted, with tremendous interest, the distinguished Senator for Baringo raising the point; but he has every right to do so.

Mr. Deputy Speaker, Sir, it is not enough to stand up in the Chamber and say that this matter is *sub judice*. In fact, it is not pronounced *sub judice* but "*sub judike*"

(Laughter)

It is not enough to stand up and tell the House that the matter is *sub judice*. You must demonstrate to this House the court case number, who the accused and what the charge is, the number of witnesses likely to be called, the number of statements that have been recorded, when the hearing date is due, which court and which judge will hear the case. All these are prerequisites for establishing that a matter is *sub judice*.

Secondly, Mr. Deputy Speaker, Sir, there is an exhaustive ruling – and our clerks can indulge us by getting it to you– that was delivered by the former Speaker of the National Assembly, hon. Kenneth Marende, on the matter of *sub judice*. It is not enough even to know that there is a court case going on, but you must establish that the proceedings of this House are likely to affect that case; and you must show the extent of the effect on it. How is the debate here going to affect that case?

Mr. Deputy Speaker, Sir, we can even take judicial notice that there is a court case out of Solai Dam. However, what case do we have in court? It is a homicide. The proceedings in this House are not inquiring into a homicide; we are inquiring into matters of recklessness, criminal negligence and greed that have brought anguish to this nation.

Mr. Deputy Speaker, Sir, you as a Chair, as Lord Denning would say, “Shall forever sit there with the eye of a hawk in terms of vigilance.” Therefore, anybody who veers off the beaten track, you have a duty to stop us. That is why you chair these proceedings. If any Senator embarks on a misadventure that goes off the track on what is before us, then you rule him out of order.

Lastly, there is the issue of public interest. It would go down very badly for this House to be portrayed out there that through very whimsical reasons, we are stifling debate on a matter that, not just Kenyans, but Kenyans of the lowest level of our society who are caught in their bedrooms and swept off like you sweep animals lying in a laager to death. It is sad 48 of them died. If it was in Rob Spear’s farms in 1799, we would be talking about something different. We are lucky that we are in Kenya in 2018.

I urge you, Mr. Deputy Speaker, Sir, that you rule Sen. Moi out of order to the extent that he has not provided any material or has not satisfied the Standing Order that he quoted, and above all he is simply trying to derail debate. He is simply trying to postpone debate. In my community, we say “when a cow has carried a calf for nine months and the gestation period is over, even if you call muscle men to hold him back, it must come out.”

(Laughter)

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, this matter has been well canvassed. It is not enough just to quote the Standing Order to stop us from debating it because it has generated a lot of public interest. Therefore, it is only in the interest of this House that we be given a chance to debate the report before us. This House is not in the business of determining court cases or providing evidence to the courts of law. Our work is to consider the best interest of the common *mwananchi*.

Sen. Moi is a distinguished Senator of this Republic. However, I do not want to imagine that if this tragedy had happened in Baringo County, he would have come to derail the debate of this august House. The innocent people who lost their lives and property deserve the true findings of this august House. We have heard Members of this Senate who have refused to be persuaded and dissuaded in order to proceed with the inquiry concerning Solai Dam. In that regard, this report is not a product of any form of political divide; it is a product of by-partisanship.

We need to accord the Committee to report to us its findings. This *ad hoc* Committee is a creature of this House. Therefore, we should not use the law as a technicality to subvert the voices of the people through their representatives. We must we

play our oversight role because that is the mandate given to us by the people of the Republic of Kenya.

Mr. Deputy Speaker, Sir, I would urge you in your ruling to dismiss the intervention by Sen. Moi with the respect and advice it deserves.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir. I also want to add my voice to this debate. First, I want this House to note that if at all there was any breach of the *sub judice* rule, which I doubt, because we have already had proceedings and debate on this issue, the proceedings that took place at the Committee stage under our Standing Orders, are proceedings of this House. So, we have already had a discussion on the Solai issue.

Secondly---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Omogeni, so that I get you clear, are you saying if we have started proceedings, it does not matter whether rightly or not, we should continue? Is that the argument?

**Sen. Omogeni:** Mr. Deputy Speaker, Sir, the point I want to make is that already we did task this Committee to look into this matter. They have prepared a report which is before the House. I want to tie that to the Constitution that we passed in 2010. Under Article 33 of the Constitution, Kenyans have freedom of expression, which includes freedom to seek, receive and impart information or ideas. The only limitation to that right in Article 33 is found in Article 24 of our Constitution.

The only way you can allow limitation of that constitutional right is a situation that can be justifiable in an open and democratic society. In the situation at hand, where lives were lost, the people of this country have a right to know what conclusions the Committee that was appointed by this House arrived at and what decision we, as a House, will make.

Secondly, the *sub judice* rule has a history. As lawyers know, its history is from the common law tradition. The rule was introduced to ensure that the jury is not influenced by debate that could take place outside the jury itself.

In this country, we know that the cases that are pending before court will be determined by judicial officers who will arrive at their decisions based on the law and not on what will take place before this House. The magistrates or judges who will consider these cases will not be influenced by the debate that will take place before this House.

Thirdly, Mr. Speaker, Sir, there was a High Court decision in the case of Okiya Omtatah versus the Attorney -General. The guiding principle is that the *sub judice* rule cannot be applied in a blanket manner or in a very general manner. What the Senator for Baringo ought to have done is to point out why he thinks that this debate will cause prejudice to the suspects who are having their cases before court. It is not enough to rise up and say that if the debate was to proceed, then the *sub judice* rule will be breached. There should be specificity which will enable you, as the Chair, to make a decision as to whether the debate that will take place before this House will in any way influence the judicial officers who will finally make determinations on the cases before court.

Looking at the report that has been tendered before the House, it does not, in any direct way, relate to the merits or non-merits of the cases that are pending before court.

