

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 28<sup>th</sup> November, 2018

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

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

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

##### VISITING DELEGATION FROM KISII COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Members and staff from the County Assembly of Kisii.

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

They are-

Hon. Paul Angwenyi	-	Chairperson, Committee on Delegated Legislation
Hon. Caroline Otachi	-	Member
Hon. Naomi Bosire	-	Member
Hon. Bilancia Nyakoe	-	Member
Hon. Bernard Nyagaka	-	Member
Hon. Samuel Nyambeki	-	Member
Hon. Zablon Mokua	-	Member
Ms. Naomi Ogero	-	Committee Clerk

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.

I thank you.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to join you in welcoming the delegation from Kisii County Assembly. They are our counterparts and I want to congratulate them. I want them to see that this is a House where serious issues are deliberated and that they can learn from here. They were in our meeting this morning and we discussed a lot of issues with them, which is the right way to go, if knowledge is to be shared. I am sure that they will learn and replicate the same in their Assembly.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir, for allowing me to also welcome the delegation from Kisii County, who are my neighbours. In fact, I told Sen. (Prof.) Ogeri, who is my great friend and a neighbour, that my neighbour is coming and I would want to welcome them on his behalf, as a good neighbour. When we were in Kisii, we were welcomed and we received great hospitality. Kisii County is one of my great neighbours and they are good people to stay with.

Welcome to the Senate and welcome again.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir, for the opportunity. They are not necessarily my neighbours but I was born in Kisii when my father was working in the tea industry. He is well known there.

I want to join you in welcoming the distinguished delegation from Kisii County Assembly and to encourage them by letting them know that they are benchmarking from the best. They are our greatest partners in devolution and we fully rely on them to ensure that devolution works in terms of providing oversight to the county governments. They are our first line of defence. We channel a lot of money to our counties and as a Senate, we are fighting to even give them more money but we want to see the common *mwananchi* benefiting from the resources that we channel to the counties and that is where their role comes in. They have to make sure that there is prudent use of every penny that goes to the county.

Welcome to Nairobi; we wish you a fruitful stay in the city of Nairobi.

**Sen. (Prof.) Ogeri:** Thank you, Mr. Speaker, Sir. Let me also add my voice to welcome the Kisii County Assembly Members and the staff who have come here to benchmark on delegated legislation.

They have come at a time when we were talking about capacity building of our county assemblies for them to be equal to the challenges that arise on resource allocation. I sit in the Committee on County Public Accounts and Investment and it is indeed important that they are here to see what role they can play in ensuring that when they pass the County Integrated development Plans (CIDPs), the Annual Development Plan and the budget; that these resources do find their way down to the projects.

They are in a better position to appreciate and assess the impact that those projects have had within their area of operations and within the county itself. Optimum and optimal utilisation of resources is the main thing that we are all fighting for. We will continue fighting for more resource allocation as they continue ensuring that those resources are put into profitable service even as we ask for value for money and make sure that the resources are readily available.

I thank you and I hope that you will enjoy your stay here. This is the way we handle our Business. As you sit here, I hope that you will be able to learn one or two things. Soon, we shall also be visiting you in your county assemblies to see how you are performing. Thank you.

**The Speaker** (Hon. Lusaka): Next Order!

Next Order.

### PAPERS LAID

**Sen. Dullo:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate Today Wednesday, 28<sup>th</sup> November, 2018.

REPORT OF THE ASSUMPTION OF THE OFFICE OF  
PRESIDENT COMMITTEE

Report of the Assumption of the Office of the President Committee Pursuant to Section 19 of the Assumption of the Office of President Act.

REPORT ON THE FINANCIAL STATEMENT OF  
MOMBASA COUNTY ELIMU FUND

Report of the Auditor General on the Financial Status of the Mombasa County Elimu Fund for the year ended 30<sup>th</sup> June, 2017.

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

**The Speaker** (Sen. Lusaka): Next Order.

**STATEMENTS**

ACTIVITIES OF THE COMMITTEE ON HEALTH

**Sen. (Dr.) Mbito:** Mr. Speaker, Sir, Standing Order No.51 (1) (b) provides that at least every three (3) months, a Committee Chairperson is expected to make a statement relating to the activities of the committee. In fulfillment of that provision, I wish to make a statement with regard to the Senate Standing Committee on Health for the period commencing 9<sup>th</sup> August, 2018 to 9<sup>th</sup> November, 2018.

Mr. Speaker, Sir, the Senate Standing Committee on Health was constituted in December, 2017 during the First Session of the Twelfth (12<sup>th</sup>) Parliament pursuant to the provisions of Senate standing order 218. The Committee is mandated to consider all matters related to: medical services, public health and sanitation.

Mr. Speaker, Sir, as outlined in Standing Order No.215 (2), the activities of the Committee shall entail the following-

- (1) Bills considered by the Committee;
- (2) Statements considered by the Committee;
- (3) Petitions considered by the Committee;
- (4) Inquiries undertaken by the Committee and progress of any such inquiry;
- (5) Any county visits undertake by the committee and the outcome of such visits; and,
- (6) The manner and the extent to which the committee met its public participation obligations in respect of the business of the Committee.

Under Standing Order No.218 (4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the National Executive (including adopted committee reports).

Mr. Speaker, Sir, during the period under review the Committee has held a total of eight sittings.

Mr. Speaker, Sir, on reporting on the activities of the Committee, I wish to provide the details of each activity as follows-

### 1. BILL CONSIDERED BY THE COMMITTEE

No Bills have been committed to the Committee. The Committee is, however, following keenly the Health Laws (Amendment) Bill which the National Assembly just concluded with. We look forward to having the Bill submitted to the Committee.

### 2. LEGISLATIVE PROPOSALS PROCESSED BY THE COMMITTEE

Mr. Speaker, Sir, during this period under review, the Committee had a pre-publication scrutiny on the Mental Health (Amendment) Act. The Bill has since been published. We look forward to the Bill being committed to our Committee after the First Reading.

### 3. STATEMENTS CONSIDERED BY THE COMMITTEE

Mr. Speaker, Sir, during this period, the Committee received a statement from Sen. Johnson Sakaja regarding the state of Pumwani Maternity Hospital. On 19<sup>th</sup> September, 2018, together with the Committee on National Security, the Committee visited Pumwani Maternity Hospital. There had been a national outcry after it was alleged that 12 bodies belonging to babies had been found stuffed in boxes.

During the visit, a number of issues emerged; namely-

(1) Pumwani Hospital is handling a larger capacity than it was meant to. This was evident with babies sharing incubators.

(2) The Hospital does not have a cold room or mortuary. This means that when there is a mortality at the hospital, bodies are kept in boxes before scheduled pick up. Bodies are picked every Monday, Wednesday and Friday and taken to Nairobi Mortuary.

(3) The Incinerator had not been working since June, 2018. That meant that disposal of hazardous material was not happening. Additionally, those assigned the task of working in the incinerator did not have the right equipment. This posed a health hazard to their lives.

(4) The County Government of Nairobi was operating with an acting CEC of Health since the substantive CEC had been suspended.

Following the visit by the Committee of National Security, Defence and Foreign Relations, and Health, it was resolved to have a joint sitting in which they would invite the Governor of the Nairobi City County and the administrators of Pumwani Maternity Hospital.

I have listed in my statement some actions to be taken. We plan to visit Pumwani Maternity Hospital to assess the current situation.

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	State of Pumwani Maternity Hospital	18/9/18	sit to Pumwani Maternity Hospital	Ongoing	

#### 4. INQUIRIES UNDERTAKEN BY THE COMMITTEE

Mr. Speaker, Sir, during this period the Committee has engaged the Ministry of Health to inquire about the medical equipment programme, implementation of the Health Act and Universal Health Coverage.

With reference to the Medical Equipment Programme, let me go on record and indicate that the Committee was against the increase of funding for medical equipment from Kshs6.1 billion in Financial year 2017/2018 to Kshs9.2 billion in Financial Year 2018/2019.