I urge you, Mr. Deputy Speaker, Sir, to disallow the attempt by my good friend, the Senator for Baringo, to derail this House from debating this matter which I emphasize is of great general public importance. I urge you to disallow that objection.

(Applause)

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I will be extremely careful because earlier on when I came into the Chamber, I greeted Sen. Moi with a lot of happiness, and you ruled me out of order. The reason I greeted him with a lot of happiness is that I have learnt from experience that when you see Sen. Moi in the Senate, there is a matter that is extremely important to him.

(Laughter)

Therefore, I sensed that this afternoon there must be a matter that is important to him. It is only that I did not know what the matter was.

One of the things that we do in this House is review of our Standing Orders to align it to issues that keep on arising as we do our duties as Senators. This is a corner that we have been before, where we are debating issues and somebody raises the point as the one that has being raised by our colleague this afternoon.

It is in light of that that our Standing Order 92 (5) states-

“Notwithstanding this Standing Order, the Speaker may allow reference to any matter before Senate or a Committee.”

Mr. Deputy Speaker, Sir, this is a curve that we have already been on because before we got to the point of drafting the report and there was a Motion that was presented before the Speaker.

I am sure he was aware of the issues that were before the Directorate of Criminal Investigations (DCI) and the Director of Public Prosecutions (DPP). However, he satisfied himself as the Hon. Speaker of this House that it was important that we, as the representatives of the people, look into this matter. Therefore, you cannot at this particular point declare this process *sub judice* as Sen. Wetangula has reminded us this afternoon.

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

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, you know I am not a lawyer so when Sen. Wetangula speaks--- I do not want to lose my point.

The point I am making is that you cannot at this point declare this matter *sub judice* yet the point of declaration was at inception stage. This matter has travelled the parliamentary journey from the mind of the Senator who brought the Motion up to the decision of the Speaker.

Therefore, in conclusion, what Sen. Moi is doing is akin to a man trying to close--

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**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot. Is it your argument that if *sub judice* argument is not raised at the inception, it should not occur at any stage?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, yes, it should not occur at any particular stage after that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your authority for that?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, please, come again. I did not get you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your authority on that?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, from past practice in this House, I remember on many afternoons we have had similar issues. The former occupant of that seat; the Rt. Hon. Ekwee Ethuro, made a similar ruling before this House. He advised that once that determination has been made, you cannot in the middle of the process subject it to another point of debate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which ruling was that in particular, and on what matter?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, are you asking for matters that were before us?

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

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, on one particular occasion we were debating a report of the County Public Accounts and Investment Committee and one of the governors had gone to court and protested that his issues should not be considered in this House. The Rt. Hon. Speaker made that ruling that afternoon, that the point of determining whether we should have debated the conduct of that governor or not had passed. I am a good history student.

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

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, in conclusion, the point that I was making is that, while Sen. Moi maybe having a point, the horse has already bolted. Therefore, he cannot close the door to the stable at this point. As a revered jokey, he should know that it is impossible to do that.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I will listen to a maximum of four other interventions and then we close it. The first one is Sen. (Dr.) Kabaka for Machakos County.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I am so happy and I hope Sen. Moi is listening.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Kabaka. Just resume your seat for a minute.

**Sen. (Dr.) Kabaka:** Okay, Mr. Deputy Speaker, Sir.

*(Sen. Sakaja and Sen. Mutula Kilonzo Jnr.  
consulted the Clerk-at-the-Table)*

Order, Sen. Sakaja and Sen. Mutula Kilonzo Jnr. Hon. Senators, Order, Senators! I have two communications to make.

*(Sen. (Eng.) Maina consulted Sen. Mugo)*

Order Sen. (Eng.) Maina!

*(Interruption of debate on Point of Order)*

**COMMUNICATIONS FROM THE CHAIR**VISITING DELEGATION FROM MARULA PRIMARY  
SCHOOL, NAKURU COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Marula Primary School, Nakuru County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, wish them a fruitful visit.

Thank you.

*(Applause)*

VISITING DELEGATION FROM JAMAA PRIMARY  
SCHOOL, KISUMU COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Similarly, Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Jamaa Primary School, Kisumu County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and on my own behalf, wish them a fruitful visit.

Thank you.

*(Applause)*

*(Resumption of debate on Point of Order)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Quickly proceed, Sen. (Dr.) Kabaka.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this issue with regard to jurisprudence on these very broad and disturbing principles of law. From the onset, I need to state that Article 51 cited by the distinguished Senator for Baringo County is the wrong Article; he ought to have quoted Article 50.

Secondly, under the principle of separation of powers, there is nothing on earth and under the sun which distinctively prevents Parliament from debating any issue so long as it does not in any way prejudice an individual's right.

What does it mean? I do know that when it comes to procurement of evidence pursuant to the Evidence Act, Cap 8 of the Laws of Kenya, there are provisions to the effect that documents or records like HANSARD do not necessarily bind the courts of law.

Mr. Deputy Speaker, Sir, I duly appreciate in certain areas in criminal law where the subjects cause a court to determine on retracted or illegally obtained evidence. There is an area where Lord Denning said that even though the courts are not bound by the

HANSARD reports in their determination of the findings in their judgment, he himself at certain times would go and peruse the HANSARD reports to look at the intention of Parliament.

That is why I am saying that it would be very dangerous if we are going to apply the rules of *sub judice* with that regard. This is because matters are pending in court which are criminal or homicide in nature. What if a crazy judge - with due respect - behaves like Lord Denning in that regard and comes and sees the outcome of the HANSARD which was killed at the preliminary level?

Mr. Deputy Speaker Sir, before I sit down, I urge you, Chair, to dismiss *in limine* the interruption by the distinguished Senator for Baringo County. More so, if you look at the public good, the interpretation of the Constitution – the Article 50 that he has mentioned – cannot be applied anyhow. The courts are called upon - when it comes to interpretation of the Constitution or even Statutes - to interpret it purposively in favour of the public as opposed to individual private right.

I sit and support that the point raised by the distinguished Senator for Baringo County be dismissed and we be allowed to proceed with this debate on the report by Sen. Mutula Kilonzo Jnr.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. We will have two other Speakers.

Sen. Cherargei.

**Sen. Cherargei:** Thank you Mr. Deputy Speaker, Sir. From the outset, I want to say that the lives and properties that were lost in Solai are very sacred. We would not like Kenyans to lose their lives at any given point again.

Articles 34 and 35 of the Constitution provide for media freedom and right of access to information. I have heard my colleagues talk of the rule of *sub judice* and that debate should be stopped. This is very unfortunate. With all due respect to Sen. Moi, I believe that there should be a legal redress for the lives and property that were lost.

The Committee that is chaired by one of the Members of the Committee on Justice, Legal Affairs and Human Rights, Sen. Mutula Kilonzo Jnr., has done good work so far. They have even visited the place. Therefore, anybody who imagines or contemplates either in reality or in any other form, stopping the process that Parliament has started, is not only a threat to the peace, security and the lives of Kenyans, but also the independence of this House. This House enjoys quasi-judicial abilities and no one should be allowed, at any given time, to try and interfere with the process of the *Ad hoc* Committee on the Solai Dam tragedy that wants to give justice to Kenyans. Justice will only be gotten in this House and the courts of law. We should respect that. All of us are representatives of the people and we should divorce politics in this issue. I know that it looks politically appetizing, but we should not, as Senators of this House, be protectors of cartels and corruption.

Those people who ensured that our people lost lives and property must pay the heavier price. If anybody has befriended the cartels or wants to protect some of these men, they should be very careful---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Cherargei. Proceed and wind up.

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

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

**Sen. Halake:** Mr. Deputy Speaker, Sir, I rise to ask if it is in order for Senator after Senator to impute ill motive, when the question that was asked was just for your guidance with regards to reference to *sub judice*. As one of the people who have always asked about different things, I am wondering if this means that we should never ask questions where there is no clarity, perhaps, by virtue of having been away or whatever reason. Is it that when you ask, it is definitely because you are not standing for the public interest? Is that in order?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Halake, I will give you and Sen. Pareno a chance to close. I have already dealt with the issue that you are raising. I have called the Senator to order.

Please, conclude. Senators, we have taken a bit of time on this issue because we need to make a very considered decision. Therefore, we need the benefit of the collective wisdom of the House.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir, for protecting me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I have not protected you; I called you to order.

*(Laughter)*

Actually, I protected you from yourself.

**Sen. Cherargei:** I stand guided, Mr. Deputy Speaker, Sir. Finally, we should be very careful because the decisions that we make today, when we stand in the way of justice for Kenyans, will come with a heavy price. I want to advise my good friend, the Senator for Baringo, Sen. Moi, to be careful not to become an impediment or stumbling block to the justice and legal redress of Kenyans. This is because we never know what the future has.

If you continue building roadblocks on your way to the future, it will be very dangerous. We advise him to stick to what is good for all of us, as leaders, because when the clarion will be called at some point in life, you should not have so many sins. You should be able to rise up to the occasion and stand with Kenyans for justice, peace and unity.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Thank you, Sen. Cherargei.

Sen. Abshiro Halake.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. I pressed the wrong button, but I just wanted to intervene with regards to the point of order, where the Senators had imputed ill motive at every juncture. Is asking about a provision within our Standing Orders automatically confirm that Sen. Moi is not standing for public interest? I do not think that is the case, even though I am not speaking for him.

**Hon. Senators:** You are!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! There is a chorus from one side of the House. That chorus is led by the Senator for Bungoma County.

Can you proceed, Sen. Halake.



**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. For the information of the Senator for Bungoma County, even though I am not a lawyer, I speak French. The right word is *sub judice*.

(Laughter)

Mr. Deputy Speaker, Sir, can I proceed?

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

**Sen. Halake:** Mr. Deputy Speaker, Sir, I digressed but that said, we have seen a lot of excitement in this House this afternoon, thanks to Sen. Moi.

**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, this is a clear case of being clever by half. Is the distinguished Senator in order to say that *sub judice* is French, when it is, in fact, Latin?

**Sen. Halake:** Mr. Deputy Speaker, Sir, we should look at the roots of Latin. The roots of French is Latin. Therefore, I can say it without fear or favour *je parle bien français très bien merci*.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Abshiro, the issue is not whether you can speak French. You have been challenged as to whether '*sub judice*' is a Latin word or a French word as you allege.

**Sen. Halake:** Mr. Deputy Speaker, Sir, it is a Latin word, but some French words have roots in Latin and both are supposed to be pronounced *sub judice*.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Let me save you further agony---

**Sen. Halake:** Mr. Deputy Speaker, Sir, I am actually enjoying it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Resume your seat. Let me save you further agony. *Sub judice* is actually Latin. Lawyers like Sen. Wetangula and others will tell you that you pronounce Latin as it is written and write it as it is pronounced. So, I would advise that you abandon that direction and wind up your remarks about *sub judice* and its application to the Solai investigation matter that is before us.

You have two more minutes.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir. A few days ago, you passed a message that I should inform the Chairperson of my Committee about the Local Content Bill and that he should be here to defend that Bill. Just before I got here I told him: "Sen. Moi, your Bill is here and I was given a message. Again, while I do not speak for him, I actually passed the message.

Besides that point, as colleagues in this House, if anybody asks a question with regards to any Standing Order, which I do a lot as you know, they do not do that because of ill motive or lack of support to the public. We all know that Sen. Moi was there a few days ago and he has been supporting this process. Where is the goodwill from colleagues? Therefore, I am, once again, asking where the goodwill for colleagues is. For instance, as a newcomer who is not very familiar with some of the issues within the

Standing Orders, I find it very intimidating to ask without being judged so harshly, as has been done this afternoon.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Finally, I can see so many requests, but time will not allow us to continue.