Additionally, the Committee has inquired from the Cabinet Secretary for Health about the Medical Equipment Programme. This has culminated with the CS for Health being invited to address the Committee of the Whole on 27<sup>th</sup> November, 2018.

The Committee has inquired about the implementation of the Health Act 2017. The Committee has been informed that the position of the Director General of Health will be filled by the end of December, 2018, and a multi-sectoral technical working group has been formed to facilitate implementation of the Health Act 2017. The Committee will continue to push the Ministry of Health to ensure that the Health Act has been implemented.

The Committee has been following up on the implementation of UHC, one of the big four programmes of the Government. The Committee was informed by the Ministry of Health that four counties have been chosen for the pilot process. The four counties include Machakos, Isiolo, Nyeri and Kisumu. Let me report that the Committee has never been involved by the Ministry in the UHC process. The Committee has its concerns on the sustainability of the programme in its current form because it will require counties to match what the national Government allocates.

#### 5. COUNTY VISITS UNDERTAKEN BY THE COMMITTEE

Mr. Speaker, Sir, during this period, the Committee visited West Pokot County. In particular, the Committee visited Kapenguria Hospital. The purpose of that visit was a result of a petition that was by the residents of Kapenguria. The Committee thanks the Governor of West Pokot for his hospitality during the visit.

The Committee has interacted with Non-Communicable Disease (NCD) Alliance of Kenya. NCDs are a big burden in our country Kenya. They include diseases like cancer, diabetes, hypertension *et cetera*. NCDs should be classified as a national disaster. The Committee interaction has resulted in the drafting of a Bill on processed sugar and alcohol.

Mr. Speaker, Sir, our main challenge was with the national Government especially the Ministry of Health. However, we look forward to working closely with them.

**The Speaker** (Hon. Lusaka): Thank you, Chair. Proceed, Chairperson of the Standing Committee on Labour and Social Welfare.

ACTIVITIES OF THE COMMITTEE ON LABOUR  
AND SOCIAL WELFARE

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. As you would expect, mine is a bit lengthy because my Committee is extremely busy and has dealt with many issues. However, I will try to summarize. I will table the report and it will be available for all Senators and the public.

I will skip the preliminaries. We know that the Committee is established under Standing Order No. 218. Its mandate is to consider all matters relating to manpower and human resources planning, pension, gender, culture, social welfare, youth, National Youth Service (NYS), children's welfare, national heritage, betting, lotteries, sports, public entertainment, public amenities and recreation. The mandate is very wide.

Mr. Speaker, Sir, as outlined in Standing Order No. 215 (2) the activities of the Committee shall entail the following-

- (1) Bills considered by the Committee;
- (2) Statements considered by the Committee;
- (3) Petitions considered by the Committee;
- (4) Inquiries undertaken by the Committee and progress of any such inquiry;
- (5) Any county visits undertaken by the committee and the outcome of such visits; we have done quite a number. I can see the Senator for Kwale nodding because we have been to his county.
- (6) The manner and the extent to which the committee met its public participation obligations in respect of the business of the Committee, which is a very important part of our work as a Senate and Parliament in its entirety.
- (7) Under Standing Order 218 (4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the National Executive.

Mr. Speaker, Sir, during the period under review the Committee has held a total of 25 sittings and one retreat and engaged with many stakeholders who will be listed in the report.

In terms of Bills, we have considered a number of them. We have considered The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) No.2 Bill of 2018. We conducted public hearing on this Bill and many people came to give us their opinions and the report by the Committee was tabled on 18<sup>th</sup> October, 2018.

Mr. Speaker, Sir, we have also considered for publication The Care and Protection of Older Members of Society, Bill (Senate Bills No.17 of 2018) which is sponsored by Sen. Aaron Cheruiyot and the previous one is sponsored by the Senator for Narok, Sen. Ledama Olekina. The public hearing was held and there was a huge number of people who came to give their views on this issue. The Bill successfully went through the Second Stage and is due for the Committee of the Whole.

Mr. Speaker, Sir, the Committee has also sponsored a Bill on County Governments Retirement Scheme Bill which is the first Bill we have sponsored as a Committee and is scheduled for Committee of the Whole. However, we have stepped it down temporarily because the National Assembly also passed a similar Bill which is before the House. It has gone through the First Reading, the Committee has done its

report and we are engaging with stakeholders. We hope that we shall expedite and deal with it, as should be, in the coming few days.

Mr. Speaker, Sir, the legislative proposals that we have processed are on The National Museums Heritage (Amendment) Bill. We held a meeting to consider it and we have responded to your good office, giving it an okay. Normally, the disposition that Committees must take when they do pre-publication scrutiny is not to curtail legislation but to address matters of constitutionality. The rest shall be left to the House to determine.

We have considered a number of Statements including implementation status of the Government set minimum wage guidelines in the country. We have written to the Ministry of Labour and Social Protection and their report will come on Thursday. These are Statements under the new Standing Orders, the rest lapsed. However, we have dealt with quite a number.

Mr. Speaker, Sir, the Petitions considered by the Committee are quite a number. One is by members of the Abasuba Community from Western Kenya on the protection of the Abasuba language, culture and heritage. It was a very interesting Petition. It is also interesting that none of the Senators from that community seemed enthusiastic which shows the challenge the community is facing with their language and assimilation mainly by the Luo community of this country. We recommended the development of a comprehensive policy that takes into consideration stakeholders input that promote indigenous cultures and languages, independent of education system in extra-curricular settings as the Constitution aspires.

Mr. Speaker, Sir, as much as the Petition came from one small community, we looked at it in the holistic nature that we should of all indigenous communities and cultures.

There is also a Petition that was brought by Sen. Mary Seneta by residents of Kaputei North Ward in Kajiado on non-recruitment of locals by flower firms institutions and other companies operating in the ward. This is an issue that affects many counties where local are bypassed and others are employed. We have also concluded on this Petition. We intend to visit. However, we noted that as it is, there is no law regulating private hiring. We thought that through the county government, we can appeal through Corporate Social Responsibility (CSR) and interventions by the Senate that these companies hire locals in whichever county, even in Nairobi County. Therefore, we made the petitioners know those instances. Earlier on, we met the Kenya Institute of Curriculum Development (KICD), the Ministry of Education and the Abasuba team.

Mr. Speaker, Sir, there was a Petition by residents of Tinderet Sub-County in Nandi on operations of Karebe Gold Mining. This Petition came during the historic sitting of the Senate in Uasin Gishu County. We asked for it to be re-routed but we are still, as always, eager to conclude with the same alacrity and energy that the Committee on Labour and Social Welfare is known for.

Mr. Speaker, Sir, there was a Petition by job applicants, which is a serious Petition that we are currently dealing with, on the multiple clearance required by different public bodies for them to apply for jobs in Kenya. For example, the Ethics and Anti-Corruption Commission (EACC), the Credit Reference Bureau (CRB), the Kenya Revenue Authority (KRA) and the Higher Education Loans Board (HELB) have put too many pre-conditions on young people before they are able to apply for jobs.

Finally, Mr. Speaker, Sir, there was a Petition by residents of Kajiado County. I must note that Sen. Mary Seneta is quite active in bringing Petitions to the House and many of them end up in my Committee but we are happy with her. This Petition was by the residents of Kajiado on delayed salaries and non-remittance of statutory deductions in Nol Turesh Loitoktok Water and Sanitation Company. Like the other Petitions, this Petition has opened the wider issue of non-remittance by county governments and public institutions of payments of Pay As You Earn (PAYE), National Hospital Insurance Fund (NHIF), National Social Security Fund (NSSF) for their employees.

We met once on the Petition and we have resolved to invite the petitioners and also make it wider together with the Public Service Commission (PSC) and the County Assemblies Service Boards (CASB).

Mr. Speaker, Sir, there are a number of inquiries. One was on non-payment of salaries to Betting Control and Licensing Board staff, Mombasa County. However, we have resolved that and had a meeting with the governor of Mombasa County, the Speaker, Members of the County Assembly (MCAs) and the County Executive Committee (CEC) members together with Sen. Faki when we went for the county visit. Sen. Faki was really committed and stayed with us even when we went to other counties. He must be applauded.