Proceed, Sen. Pareno.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. I rise to contribute to this very interesting aspect of our Report. The words to note in our rules are “active proceedings.” Were there active proceedings at the time this Senate was seized of this matter? No. When we started on this matter, as the Committee on National Security, Defence and Foreign Relations, we visited the scene. We brought a preliminary report to this House and Sen. Kihika made a Statement on that aspect before anybody was ever brought before a court of law.

Actually, the arrests and proceedings which they now want to use to stop us, were initiated after this Senate spoke and called for the arrests. It will not be fair for us to call for arrests and prosecution while this House was already seized of this matter, only for them to use the *sub judice* rule against us.

Mr. Deputy Speaker, Sir, the Senate has expended a lot on this matter. An *Ad hoc* Committee was brought before this House and Members approved it before the proceedings started. After the approval, Members proceeded to expend their time, labour and resources to investigate the Solai Dam Tragedy. Look at the Report that is before us now; it is so voluminous. So much work and investigation have gone into it, and then someone comes to tell us about *sub judice*, after all that has been done? I say no.

Mr. Deputy Speaker, Sir, I wish to report that Members of this *Ad hoc* Committee have been threatened so that they do not discuss or bring this Report before this House; and they have told us that much. They have also received advances from people; they might even probably identify who are threatening them not to append their signatures on the report. If you look at this Report, only five out of nine Members of the Committee have signed it. Shame on those---

(Applause)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You should not anticipate debate.

**Sen. Pareno:** Yes, Mr. Deputy Speaker, Sir. I wish to be corrected on that. However, they have reported that they have received threats. This *sub judice* rule that is being invoked now is just another threat. I ask that we commend this Committee for coming out strongly; for resisting the advances, threats and for appending their signatures for the sake of the people of Solai.

(Applause)

Mr. Deputy Speaker, Sir, I submit and say that we should walk with our heads high, as the Senate and as a Committee that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is your submission that the point of order by Sen. Moi should not be entertained?

**Sen. Pareno:** Mr. Deputy Speaker, Sir, it should be disregarded with the contempt that it deserves.

Thank you. Mr. Deputy Speaker, Sir.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! We have to bring this to a close. I can see that my screen is full, but Sen. Wambua has pleaded for two minutes. I hope there is value addition in your contribution. Do not repeat what your colleagues have already said.

Sen. Wambua, you have strictly two minutes before we close it.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir. I also hope that there will be value addition in this contribution. The value addition is very simple and straightforward. We have spent well over 30 minutes canvassing the matter of *sub judice* even before the Chairperson of the Committee begins reading the first paragraph of the Report. If there was any doubt as to the amount of public interest on this matter, then the debate on the intervention by Sen. Moi settles that matter. This is a matter of serious and immense public interest that cannot be curtailed by a consideration on the *sub judice* rule.

Mr. Deputy Speaker, Sir, I submit---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is the matter *sub judice*?

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I submit that it is not. We should continue---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Why is it not *sub judice*?

**Sen. Wambua:** If you asked me, and I am not a lawyer, the lawyers in the House have already ventilated on this matter. However, if you weigh the public interest against the argument of *sub judice* on this matter, it has been canvassed, not only in this House, but also in the public domain. It has been debated and witnesses have appeared before the Committee of this Senate.

My submission is, therefore, that you allow the Committee Chairman to table the Report and for Senators to debate this matter objectively and without prejudice.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Thank you, Senators.

Sen. Wambua, the Report was tabled yesterday. What is before us this afternoon is whether the Chairperson of the Committee can move the Motion to adopt the Report of the Committee and, of course, that will be followed by debate so that the adoption can take place.

Firstly, I have deliberately allowed all those interventions so that we can make an informed decision. This is not the first time that the issue of *sub judice* has been raised before this House. I, therefore, find nothing unusual for Sen. Moi or any other Senator raising it. I do not think it is trivial and that is why our Standing Orders provide the rule of *sub judice*. Therefore, that should be the starting point as we look at this matter.

Secondly, I have also listened to the discussions, contributions and interventions by hon. Senators, trying to argue their understanding on this rule, its limitations and application. Thirdly, a Speaker of this House has previously had to make a detailed ruling on this matter. Similarly, the Speaker of the National Assembly, throughout various Parliaments, has ruled on this matter. Therefore, this being a very weighty decision

because it touches on the independence of Parliament and how it should exercise that independence in relation to the other arms of government; in the circumstances, I direct as follows.

One, that this Motion be deferred to tomorrow at 2.30p.m. Two, that this Motion be given high priority tomorrow at 2.30 p.m. In which case, Order No.7 – which is normally Statements and which normally takes a bit of time – will be transacted after this Motion has been debated. This means that within the first five minutes of tomorrow's Sitting, this Motion should be transacted, depending on the ruling of that Speaker, which should precede any further debate on this Motion.

Therefore, in short, Senators, the Speaker will make a detailed ruling on the matter raised by Sen. Sen. Moi tomorrow at 2.30p.m. Depending on that ruling, a debate may ensue depending on the finding, because I need a bit of time to reflect and balance all the authorities and look at history.

We are also guided by precedents and previous decisions of Parliament. We can also break new ground. However, we have to support that new ground with authority, so that our decision can stand the test of time.

**Sen. (Dr.) Kabaka:** On a point of intervention, Mr. Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your intervention, Sen. (Dr.) Kabaka?

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir. Before you finalise your ruling, I am standing on a point of intervention with regard to the seriousness of the matter which you are making a ruling on and for the security of the Committee Members who have been threatened. The Mover of this Report, Sen. Mutula Kilonzo Jnr. should be given proper security before then.