Normally, Senators will only welcome you to their county but Sen. Faki was our resident tour guide together with Sen. Boy of Kwale County. Because of that, we were able to conclude on this important issue together with the issues of the county government workers union of Kilifi County with Sen. Madzayo who is a Member of this Committee. Kwale County, Sen. Boy and Mombasa County.

There is an issue that is ongoing which we are dealing with on discriminating and victimization of Kenyan workers working on the Standard Gauge Railway (SGR). The objective was to find out what Government agencies are doing in terms of streamlining the operations. We have had several meetings and given undertakings and directions by the powers vested in this Committee, yourself and this House. We have even instructed that all Chinese signage on the SGR be removed and all these Chinese doing jobs like ushering, security and work that Kenyans can do must be done by Kenyans. We have insisted on that.

The Committee is concluding this matter. We are doing a site visit. The problem is that if we will tell them when we will be going, they will hide these wrong things that they do. So, we will go impromptu. We will just show up and ride the train to Mombasa and we hope Sen. Faki can welcome us again.

There is also the Petition letter by former locomotive drivers of Kenya Railways (KR) to find out why they have not been incorporated into the SGR. We have invited them. They are very able *wazees* who were part of the railway and have a lot of experience. We are waiting for a final report from the Kenya Railway Corporation on the same.

As I have noted, we have done a couple of county visits to Mombasa, Kwale and Kilifi counties in this past quarter. This is just for the last three months covered by this report. In those meetings, we met Members of County Assemblies, county speakers, Governors, CECs and County Government Workers Unions (CGWUs) who for a long time have not been recognised.

On the Floor of this House, we gave a directive that because the law says that every county government must acknowledge and recognise the workers union that has the majority of employees of that establishment or institution, we gave a directive that in 14 days, we shall deem all those unions to have been recognised. The reason why governors are not recognizing them is because they do not want to get into Collective Bargaining Agreements (CBAs).

**The Speaker** (Hon. Lusaka): I hope you are concluding.

**Sen. Sakaja:** Yes, Mr. Speaker, Sir. It is because of the nature of the Committee. Its mandate is very wide and it has hardworking Members.

Finally, we have done the commendation of Eliud Kipchoge for breaking the World Marathon Record. One on honorarium to councillors by Sen. Kinyua, we are looking at that because it is a labour issue as well.

Mr. Speaker, Sir, allow me not to go through everything and leave out the public participation that we have done. We have matters of challenges and recommendations. I think many of these are generic with most committees. We have given very strong recommendations of what needs to be done.

I thank the secretariat led by the Clerk of this House. We have seen and I have personal experiences being in both Houses. The Clerk and the staff of the Senate are professional, hardworking and they are very helpful. Were it not for the clerk that we have, staff and secretariat, we would not have achieved what we have been able to in this quarter. The rest of the details shall be left with the Clerks-at-the-Table, including the pending activities that we have.

**The Speaker** (Hon. Lusaka): Thank you, Chairperson of the standing Committee on Labour and Social Welfare.

I now invite the Chairperson of the Committee on Land, Environment and Natural Resources.

#### ACTIVITIES OF THE COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

**Sen. Mwangi:** Thank you, Mr. Speaker, Sir. I am presenting a Statement relating to the activities of the Senate Standing Committee on Land, Environment and natural Resources, pursuant to Standing Order No.51.

Standing Order No.51(1)(b) provides that at least every three months, a Committee Chairperson is expected to make a Statement relating to activities of the Committee. In fulfillment of that provision, I wish to make a Statement with regard to the Standing Committee on Land, Environment and Natural Resources for the period commencing 9<sup>th</sup> August, 2018 to 9<sup>th</sup> November, 2018.

The Committee on Land, Environment and Natural Resources was constituted in December, 2017 during the First Session of the Twelfth Parliament, pursuant to the provisions of Standing Order No.218. The Committee is mandated to consider all matters related to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Mr. Speaker, Sir, as outlined in Standing Order No.215(2), the activities of the Committee shall entail the following-

- (1) Bills considered by the Committee.

- (2) Statements considered by the Committee.
- (3) Petitions considered by the Committee.
- (4) Inquiries undertaken by the Committee and progress of any such inquiry.
- (5) Any county visits undertaken by the committee and the outcome of such visits; and,
- (6) The manner and the extent to which the Committee met its public participation obligations in respect of the business of the Committee.

Under Standing Order 218(4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the National Executive including adopted Committee reports.

Mr. Speaker, Sir, in overall the Committee has held a total of 53 sittings; and a total of 13 sittings during the period under review and is currently planning to hold county or site visits. The Committee has also engaged with several stakeholders. On reporting on the activities of the Committee, I wish to provide the details of each activity as follows:-

#### 5. BILL CONSIDERED BY THE COMMITTEE

NO	BILL	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	The Physical Planning Bill (NA Bill No. 34 of 2017)	16/5/18	The Committee conducted a public hearing on <b>Thursday 21<sup>st</sup> June, 2018</b> and met with the following stakeholders; <ul style="list-style-type: none"> <li>. Council of Governors (CoG)</li> <li>. County Assemblies Forum (CAF)</li> <li>. Machakos County Assembly</li> <li>. Nyandarua County Assembly</li> <li>. Intergovernmental-Relations Technical Committee ( IGTRC)</li> <li>. Kenya Law Reform Commission ( KLRC)</li> <li>. Law Society of Kenya (LSK)</li> <li>. National Gender and Equality Commission (NGEC)</li> </ul>	The Matter was adequately considered and report tabled in the Senate on 24 <sup>th</sup> July, 2018.	Completed

We also had The Land Value Index Laws (Amendment) Bill (National Assembly Bills No. 3 of 2018). The Committee conducted a public hearing on 3<sup>rd</sup> October, 2018 and met with the following stakeholders-

- (1) The Ministry of Lands and Physical Planning.
- (2) The National Land Commission (NLC).
- (3) The National Environment Management Authority (NEMA)
- (4) The Council of Governors (CoG).
- (5) The Institution of Surveyors of Kenya (ISK).
- (6) Haki Madini Kenya (HMK) Limited.

Mr. Speaker, Sir, the matter was adequately considered and a report tabled in the Senate on 14<sup>th</sup> November, 2018. We have so far completed the work on that Bill.

We also dealt with The Natural Resources (Benefit Sharing) Bill, 2018. It was referred to the Committee on 31<sup>st</sup> May, 2018. The Committee in its meetings held on 27<sup>th</sup> June, 2018 and 5<sup>th</sup> July, 2018 met the Sponsor and had interactive sessions on the Bill and informed the Speaker that he may consider publishing the Bill. The Committee concluded the matter on 5<sup>th</sup> July, 2018.

Mr. Speaker, Sir, the Statements considered by the Committee are as follows: The Committee dealt with the Statement on delayed compensation of displaced persons during the construction of Mulima Dam in Mbooni Constituency, Makueni County. The Committee at its meeting held on 20<sup>th</sup> November, 2018, resolved to invite stakeholders responsible for this Statement at a meeting scheduled for tomorrow, 29<sup>th</sup> November, 2018. The status of the meeting is that it is in progress and stakeholders have been invited. We are therefore, waiting for the outcome of the meeting tomorrow.

Mr. Speaker, Sir, the other Statement is on delayed compensation for displaced persons during the construction of Manooni Dam in Makueni Constituency, Makueni County. The Committee at its meeting held on 20<sup>th</sup> November, 2018, resolved to invite stakeholders responsible for this Statement at a meeting scheduled to be held tomorrow, 29<sup>th</sup> November, 2018. The Ministry of Agriculture and the Department of Irrigation is expected to come to that meeting. The matter is in progress and stakeholders have been invited. We shall report on what will happen in the meeting.

The next Statement is on availability and accessibility of water in Nairobi City County. The Committee at its meeting held on 28<sup>th</sup> November, 2018 resolved to invite stakeholders responsible for this Statement at a meeting scheduled for tomorrow, 29<sup>th</sup> November, 2018. The Ministry of Water and Sanitation and the County Executive Committee (CEC) Member in charge of water in Nairobi City County have been invited. We shall give a report after that meeting.

The other Statement is on demolition in Nairobi City County.

**The Speaker** (Hon. Lusaka): You need to be moving towards the conclusion, because your time is running out.

**Sen. Mwangi:** Mr. Speaker, Sir, our Committee has very a wide mandate. So, I have quite a bit to conclude, but I will not take long. I will try to summarise.

With regard to demolition in Nairobi City County, the Committee at its meeting held on 20<sup>th</sup> November, 2018, resolved to invite stakeholders responsible for this Statement at a meeting to be held tomorrow. However, I have been called by the Cabinet Secretary today and he told me that he may not come because there is a Cabinet committee that is dealing with this matter. The chairman of that committee is the Cabinet

Secretary for Tourism, hon. Balala. So, he will not come for this matter tomorrow, but we will reschedule it for February, when we come back from recess.

Mr. Speaker, Sir, the next Statement is on status of issuance of title deeds for Mwea rice farmers in Kirinyaga County. The Committee at its meeting held on 20<sup>th</sup> November, 2018, resolved to invite stakeholders responsible for this Statement to a meeting scheduled for 4<sup>th</sup> December, 2018. The matter is in progress and we will be visiting Mwea to acquaint ourselves with the matter on the ground.

There is also a Statement on water projects undertaken within the 47 counties. In our meeting on the 20<sup>th</sup> November, 2018, we agreed to invite the Ministry of Water and Sanitation tomorrow, 29<sup>th</sup> November, 2018. The Cabinet Secretary will come tomorrow to respond to the questions put to him by the Committee.

Mr. Speaker, Sir, we have considered the following Petitions:-

We had a Petition on alleged non-operationalization of certain provisions of the Wildlife Conservation and Management Act No.47 of 2013. We considered the matter and the report was tabled in this House.

There was also a Petition on variation of the boundaries of Nyangweta Forest in South Mugirango Sub-County, Kisii County. We deliberated on this matter and tabled a report in this House. So, the matter has been dealt with.

The other Petition was on the proposed Mitubiri Sanitary Landfill Project in Murang'a County. This matter was dealt with and the report was tabled in this House.

We had a Petition on enactment of a single legislation on the protection and sustainable management of water resources, water sources and riparian zones in Kenya. We deliberated on this matter and tabled the report.

The other Petition was on adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section). We invited the Petitioners and deliberated on this matter. We are yet to make a trip from Kajiado to Naivasha, so that we can fully determine this matter. However, it is in progress and we have scheduled ourselves to make a trip from Kajiado to Naivasha in January, 2019.

Mr. Speaker, Sir, the other Petition was---

**The Speaker** (Hon. Lusaka): How much more time do you want?

**Sen. Mwangi:** Mr. Speaker, Sir, this Committee had 14 Petitions and I have dealt with six of them. I will finish with the six Petitions and then, perhaps, table the document, so that Members can read it.

**The Speaker** (Hon. Lusaka): Members can read the document; just go to the conclusion.

**Sen. Mwangi:** Mr. Speaker, Sir, I will conclude and then table the document. I will now go to the challenges and recommendations that the Committee had.

Mr. Speaker, Sir, quorum has been a real challenge in the Committee because lack of it has consistently caused us not to hold meetings when we are supposed to. We are, therefore, recommending, as a Committee, that this House reviews the Standing Orders so that no Senator should be in more than two Committees because quorum has become a problem in very many committees. Consequently, we are unable to work because of that problem.

Mr. Speaker, Sir, we have also had witnesses who have ignored invitations and even summons to Committees. On this one, we are recommending that the Parliamentary

Powers and Privileges Act should be reviewed so that we put in place punitive measures for those who ignore summons and, if possible, we put them in jail.

Mr. Speaker, Sir, petitions committed to two committees to be carried out jointly will continuously be a challenge. We should not have a petition that is referred to two committees, because it becomes a problem. There is one petition that we are supposed to deal with jointly with the Committee on Justice, Legal Affairs and Human Rights, and it is a problem getting the two committees together.

Sometimes, the Committee on Lands, Environment and Natural Resources can be ready, but nobody from the other Committee appears. We were, therefore, unable to deliberate on that petition in Kericho because Members of the Committee on Justice, Legal Affairs and Human Rights were not with us, yet we were supposed to deliberate on the matter together.

Mr. Speaker, Sir, I beg to table this report on the Table.

Thank you.

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

**The Speaker** (Hon. Lusaka): Thank you, Chairperson of the Committee on Lands, Environment and Natural Resources. I do not see the Senator for Turkana and the Senator for Wajir, Dr. Ali.

Proceed, Sen. Seneta Mary Yiane.

#### MANAGEMENT OF WATER RESOURCES IN KAJIADO COUNTY

**Sen. Seneta:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources on the management of water resources in Kajiado County. In the statement the Committee should-

- (1) Explain the policies, legal and institutional framework governing the water supply and demand in the country;
- (2) Explain the role of county governments in the management of water resources in their respective counties.

As you have just heard, water companies are having big conflicts with county governments, not only in Kajiado, but in the whole country.

- (3) Explain the measures put in place by the national Government to ensure that there is no conflict between the national Government and county governments over the management of water resources; and ,

- (4) State the water supply and demand situation in Kajiado County, particularly in Kitengela Township; and explain what the national Government is doing to remedy the situation.

**The Speaker** (Hon. Lusaka): This Statement is committed to the Standing Committee on Lands, Environment and Natural Resource. Is the Chairperson present?

**Sen. Mwangi:** Mr. Speaker, Sir, we will invite the Cabinet Secretary (CS) and also the Senator who has come up with the Statement so that her questions can be answered.

**The Speaker** (Hon. Lusaka): Next is Sen. Seneta, with a Statement from the Standing Committee on Roads and Transportation.

#### THE STATUS OF NAMANGA ROAD

**Sen. Seneta:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation on the status of Namanga Road. This is an international road that connects Kenya to Tanzania and, by extension, links Kenya to other countries. The road also serves many transporters, some transporting goods to Jomo Kenyatta International Airport (JKIA) and generally to or from Kenya. In the statement the Committee should:-

(1) Explain why there are no emergency bridges at Ilkekelemendugi River in Kitengela and Ilbisil River along Namanga Road, yet this is an international road.

Any accidents or blockage of the already existing bridges would completely render the road impassable. This is a very important road and if there are no emergency roads, we shall experience what we experienced before along Mombasa Road in Machakos County; where the Athi River, at one time, flooded and people were not able to go to other counties.

(2) State what measures the Kenya National Highways Authority (KeNHA) has put in place to remedy the situation.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Where is the Chairperson of the Standing Committee on Roads and Transportation? Have you have noted the Statement?

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir, we have noted the Statement. We will take it up and get back to the Senator once we get the CS.

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

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

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

**Sen. Sakaja:** Mr. Speaker, Sir, please clarify whether, in this new Standing Orders, we allow 'riders,' because we have the same problem in Nairobi. A lot of roads that have been done, whether it is Outering Road and in many other parts, our children are under the danger of being hit by cars because there are no bridges; and women are indignified by being forced to jump over these barriers. We would like to know the status and what the plan is with these roads. Is it---

**The Speaker** (Hon. Lusaka): Yes, we allow it. We will allow you, but briefly.

**Sen. Sakaja:** Kindly, Mr. Speaker, Sir, in addition to that, the Committee should give us a status, because at some point I heard that they were somewhere in Nairobi of course without inviting the Senator for Nairobi. They went to Outering and Thika Roads. I wish they would have invited me to accompany them, and we will welcome them the Nairobi way next time.

It is, however, important for them to also impress upon these authorities that they are not building roads for cars, but for people. Therefore, when you build roads for people, we want to see bicycle lanes; we want to make sure that there are bridges for people to cross over. Please, let us hear the status and also the design policy that KeNHA, the Kenya Urban Roads Authority (KURA) and all these agencies are employing.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Sen. Lusaka): Next Order.

**BILL**

*Second Reading*

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

This Order will also be deferred because we do not have the numbers.