*(Laughter)*

This is not a laughing matter; it is a matter of life and death.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Mwaura, what is your point of order?

**Sen. Mwaura:** Thank you, Mr. Speaker, Sir. Martin Luther King Jr. said that-

“All labour that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence”

You have given yourself time to give a considered judgment on this matter. Is it in order for, Sen. (Dr.) Kabaka to challenge your ruling? That is unparliamentary and unprocedural.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mwaura! I do not think, Sen. (Dr.) Kabaka has challenged my ruling. He was seeking further clarification with my permission,

Sen. (Dr.) Kabaka, unless you are speaking for yourself, Sen. Mutula Kilonzo Jnr. is here and he has not indicated that he is in danger and requires a specific direction on security. So, let us not over dramatize this matter; it has been out in the public domain for a long time. We are now at the tail end of it. However, should, Sen. Mutula Kilonzo Jnr. or any other Senator require the support of Parliament to exercise their duties, that

opportunity is there, though not necessarily on the Floor of this House. That facility is there for all Members who must feel safe and protected as they exercise their duties.

So, I direct that Order No.8 be deferred to tomorrow. It should be on tomorrow's Order Paper at the same position as Order No.8. As I have already said, it will be transacted before Order No. 7 which is Statements. It is so ordered.

*(Motion deferred)*

Next Order.

*(Loud consultations)*

Order, Senators! Those who are retreating should do so in silence.

### COMMITTEE OF THE WHOLE

THE COUNTY BOUNDARIES BILL  
(SENATE BILLS NO. 6 OF 2017)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators, we do not have the numbers to carry out a division in Order No.9. I, therefore, direct that Order No.9 be deferred.

*(Committee of the Whole deferred)*

Hon. Senators, I also direct that the items appearing as Order Nos.10, 11 and 12 be deferred to tomorrow. The Movers and sponsors of those items are not around. So, we will proceed from Order No.13 downwards. We will not sit in the Committee of the Whole.

### COMMITTEE OF THE WHOLE

THE OFFICE OF THE COUNTY ATTORNEY BILL  
(SENATE BILLS NO.3 OF 2018)

THE FOOD SECURITY BILL  
(SENATE BILLS NO.12 OF 2017)

THE OFFICE OF THE COUNTY PRINTER BILL  
(SENATE BILLS NO. 7 OF 2018)

*(Committee of the Whole Deferred)*

Next Order.

**BILLS***Second Reading*THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO. 13 OF 2018)*(Sen. Cheruiyot on 25.7.2018)**(Resumption of Debate interrupted on 25.7.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This Bill has been moved. Sen. Mary Seneta, the last time the debate on this Motion was interrupted you were on the Floor and you had 13 minutes remaining. Would you wish to continue or you concluded your contribution?

Sen. Seneta, you have the Floor.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for giving me the chance to complete my contribution on this Bill. From the outset, I want to congratulate, Sen. Aaron Cheruiyot for having thought about the human resource element in our counties.

Mr. Deputy Speaker, Sir, building the human capital is a very important aspect in our devolved units. If we want to develop our counties, we must have competent, effective and capable staff and a human resource management which can perform.

When we look at our counties today, many of our sectors need human resource that can sit down, plan, manage and deliver effective services to our counties. Therefore, to have a County Public Service Board (CPSB) chairperson who is a professional, it will determine and go a long way in making sure that whoever they recruit as the staff of the counties are very competent.

I agree that it is not only the chairperson that should be a human resource management professional, but also the whole CPSB membership who should equally be competent and qualified to recruit the staff of the counties who can deliver services at the right time.

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

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

Madam Temporary Speaker, today, when we look around in many of our sectors in the counties, many of the staffers lack the capacity. We should not only look at the CPSB as being competent, but also offer service training or refresher courses to the staffers who are recruited in the counties. This will ensure that we have people who can deliver quality and timely services to our citizens. We also need a competent workforce that can reason and come up with policies that affect different sectors in the counties so that we can give quality services to our people.

Looking at the Bill, it is equally important that we agree that whenever a process of recruitment is required in our counties, the CPSB must also adhere to merits when they are employing staff. They should look into the qualifications and experiences of the

people they recruit, so that when we get the workforce in our counties, we get people who can work and deliver services to the citizens at the right time.

I support this Bill.

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker. I rise to support the amendment. It is actually a very simple amendment, but it speaks volumes on the question of ensuring that the chairperson of the CPSB be a person who is qualified in the human resource management profession.

In all sectors, both in the public and private, and particularly in the private sector, the people who recruit workers are experts in human resource management.

I am not surprised about the omission because there are so many omissions in this Act. We have ended up panel-beating the County Governments Act in so many respects that, in fact, sometimes I think we should audit the County Governments Act entirely. The reason why I am saying so is that, recently, two courts ruled that there is no position of a Deputy Speaker in the County Governments Act yet Deputy Speakers have been sitting in the county assemblies for the last six years.

The same way that we have a Deputy Speaker here, you wonder; when the court was ruling that the Constitution and the County Governments Act do not envision a Deputy Speaker, was that person familiar with law making? Who is supposed to chair the Committee of the Whole and report to the plenary in the absence of a Deputy Speaker? Some of these issues have called us, as Senate, to audit this Bill and the County Governments Act.

*(Sen. (Eng.) Maina walked towards the door and stood in front of Sen. Mutula Kilonzo Jnr.)*

The Senator for Nyeri County is leaving and they had a crisis in his county when the Governor died. He is standing in front of me contrary to the Standing Orders.

*(Sen. (Eng.) Maina walked out of the Chamber)*

The Supreme Court was called upon to fill in the gap created by the crisis in the counties of Nyeri and Nairobi. Nairobi County has not appointed a deputy governor in the timelines provided. Nyeri County has appointed their Governor and moved on. Although the Senator for Nyeri County was proposing that a Senator should be given a role in the appointment of a governor in the case of the counties of Nyeri and Nairobi, which we did not agree with, the fact is that there is a lacuna in the County Governments Act. He was trying to find, just like any good leader, a method of covering it.