*(Bill deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO.13 OF 2018)

*(Committee of the Whole Deferred)*

**The Speaker** (Hon. Lusaka): Order No.10 is also deferred because we do not have the Chairperson.

**COMMITTEE OF THE WHOLE**

THE URBAN AREAS AND CITIES (AMENDMENT) BILL  
(SENATE BILLS NO.4 OF 2017)

*(Committee of the Whole Deferred)*

**COMMITTEE OF THE WHOLE**

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

*(Committee of the Whole Deferred)*

**The Speaker** (Hon. Lusaka): What is your Point of Order, Sen. Sakaja?

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. On Order No.11, The Care and Protection of Older Members of Society Bill (Senate Bills No.17 of 2018), the sponsor of the Bill and the Chairperson of the Committee are all here and we are ready to move it at the Committee of the Whole stage, because all the amendments are ready. If there is no other presiding officer, we can get Senator number one in terms of Standing Orders, Sen. Khaniri, to sit in. We will do it very quickly because he understands how to do it. He does not have to be in the Speakers Panel; he can do it very quickly and finish the amendments.

**The Speaker** (Sen. Lusaka): Sen. Sakaja, please approach the Chair.

*(Sen. Sakaja consulted the Speaker)*

Hon. Senators, we will defer Orders No.12,13 and 14 and proceed to Order No.15

### COMMITTEE OF THE WHOLE

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

THE COPYRIGHT (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO.33 OF 2017)

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

*(Committee of the Whole Deferred)*

### BILLS

#### *Second Reading*

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL  
(SENATE BILLS NO. 24 OF 2018)

*(Sen. Farhiya on 27.11.2018)*

*(Resumption of Debate interrupted on 27.11.2018)*

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Hargura, you were in the process of seconding, you have 12 minutes.

**Sen. Hargura:** Thank you, Mr. Speaker, Sir. I would just like to summarise my secondment of this Bill.

For the benefit of the Members, whenever we make a Bill, we normally have some regulations to be made by some particular authorities. If it is a Cabinet Secretary (CS), we say that the regulations will be done by the CS. A Bill which was passed by this House together with the National Assembly, whatever it contains, any statutory instrument, need to be also checked by this House. But, the Statutory Instrument Act, 2013, excluded the requirement that the Senate also has to look at those statutory instruments before they are passed. That is where we have problems.

I mentioned a case of the Community Land Act which we passed together with the National Assembly but the regulations which were made by the Cabinet Secretary, Ministry of Lands, did not come to this House. When we passed that law, we expected that the regulations should also be in line with the spirit with which we passed the law.

But if the regulations do not come to this House, then it means that somewhere along the line, we are not fulfilling our responsibilities as legislators and also as defenders of counties because these laws affect counties.

If regulations are made which are not in the interest of the counties, then we will not have accomplished our task of defending the interests of the county governments. That is why this amendment was brought so that we ensure that once a Statutory Instrument is developed based on legislation from Parliament, then it is submitted to the two clerks; the Clerk of the Senate and the Clerk of the National Assembly.

That is the first Amendment to Section 11; then to Section 15, it is just the time frame that if the time lapses before the Committees finish with the Instrument, then each House can extend for a period of 21 days, the duration required for the Committees to look at that instrument.

I second the Bill.

*(Question proposed)*

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

**Sen. Cheruiyot:** Thank you, Mr. Speaker Sir, for giving me this chance. I support this Bill by my good friend, Senator for West Pokot; Sen. Pogishio. This is a very important Bill which even before we delve into its merits because in any case, it is a very small amendment, I would wish to call to the attention of the House that on many occasions, when presented with Bills during Second Reading, Senators suggest so many good proposals for amendment that they note with how the Bill has been drafted.

However, when we are doing Committee of the Whole, we have just seen how we have had to drop Order Nos. 11, 12, 13 and 14 because despite being the Committee of the Whole, so many things that Senators raised about this particular Bills are left to only either the Movers or the seconders of those particular Bills or for the Committee to handle.

Therefore, in between that process, so many things are left out and it is unfortunate because some of these laws come back to haunt us especially we, as the House of the Senate. We are aware of all that is going on around the Houses of Parliament and how some people would wish that they could easily strike out the Senate but they found out that it is impossible. It remains to be the upper House and the House where people on many occasions consider being the House of reason.

This amendment is primarily important, because I am sure when the proper Statutory Act was being passed, somebody may have easily noted that the way it was drafted with just reference to the words being transmitted to the Clerk without specificity to know that the Houses of Parliament in Kenya has two clerks; the clerk of the National Assembly and the Clerk of the Senate. Without that level of specificity in the Bills that we are passing, then we end up finding ourselves in the kind of situations where laws have been passed in the National Assembly and just the same is transmitted to the President for assent without concurrence from the Senate.

You find that such Bills are signed into law and they become operational. It is unfortunate that we only have to rely on data of this world to remind us on many occasions that this particular Bill was supposed to have been transmitted to the Senate but the same was not done but sometimes even we, as Senators, are not aware. Article 110 of

the Constitution of Kenya 2010 clearly stipulates there has to be concurrence of you, as the Speaker of the Senate and the Speaker of the National Assembly, before any particular Bill can be processed. I do not imagine or want to believe that, that law has been tested to its full limits.

On many occasions, you find Bills that are before the National Assembly over which we, as a Senate, have not given concurrence through our Speaker that these laws do not concern counties. The truth of the matter is that the day we decide to put our foot down and ask the country to tell us any matter that does not concern counties, there will be none. That is the truth of the matter. All these issues that they are discussing even if it is the Statute Law (Miscellaneous Amendments) Bill, their application will be within counties.

Therefore, if you look at many other jurisdictions like our own that have a bicameral Parliament like ours, the understanding is that both Houses concur to Bills so that you can have double scrutiny of what is being proposed before the country. But, somebody has mischievously thought and found a way that the only laws as a Senate we are supposed to consider are what is friendly to them and they are considered to be within the ambit of counties.

Therefore, I want to say that I support this specific amendment that once enacted, as has been said by Sen. (Eng.) Hargura in his seconding notes, will make it mandatory for us, as we inspect the statutory instruments that accompany many of these laws, the concurrence of the House of Senate will now be felt because it is specifically directed. Nobody can mischievously hide under the law and just say, we consulted a particular clerk. It has to be the Clerk of the Senate.

With those few remarks, I support.

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

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. I want to also support the proposed amendments to the Statutory Instruments Act. I serve in the Committee of Delegated Legislation. Often, we have had problems in terms of determining which subsidiary legislation should come before our Committee and which one should go to the National Assembly. Unless we, as a Senate, fight to reclaim our space, then we will always be overrun by the National Assembly.

Mr. Speaker, Sir, I support this Bill because it is giving us an opportunity to reclaim our rightful place as Senators, when it comes to scrutinizing subsidiary legislations that emanate from the Executive. If we follow the history of countries that have bicameral Parliaments like the United States of America (USA), there were a lot of fights between Congress and the Senate, before eventually Congress came to accept that the Senate is the superior House.

In fact, this debate that we have heard, where the National Assembly says that finance Bills should not come to the Senate, these are issues that were there in the USA between Congress and the Senate. After a lot of infighting between Congress and the Senate, eventually it was accepted that finance Bills must be processed by the Congress and get the concurrence of the Senate. In fact, at some point in history, the chairmanship of the Finance Committee used to alternate between Congress and the Senate. Therefore, I do not understand how somebody can make a conclusion that finance Bills do not concern counties. What concerns counties more than how we disburse funds to our counties?

We as Senate, should each day in, day out, fight to ensure that we reclaim our space, truly represent our counties and that any Bill that affects counties must pass through the Senate. Therefore, once these amendments are processed, it will now be as clear as day and night that Bills that are sent to the Clerk of the National Assembly will go to the Assembly and those that are sent to the Clerk of the Senate, will be processed by the Senate.

So, this amendment is coming in to cure some lacuna in law. When this Act was being passed, people assumed that Senate will not play any role, but having been in existence for the last six years - I can confirm that from our Committee - we have processed a number of regulations. There is a very key role that the Senate should play in scrutinizing these regulations.