In the last Session, I moved an amendment to have county governments protected under the Government Proceedings Act. This is because, in the transition between the Local Government Act and the County Governments Act, we forgot to give county governments the same immunity that the local governments used to have. The result is that the debtors of the previous councils began attaching goods of county governments yet it is the government as understood under the Constitution. So, this is yet another gap.

I will propose and I have sought the opinion and the concurrence of the Mover, Sen. Cheruiyot, – I am very pleased by this gentleman – that, first, we have another amendment to cater for deputy governors.

The second one that I want to propose is a very strange thing. In the CPSB, the secretary, who is the Chief Executive Officer (CEO) is not a member and he or she is not supposed to sit in the board. It is not express. So, some chairpersons who like the secretaries invite the secretaries while others do not. So, you can imagine, in these CPSBs that we are passing here, there are secretaries who do not sit in the deliberations of who is going to be hired or not.

There are petitions coming, like the issue in Bomet County. How did the CPSB end up employing 3,500 staff just before the general elections? If there was a human resource person sitting as a chairperson, we would be holding that person to account because under the standards of recruiting, they would know what to do.

I am also addressing the Senator for Nyeri County. One of the counties suffering out of human resource in terms of the expenditure is Nyeri County. They are spending 85 per cent or more of their sharable revenue paying workers. The professional County Public Service Board (CPSB) chairperson would, at the first instance, advise the county government to freeze recruitment of workers until they do the audit. That applies to Nairobi and Mombasa. These two cities are, without limitation, possibly the dirtiest in this region, yet, just like Nyeri, they claim that they are spending a lot of money paying workers. What do they pay these workers to do?

Madam Temporary Speaker, I expect that this professional that we are including will advise county governments to audit the workers. For example, he or she would check who is assigned to water flowers on Kenyatta Avenue and ensure that the rivers in Nairobi County are clean. How do we account? The previous section that we are seeking to amend just hired a person who has a degree. Governors and others proposed people, who are serving in these positions, who just have a normal degree.

It could be a degree in catering or veterinary medicine - I do not have a problem with veterinarians. When we were considering the impeachment of the late Gov. Gachagua – may his soul rest in peace – one of the allegations and accusations then was that the Acting County Executive Committee (CEC) Member was a veterinary doctor as opposed to a finance person. The law requires that the CEC for Finance must be a person qualified in financial matters.

If counties are spending up to 70 or 80 per cent--- We were with the Commission on Revenue Allocation (CRA) today and I expected that the Senator for Taita-Taveta County would be here. They are only spending 15 per cent of their shareable revenue on development. That means that 85 per cent of the revenue that we send to Taita-Taveta and many other counties goes to employment. Is it not time we started doing those audits? It is these chairpersons of CPSBs that are recruiting political and legal advisors as opposed to a county attorney.

I do not know what they are supposed to do. They are also economic advisors, fashion designers and all sorts of advisors. When we hire a professional, who is subject to the professional standards like lawyers, architects and surveyors and engineers, like the Senator for Nyeri County, he will be able to answer questions, not only before the county government, but also the professional organisation.



Madam Temporary Speaker, I support this and many amendments. I hope that the Committee, led by Sen. Kinyua, can audit the County Governments Act. Do we need to have five, six or ten amendments? Sen. Murkomen, Sen. Cheruiyot and I have all proposed amendments. Maybe another Senator will come up with other amendments. In the last Session we had almost six or seven amendments from a raft of Senators. Is it time to start interrogating this?

This morning we were asked what happened to the county boards that we passed in the Senate and the National Assembly, and then signed into law by His Excellency President Uhuru Kenyatta. Why should we pass laws and then we are stifled by governors, who do not want Senators to have any role in the counties? Then, we continue making amendments, instead of going back to ask: What is it that we have done before? What is the problem? Where is this matter in the Court of Appeal? How can we intervene to see Senators making a meaningful intervention in the counties where we belong? We are strangers in our counties because all avenues and doors have been locked.

We take pride in making these laws, but we have no role in places where we have been elected. I have heard people saying that some were elected by a million votes and others 300,000. I was elected by 300,000 votes, which was over 97 per cent of the vote. However, when it comes to matters counties, Senators, just like me, stay in the periphery and cheer, like cheering the World Cup.

These amendments are important but, in my view, the Committee needs to interrogate many of these things, so that we can cover all the gaps. There is the issue of impeachment of speakers and CECs. Members may not know, but governors have become powerless in their counties. They appoint a CEC who will misappropriate funds. When they are suspended, they go to court and obtain an injunction. They work at the pleasure of the court.

Can we, as Senators, start interrogation these matters and find a formula? Machakos County is in a stalemate. They refused to approve five CECs and the Governor went ahead to appoint them irrespective of the County Assembly's decision. Nothing in this Act says what the recourse is. Are these people illegally in office or not? These caveats ought to be in the law, so that we can protect counties in the true sense of the word.

Madam Temporary Speaker, I am glad that Sen. Kinyua, who is the Chairperson of Committee on Devolution and Intergovernmental Relations, is here because, as I said, we must audit the County Governments Act. The Committee can propose a raft of amendments to take care of all the lacunas that have appeared in the past and anticipate what will happen in future. When these governors leave office, particularly those serving their second term, they will go to Dubai, the Isle of Man, Baroda and many other places if we do not take action.

Thank you, Madam Temporary Speaker.

**Sen. Kwamboka:** Thank you, Madam Temporary Speaker. I support the amendment Bill by Sen. Cheruiyot. Indeed, he has come up with good amendments, for example to Section 32 with regard to the deputy governor.