Mr. Speaker, Sir, we need to be more alert as Senate, because I have read a number of Bills that are processed by the Committee on Delegated Legislation by the National Assembly, that never find their way to the Senate, which is not right. That is not the way it should be. Once the National Assembly has made a determination on a particular regulation, they should also find their way to the Committee on Delegated Legislation of the Senate, either for concurrence or rejection. I want to appeal to my Chairman, Sen. Poghisi and Members of this Committee, to always be alert on these regulations.

Mr. Speaker, Sir, I support this amendment because it is one that is squarely within Article 110 of the Constitution. It gives us more role in scrutinizing regulations that are forwarded to either the National Assembly or the Senate by the Executive.

With those few remarks, I support.

**The Speaker** (Hon. Lusaka): Hon. Senators, I do not see any more interest and, therefore, I invite the Mover to reply.

**Sen. Farhiya:** Thank you Mr. Speaker, Sir. I beg to reply and wish to thank Sen. Hargura for seconding it and articulating the impact of not having those amendments in this Bill, in terms of how it has – he gave a real example - affected the Land Bill regulations.

Mr. Speaker, Sir, this section was okay as passed in 2013, however this year, The National Assembly Committee on Delegated Legislation moved an amendment to remove the Senate. So, it is not that it was not there, it was there but they removed it deliberately, the intention being to render this Committee useless, in terms of Delegated Legislation in the Senate. In addition, it would have also rendered the other committees useless, if this was allowed to pass.

I also wish to thank Sen. Cheruiyot for his remarks in terms of this House stamping its authority to ensure that they protect their space and, by extension, counties, because this House exists to protect counties.

I also wish to thank Sen. Omogeni, for his views on Committee deliberations and other issues, including the struggles between Congress and Senate in the USA.

Mr. Speaker, Sir, in conclusion, given that our own existence as a House is being threatened all the time by different attempts by the “Lower House”, we need to pass these amendments, just to stamp our authority as the “Upper House”, claim our space and by extension, protect counties.

Pursuant to Standing Order No. 61(3), I request that the putting of the question be deferred to a later date. Thank you.

**The Speaker** (Hon. Lusaka): Putting of the Question on this Bill is deferred to Tuesday, 4<sup>th</sup> December, 2018. It is so ordered.  
Next Order.

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

*Second Reading*

THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL  
(SENATE BILLS NO.25 OF 2018)

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

**Sen. Khaniri:** Mr. Speaker, Sir, I want to thank you for the opportunity and to state that, I am very glad that finally, I have an opportunity to move this Bill. This Bill has been on the Order Paper for the last couple of months. I was worried that if I do not get an opportunity to move it today, tomorrow being a day for Members Motions, and next week we all know what is happening, I was not going to get an opportunity to move this Bill until next session which is next year.

Nevertheless, I thank you and beg to move that the County Law Enforcement and Compliance Bill 2018 be read a Second Time.

Mr. Speaker, Sir, I wish to state that the purpose of the legislative proposal, is to establish enforcement and inspectorate units in the counties which are to be responsible for ensuring compliance with county laws.

Albert Einstein once said that nothing is more destructive of respect for the Government and the law of the land, than passing laws which cannot be enforced. Therefore, this Bill comes to cure the lacuna in the law, as far as county laws enforcement is concerned. I believe this piece of legislation is long overdue; we passed the new Constitution in 2010, that established county governments and assemblies, which were given powers to legislate and as Senate, I think we slept on the job. We should have passed this Bill long time ago, so that the legislation that is churned through the County Assemblies, has a body that can ensure compliance and enforcement.

Mr. Speaker, Sir, in giving some background, the establishment of a County Law Compliance and Enforcement Unit (CLCEU) is informed by need for officers who can be responsible for enforcing and ensuring compliance with the law enacted by the county governments. Under Article 185 of the Constitution, counties have the power to make laws that are necessary for, or incidental to, the effective performance and exercise of the powers of the county government under the Fourth Schedule.

In this regard, the role of the enforcement officers within the counties is integral to the daily operations and conduct of business in the counties. Otherwise, it will be an exercise in futility, where county assemblies will come up with good pieces of legislations, but with no unit to ensure that those pieces of legislation are complied with.

Mr. Speaker, Sir, it is necessary that a national law broadly sets out the functions and expected conduct of such enforcement officers. They must ensure safety and wellbeing of the residents of the county and provide an enabling environment for the conduct of business and other regulated activities at the county level.

Mr. Speaker, Sir, we have left this to the county assemblies, but it is not right. We need to have a standard legislative framework. It is only the Senate that can come up with this kind of law that will see to it that we have a proper legal framework for recruitment, training and provision of code of conduct for these particular officers we are trying to establish by this legislation.

There needs to be sanity and order in the counties. We do not want a situation where governors pick their political goons and make them the county *askaris*, without any code of conduct. These *askaris* go harassing their opponents and *wananchi* in the markets. We must have a proper code of conduct. As I said, it is only the Senate that can come with this piece of legislation.

In addition, the professionalism and approach of the enforcement officers shapes community notions of the county government. Currently, reports abound of the enforcement officers and county *askaris* mishandling the general public. This Bill, therefore, provides a legal framework for the appointment, functions and a uniform code of conduct for the enforcement officers.

Mr. Speaker, Sir, before I elaborate on what each clause provides, allow me to remind this House on the milestones that have resulted into this Bill. On Tuesday, 21<sup>st</sup> July, 2015, in the last Parliament, I requested a Statement under the then Standing Order 45(2) (b), concerning the operations of the county inspectorate departments in the country. At the time, there were numerous reports of human rights abuses, disorganization, impunity and political misuse of county *askaris* in the then newly created counties.

The Statement sought to find out if there existed a uniform code of conduct, training, disciplinary and complaints mechanism. Most importantly, I wanted to establish the legality of having inspectorate departments in the country. The Statement was forwarded to the Council of Governors (CoG) and the Office of the Attorney General, who gave responses as follows:

The CoG affirmed the fact that county governments have legislative authority under Article 185 of the Constitution and that it was deemed necessary that they establish inspectorate departments for the enforcement of these legislations. Some counties inherited inspectorates or reinforcement departments from the previous local government authorities, especially in the case of city and municipal councils.

The CoG also recognizes the need for collaboration between the national Government and the county governments in delivery of security services.

From their response, the CoG confirmed that it had initiated discussions with the Ministry of Interior and Coordination of National Government, the Attorney General and stakeholders to explore ways of collaboration. The CoG concurred with the Attorney General's advisory that there is need to establish security units at the counties, either through legislation or agreement with the national Government.

The CoG, recognizing the mandate of the Senate to protect counties, affirmed its support for legislation that will streamline enforcement units in the counties. In other words, we have a strong nod - although we do not need it, since it is within our mandate - from the CoG that we must pass this legislation, so that there is a standardized legal framework for the establishment of these units.

Mr. Speaker, Sir, from the Attorney General's Office, the Attorney General indicated that Chapter 11 of the Constitution defines national security, with Article 238

outlining the principles of national security. Article 239 (1) outlines the organs that undertake national security, which are the Kenya Defence Forces (KDF), the National Intelligence Service (NIS) and the National Police Service (NPS). However, it is important to note that the Bill does not seek to create an organ that provides national security.

The Attorney General pointed out that the NPS is under the national Government as per the Fourth Schedule of our Constitution, 2010. Further, Article 239 (4) states:

“A person shall not establish a military, paramilitary, or similar organization that purports to promote and guarantee national security, except as provided for by this Constitution or an Act of Parliament.”

This prohibition applies to county governments too. Therefore, they have no powers to establish these units on their own, unless we pass this legislation.

The Attorney General further intimated that Article 247 of the Constitution grants Parliament powers to enact legislation, establishing other police services which must be under supervision of the NPS and the command of the Inspector General of the Police.

I wish to draw the attention of this House to other disciplined forces that have been established according to Article 247 of the Constitution. These are: The Kenya Forests Service (KFS), the Kenya Wildlife Service (KWS), the Kenya Prisons Service (KPS) and the Kenya National Youth Service (KNYS). However, all these units are administratively placed under the command of the Inspector General of Police through the amendment of the Executive Order No.2 of 2013.

Mr. Speaker, Sir, while in the long run it will be necessary to consider sharing of the national security function between the national Government and county governments as envisaged under Article 187 of the Constitution, this Bill if enacted will help tackle some emerging safety and security concerns in the counties and complement police efforts.

At this point, I wish to acknowledge the ongoing police reforms that were launched by His Excellency the President on 13<sup>th</sup> September, 2018 and appreciate the unified structure modeled on the administrative structure of governance that recognizes devolution. Devolution should be the way to go and by setting up a recognized enforcement structure in the counties, law enforcement and security will be better managed by the counties.

At this point, allow me to take the Senators to other jurisdictions in the world and give a brief comparative analysis. In the United States of America (USA), an elected official known as ‘the Sheriff’ is in charge of enforcing the law in a county or town. The role of Sheriff’s offices varies considerably from state to state and county to county.

The Sheriff’s Office Law Enforcement Operation Branch is responsible for providing primary law enforcement services. These services include sheriff patrols, detective services, court security, civil processes and law enforcement records functions. It is, however, important to note that their responsibility of law enforcement in the USA is elected, although he serves under the Governor who is supposed to ensure procedural and proper execution of the laws.

Generally in the USA, there are federal law enforcement agencies, state law enforcement agencies, county law enforcement agencies and municipal police departments. The above system is not any different in the United Kingdom (UK), Canada and Australia jurisdictions which share the English traditions of the sheriff.

It is, therefore, worth noting that all these jurisdictions have special law enforcement agencies for their devolved units. However, in some instances, the local law enforcement agencies are in the form of devolved police powers where each county and state has its own police services, which is a departure from the Kenyan situation. This reiterates my earlier call on police devolution, which should be the way to go by setting up and recognising enforcement structures in the counties to complement what this Bill is seeking to establish.

In South Africa, they have the municipal police. This is a separate police force maintained by some municipalities for law enforcement. Municipal police forces are responsible for traffic policing and enforcing local bylaws within the municipality. They work in cooperation with the South African Police Service to prevent crime and maintain public order. Municipal police forces exist in a number of major South African cities, including Cape Town and Johannesburg.

It is worth noting that Section 206 of the Constitution of South Africa provides that national legislation must provide a framework for the establishment, powers, functions and control of municipal police services. This is what we are seeking to do here so that we have national legislation that will form the legal framework under which various counties will form their units.

The point of departure with our Kenyan situation is that the South African Police Service Amendment Act 1998 allows municipalities to apply to the government of the relevant province for permission to establish a municipal police service. The Provincial Minister of Safety and Security may approve the application after consultation with the National Commissioner of the South African Police Service.

Mr. Speaker, Sir, the powers and responsibilities of South African Municipal Police are more restricted than those of those of the South African Police Service. The three statutory functions of the municipal police services are traffic policing, enforcement of bylaws and regulations; and preventing crime. Thus municipal police forces do not conduct criminal investigations.

In summary, most jurisdictions in the world have enacted laws to establish law enforcement units for their devolved units. As noted earlier, the framework may differ, but the core function of enforcing county legislation and regulations is constant in all these units that have been established. It is, therefore, paramount that a progressive country like Kenya should have a legal framework for the establishment, appointment, functions and uniform code of conduct for the enforcement officers.

Coming back home, this Bill is fashioned in the same way as the following Acts, which have provisions for enforcement officers: The Standards Act, which establishes the Kenya Bureau of Standards (KEBS). Part VI, Section 13 of the Act provides for the appointment of the inspectorate, while Section 14 provides for their powers. Therefore, even the KEBS have their unit. Part X, Section 117 of The Environment, Management and Coordination Act provides for the appointment of environmental inspectors and their powers. Part II of The Forest Conservation and Management Act of 2016, establishes the KFS and provides for its functions and powers. Part II of The Wildlife and Conservation Management Act of 2013, establishes the Kenya Wildlife Service (KWS) and provides its functions and powers. Part II of The Prisons Act, CAP 90, establishes the KPS and provides for its functions.

Mr. Speaker, Sir, allow me to take this House through the structure of the Bill and indicate as follows. Part I of the Bill provided for the preliminaries of the title, interpretations and objects of the Bill. Amongst the objects is to provide a framework and standards for the establishment and operation of county law compliance and enforcement units; and to regulate the conduct of county law enforcement and compliance officers. As I said earlier, we must have a standardised code of conduct for all these officers across all the counties.

Mr. Speaker, Sir, Part A of the Bill is the establishment of the law enforcement and compliance units. The Bill provides for the establishment of law enforcement and compliance unit in every county, consisting of such maximum number of officers as shall be determined from time to time by the County Public Service Board (CPSB). The CPSB is to be responsible for deployment, promotion and demotion of these officers.

Mr. Speaker, Sir, the Bill has the provision for the code of conduct. This is because how professionally the enforcement officers perform their duties will have a major impact on the image and the business environment of the county. The Bill, therefore, sets out the code of conduct for the officers in the unit and requires that they subscribe to the code of conduct. Members can go through the code of conduct provided for in the Miscellaneous Schedule of the Bill, which states that-

1. An enforcement officer shall, in the implementation of this Act or any other law—
  - (a) not unlawfully discriminate against any person;
  - (b) exercise fairness, self-control, tolerance;
  - (c) respect all persons and their traditions, beliefs and lifestyles if they are compatible with the rule of law; and,
  - (d) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

Those are just some of the provisions in the code of conduct.

Mr. Speaker, Sir, part (c) of the Bill sets out the functions of the county law enforcement and compliance units as follows-

- (a) Ensuring the compliance and enforcement of all county laws;
- (b) Inspection for compliance with trade licences and permits;
- (c) Ensuring legal compliance to all county revenue collection, including cess, royalties and land rates;
- (d) Protecting and guarding the property of the county; and,
- (e) Protection of public entertainment sites, among other duties.

On the powers of entry by enforcement officers, the Bill sets out the powers of the enforcement officers which include-

- (a) “enter a premise in which a regulated activity is undertaken and carry out examinations or enquiries to determine whether the provisions of this Act or any other relevant county law are being complied with;
- (b) require the production of, inspect, and examine a license, register, record or other document relating to a regulated activity within the county;
- (c) carry out periodic inspections of all premises undertaking regulated activities within the county, to ensure that the provisions of this Act or any relevant county law are complied with;”

It says, any article used in the commission of an offense.

Mr. Speaker, Sir, that is just amongst the powers. There are many others and are all listed in the Bill. I hope Members will get an opportunity to go through the Bill. If they have any proposals for amendments, we are looking forward to those proposals.

With regards to powers of arrest, the Bill provides;

“Where an enforcement officer has a reasonable ground to believe that an offence has been committed under this Act or any county law, the officer may arrest the person committing the offence. Where the offence under subsection (1) relates to a regulated activity, the officer may arrest—

- (a) The proprietor of the activity;
- (b) An employee of the proprietor; or
- (c) Any other person whom the officer reasonably believes is involved in the carrying out of the activity.”

The Bill provides for the use of reasonable force to execute arrest where a person who is believed to have committed a crime under any county law resists an arrest.

The Draft Bill further requires the county enforcement officers to present arrested persons to the nearest police stations. Therefore, we do not expect this unit to have their own cells for incarceration of offenders.

The Bill further gives authority to the unit to take temporary possession of goods, vessels and animals that are held by persons contrary to the law until such a time that the persons have complied with the law.

The Bill further requires an officer to sufficiently disclose his or her service identity while exercising any of his or her powers under the Act.

The Bill makes it an unlawful for any person to erect, build, establish or keep any structure, building, shed, kiosk or any other structure public or private without approval of the county government. If the owner and or occupier does not demolish or obtain approval within the seven days, the county government may demolish such structures and surcharge the owner of the plot or person who has constructed, the cost of the demolition.

The Bill provides that where a notice is to be given under the law, such notice shall be deemed to have been served if it is placed in a conspicuous place of the structure or building, served upon the owner or the occupant.