The procedures and timelines with regard to the appointment of a deputy governor are indicated very well in the Bill. I would urge the Senator to add another amendment on how to appoint another deputy governor after the previous one resigns. He should also give timelines for it. I am talking about the situation that we currently have in Nairobi

City County. There is no clause in this Bill that says how long a governor should take to appoint his or her deputy.

Under Section 58 of the principal Act, on the composition of the CPSB, the Member has come up with amendments. Whenever a vacancy arises in the CPSB, the governor shall constitute a selection panel for the purpose of selecting suitable candidates for appointment as members of the CPSB. The amendment has added more members. For example, one person will be nominated by the governor from the private sector, which will push for and protect the interests of the private sector. One person will be nominated by the Federation of Kenya Employers (FKE), which will protect employers of this country.

Madam Temporary Speaker, I support this amendment Bill and urge the sponsor to include timelines when it comes to the appointment of another deputy governor in case the one serving resigns.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Very good.

Sen. Kinyua, proceed.

**Sen. Kinyua:** Thank you, Madam Temporary Speaker. From the outset, I congratulate Sen. Cheruiyot for bringing this amendment. If you look at Clause 58(3)(d)(ii), he has brought in the issue of professionalism. Previously there was nothing like that. A governor could pick his friends or any other person that he or she deemed fit. With this amendment, there will be professionalism in the CPSB.

He has also considered the youth because previously there was a requirement that you needed to have 10 years' experience. That has been reduced to five years which takes care of the youth of this country because even the youth have the capacity and ability to lead in this country. I strongly support him for that.

Having listened to him, the CPSBs are crucial in running of activities in the counties by the virtue that they are the ones that employ people to work in the counties. If we have boards that are not professional, the counties will have--- They normally say that if you give peanuts, you get monkeys. With this one, we will get professionals who will be doing the work diligently in the counties.

He has also put the time limit that is non-renewable such that other people will also have a chance to serve once a term of other people expires after six years.

This is a good amendment and I support.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Cheruiyot, it is your time to reply.

**Sen. Cheruiyot:** Madam Temporary Speaker, I take this opportunity to thank my colleagues who have contributed to this Bill. While listening to them, the line that we share is that there is genuine concern amongst Senators in this House that we need to professionalize how our counties are being run. We should infuse into the CPSBs that the true sense of duty can only be gotten by ensuring that professional human resource minds are trained to understand that human resource is an extremely important resource for any county that wants to thrive and achieve its full potential.

I have taken time to note down all the concerns that have been raised by colleagues, proposed amendments, ideas and thoughts. There are those who are in support of the Bill in its entirety and feel that there is need for additional amendments to the County Governments Act.

I have listened to the contribution from my distinguished colleague Sen. Kwamboka about the timelines that a county government can stay without a deputy governor, something which should be included in this Bill. Sen. Mutula Kilonzo Jnr. raised an important issue; that we need to add into the amendments consideration of the office of the Deputy Speaker in our county assemblies.

Madam Temporary Speaker, it is worth noting that up to date, many of our Deputy Speakers continue to face ridicule. Sometimes they are reminded by their colleagues that after all, despite occupying extremely important positions in our county governments structures, their positions are not recognised anywhere in law. Therefore, as a House, we are expected to legislate and think through the proposals that come from our county governments and try to streamline legally the operations of our county governments. I will be moving all those amendments, many of which are straightforward.

With all those remarks, I thank my colleagues who found time to read through the Bill and give worthy responses. Pursuant to Standing Order No. 55(3), I request that the putting of the question on this Bill be deferred to another day. I thank you.

**The Temporary Speaker** (Sen. Nyamunga): We will defer putting of the question to tomorrow.

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

Let us go to the next Order.

### *Second Reading*

#### THE LOCAL CONTENT BILL (SENATE BILLS NO.10 OF 2018)

**The Temporary Speaker** (Sen. Nyamunga): Order No.14 is deferred because Sen. Moi has requested that it be deferred.

*(Bill deferred)*

Next Order.

### **MOTIONS**

#### THE STATUS OF EDUCATION IN NORTHERN KENYA

THAT, AWARE that Article 43(f) of the Constitution of Kenya stipulates that every person has the right to education, and Article 53(1)(b) provides that every child has the right to free and compulsory basic education;

ALSO AWARE that education is a basic need and a tool for intellectual empowerment and social-political development;

FURTHER AWARE that education is a shared function between the National and the County levels of Government with the National

Government being responsible for primary, secondary and higher education while the County Government is responsible for preprimary education, village polytechnics and home craft centers;

COGNISANT that both levels of Government complement each other in promoting sustainable education;

CONCERNED that the intake, uptake and quality of education in the Northern Kenya have adversely been affected owing to discrepancies in public resources allocation, insecurity, skewed staffing and teacher training in the region;

FURTHER CONCERNED that both the school completion rate and the national examination outcomes in region are poor and that the number of students from Northern Kenya who qualify for core courses in universities, colleges, technical schools and village polytechnics is minimal compared to other parts of the country;

NOTING WITH CONCERN that due to insecurity and other related concerns, the Teachers Service Commission (TSC) which is the body responsible for the employment and deployment of teachers, has in the recent past, taken steps to transfer non-local teachers from the northern region of Kenya to other parts of the country;

CONCERNED THAT, the transfers have led to shortage of skilled teachers which has been a major cause of the dismal performance in examinations in schools in the region;

NOW THEREFORE, the Senate resolves to task the Standing Committee on Education to conduct an inquiry into the challenges facing the education sector in Northern Kenya with a view to-

(1) evaluating the effect of the teacher transfers from the region and recommending to the Ministry of Education, policy measures to address the challenge;

(2) evaluating the status of the education infrastructure in the region and proposing solutions to mitigate the current and looming challenges;

(3) proposing mechanisms for enhanced resource allocation at both levels of government to facilitate improved education facilities; and

(4) assessing school intake compared completion levels in the region in order to ascertain the impact of the challenges facing the schools and how these disadvantages the region compared to other parts of Kenya and proposing ways of addressing the challenges.

And that the Committee submits a report to the Senate within three months of adoption of this Motion by the Senate.

*(Sen. (Dr.) Ali on 31.7.2018)*

*(Resumption of Debate interrupted on 31.7.2018)*

**Sen. (Dr.) Ali:** Madam Temporary Speaker, in reply to the Motion, I am grateful for Members who contributed to the Motion yesterday. I am happy that most of the issues

came out. I just want to state that in the case of the northern parts of Kenya with all the problems, the Ministry of Education should look into the issues of not only university education but also primary and secondary education. We need the quota system because sometimes back, there used to be quota systems.

Many Members mentioned about the issues of discipline that teachers face, which is true. However, there are some issues that teachers mentioned such as rape and sexual harassment which are not possible because of our cultures and religious aspects. It is not possible in those areas even if they happen in other areas.

Members spoke widely on this Motion and in an appropriate manner. I hope the Committee will look into the issues properly. I have been informed that the Committee will tour the northern parts of this country soon. I hope they will get hold of the stakeholders and involve the leadership when they visit those areas, so that we work together and do what is required so that the children of northern Kenya get proper education.

I thank you.

**The Temporary Speaker** (Sen. Nyamunga): I will now put the question.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Nyamunga): Next Order!

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF  
NAKURU COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Nakuru County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Tuesday, 19th June, 2018.

*(Motion deferred)*

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF  
KILIFI COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Kilifi County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Tuesday, 19th June, 2018.

*(Motion deferred)*

Next Order!

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF  
HOMA BAY COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Homa Bay County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Tuesday, 19th June, 2018.

*(Motion deferred)*

Next Order!

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS  
OF KISII COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Kisii County Executive for the financial year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Tuesday, 19th June, 2018.

*(Motion deferred)*

Next Order!

APPROVAL OF SENATOR TO SERVE IN DEVOLUTION AND  
INTER-GOVERNMENTAL RELATIONS COMMITTEE

THAT, pursuant to standing orders 183, 212 and 213, the Senate approves the nomination of Sen. Rose Nyamunga, MP, to serve in the Standing Committee on Devolution and Intergovernmental Relations in place of Sen. James Orengo, EGH, SC, MP.

*(Motion deferred)*

Next Order!

MANAGEMENT OF CONSTRUCTION CONTRACTORS

THAT, AWARE that Section 15 of the National Construction Authority (NCA) Act prescribes the requirements for registration as a contractor;

ALSO AWARE that Section 18 of the Act mandates the NCA Board to accredit firms incorporated outside Kenya to carry out construction works in Kenya for a prescribed period;

CONCERNED that a large number of registered local contractors cannot perform up to the expected standard leading to collapsed buildings, poor county roads and infrastructure and incomplete contracts;

APPRECIATING that there is still a good number of local contractors that has demonstrated capacity to perform and deliver projects as required;

DEEPLY CONCERNED that foreign contractors are now engaging in projects that local contractors have equal capacity and skill to perform, especially in the counties;

RECOGNIZING THAT there is need to grow our local industries by giving job opportunities to Kenyan citizens and building their technical capacities;

NOW THEREFORE, the Senate calls upon the Government through the NCA to-

1. Conduct a fresh registration drive of all building and infrastructure contractors in order to weed out all non-performing ones and to identify those who demonstrate compliance;
2. Enforce strict oversight on foreign contractors and institute a mechanism to handle complaints raised against contractors;
3. Ensure that foreign contractors are only awarded contracts that local contractors cannot handle and require them to include technology transfer to locals; and
4. Require both local and foreign contractors to undertake corporate social responsibility activities in the counties where they operate.

*(Sen. Kasanga on 26.7.2018)*

*(Resumption of debate interrupted on 26.7.2018)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, Order No. 21 is open for debate. Any Senator who has interest in this debate is free to contribute.

Hon. Senators, it seems that there is no interest on the Motion and Sen. Kasanga is not present to reply. Maybe, she has forfeited that opportunity. I will not put the Question.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Nyamunga): Next order!

FRAMEWORK TO PERMANENTLY ADDRESS  
EFFECTS OF FLOODS

THAT, aware that several days of heavy rains recently have caused severe flooding in many parts of the country, resulting in multiple deaths and devastating damage to property and infrastructure;

NOTING with concern that, whenever Kenya experiences periods of severe drought, torrential rains usually follow;

CONCERNED that year in year out, the challenge of floods continues to recur, leading to loss of human and animal life, displacement of people and wanton destruction of property;

COGNIZANT that the number of Kenyans needing emergency food aid as a result of displacement caused by the current floods continues to rise by the day, and that the floods have also washed away many bridges and destroyed roads in many parts of Kenya;

ALSO CONCERNED that no effective measures, such as improved storm water harvesting, proper drainage infrastructure and preventing the destruction of riparian reserves and natural water courses, to mitigate and/or provide a lasting solution to the menace of flooding, have been taken;

NOW THEREFORE, the Senate calls upon the National Government to develop a lasting framework to permanently address the challenge of effects of floods by, among other things

1. developing and enforcing regulations for preventing the obstruction of riparian reserves and natural water courses; and

2. preventing and regulating the construction of informal settlements and ensuring prevention of construction on low lying areas and flood plains.

And further that the relevant government agency to execute this task submits a report to the Senate within three months of the adoption of this Motion.

**The Temporary Speaker** (Sen. Nyamunga): The mover of this Motion is not present; we, therefore, defer it. Under the circumstances, we now adjourn.

*(Motion deferred)*

## ADJOURNMENT

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday 2<sup>nd</sup> August, 2018, at 2.30 p.m.

The Senate rose at 5.40 p.m.