There are miscellaneous provisions. The Bill makes provisions for the coordination and collaboration between the relevant county departments and State entities at the national level, including the Directorate of Public Prosecution (DPP) and the Judicial Service Commission (JSC). It also gives powers to the county legislation on law enforcement and compliancy and establishes a reporting system.

The Bill will also require that county law enforcement officers respect the fundamental rights and freedoms of the residents of the county and allow for a conducive environment of business within the county.

Finally, the Bill gives an elaborate schedule on the code of conduct to be observed by the law enforcers, specifically it provides for duty to act impartially, calls for respectful conduct, demands for confidentiality, discourages improper motive and encourages declaration of conflict of interest. It also calls for protection of arrested persons.

Mr. Speaker, Sir, I wish to state that the Bill does not delegate legislative power. However, county governments may delegate legislative authority to the relevant county executive committee member as may be appropriate.

This Bill affects powers and functions of the county government. It is, therefore, a Bill that concerns counties in terms of Article 110 (1) (a) of the Constitution of Kenya 2010. It is not a money Bill within the meaning of Article 114 of the Constitution of Kenya 2010.

In conclusion, I am proud to have sponsored this Bill. However, ensuring the joys and responsibilities of the legislative mandate of this House, there is need for this Bill to be fast tracked to help tackle the numerous challenges faced by the general public in their interaction with the county enforcement officers.

The enactment of this Bill will also provide a solution to the lacuna in law as to the extent of powers of enforcement officers controlled by the governor and limitations of the county *askaris*. I urge hon. Senators to give it the due consideration it deserves and support it fully.

I beg to move, and request Sen. Cheruiyot of Kericho County to second the Bill.

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

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

Thank you, Madam Temporary Speaker.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker, for giving me this chance. I want to appreciate the very good thoughts and work that has been put into this Bill by my elder brother and friend, the Senator of Vihiga County, Sen. Khaniri.

The fact that six years into devolution, we, as a House, have not considered making such laws, speaks a lot about how us. Sometimes we miss our priorities because we do not consider matters that are extremely important to our county governments.

Devolution offered Kenyans an opportunity to self-governance. If you listened keenly to Kenyans in the run up to the 2010 Referendum, they felt that they were not getting proper representation and services from the centre. It was, therefore, important that we go the devolved way. This was to ensure that each and every person in our society, in their own small way, manage their affairs in a neat and better way than what was being offered previously. Therefore, we ushered in devolution into our country that came with many challenges.

This Bill proposes something important which I would not wish to repeat the words of Sen. Khaniri. I wish to point out, perhaps, one or two things that I feel are extremely important in this Bill. I call upon my colleagues to support it.

Earlier on this year, we have witnessed a number of counties that organized the graduation ceremonies of what we would be considered as enforcement officers. For example, we saw 200 enforcement officers being commissioned in Bomet, Nandi, among other counties. Currently, there is a stand-off because the county government enlisted 780 young men and women and they trained them in a particular village polytechnic and they wanted to employ them as law enforcement officers. However, they do not have the legal basis for doing it. The legislative framework has not been availed up to this particular time.

The County Public Service Board (CPSB) advised that despite the fact that they spent significant amounts of county resources in training them---

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, kindly, consult in a manner that ensure that we can also listen to the proceedings.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker. The CPSB advised that despite the fact that there might be established need for that particular county to recruit county enforcement officers, the procedure under the Public Service Management is for them to come up with an establishment that also gives the proposals of the requisite qualifications for one to be recruited as an enforcement officer. They were basically telling the county that they had put the cart before the horse and it would be impossible to solve that quagmire as it is. To date, the stand-off has never been resolved in many counties. I keep hearing the Governor promising to employ these young people, but nothing is forthcoming.

In this particular Bill, it is proposed that the CPSB will determine the number of county law compliance and enforcement officers required for effective performance of this unit. It is upon them to carry out a needs assessment. I find this to be important for you do not want a governor, having been newly elected into office, to want to directly appoint ward coordinators. If that is allowed, they will appoint all their cronies and friends under the guise of being county enforcement officers. We need to establish the required number and what will be the proper number of enforcement officers per county. The CPSB is well---

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Order! Hon. Senators, kindly consult quietly.

**Sen. Cheruiyot:** Madam Temporary Speaker, you may want to note that those who are leading in the disturbance in the House are the Senate Majority and Minority leaders.

*(Laughter)*

I wish I knew that the Senators were either held up in a meeting or that they were somewhere. I would have proposed that part of the Orders which were dropped out of the Order Paper today be considered later. This is because part of the amendments that I am making to the County Governments (Amendment) Bill (Senate Bills No. 13 of 2018) is to ensure that the chairperson of a CPSB be a human resource practitioner. I am making that proposal to establish some of these things that are now being proposed in this Bill. You need a properly trained human resource professional who will look at the proposed matching then go ahead to match the skill gaps. This is a field where many a times people feel that any other professional can handle it. However, the truth of the matter is that you need a properly trained human resource professional to understand some of these proposals, including what is now being proposed in this particular Bill.

The Bill talks about the appointment of officers to this particular unit. Those officers who will be responsible for human resource function relating to the unit and

qualifications. Does one need to have a form four level of education or post-secondary education to be appointed in this particular unit?

Allow me to address myself to an issue I consider important. As I had earlier said, Sen. Khaniri has done an exemplary job. He has gone into other jurisdictions and given us a comparison. By the way, I commend him for moving the Bill in such manner. They should speak and enlighten their colleagues who care to listen of what other countries, that we need to benchmark with as a country, are doing about it and why they are proposing that a particular thing be done.

I only have concern with Clause 8(4) of the Bill where it says that:-

“If forty-eight hours under subsection (3) end outside ordinary court hours, or on a day that is not an ordinary court day, the enforcement officer shall report the seizure on the next court day.”

This is a properly provided provision which ordinarily no one will be opposed to, but look at what is happening in the country. Look at what the Director of Public Prosecution (DPP) and Directorate of Criminal Investigations (DCI) are doing. They are arresting members of the public and keeping them in custody for more than four or five days despite the Constitution stating that you cannot keep a suspect in custody for more than 24 hours unless it is on a weekend. Therefore, the question is; what is this? I am on record as having spoken about it. What is this hurry about arresting people on a Saturday or a Sunday yet they are not a flight risk and they are not threatening anyone.

This kind of a provision may be subject to abuse. Somebody can fall foul with the governor and the enforcement officers can pounce on them then use this particular provision. It has its own limitations, but it is one provision that needs to be used sparingly. The right to bail is a fundamental human right and it well articulated under the Bill of rights in the Constitution. The fact that there is continuous abuse of that particular right is something that we need to speak about knowing the history of our country. We are well aware of the days of detention without trial and the Nyayo House Torture Chambers. We are seeing it creep in---

*(Several Members stood up in their places)*

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

**The Temporary Speaker** (Sen. Nyamunga): What is your point of order, Senator?

**Sen. Poghiso:** Madam Temporary Speaker, I thought that you would have seen that there was more than one Member on their feet while Hon. Cheruiyot was contributing to the Bill.

**The Temporary Speaker** (Sen. Nyamunga): I brought that to their attention several times. It is unfortunate that it is the leadership of the House doing that. What else--

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

*(Sen. (Dr.) Kabaka stood up at his place)*

**The Temporary Speaker** (Sen. Nyamunga): You cannot be on your feet before you are given an opportunity. What is your point of order?

**Sen. (Dr.) Kabaka:** Madam Temporary Speaker, it is the leadership that was standing. However, I have never seen Sen. Orengo excited like today. Could it be that he is excited because 'baba' was around?

**The Temporary Speaker** (Sen. Nyamunga): That is a possibility. Continue, Senator.

**Sen. Cheruiyot:** Madam Temporary Speaker, it is good to note that all the excitement that I am seeing in the House is courtesy of 'baba'. For those of us who missed that opportunity, I am sure that Sen. Orengo will organise for us to also get to meet him, and perhaps, get what he gave them for us to be equally excited.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Yes, the Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I am gladly listening to Senator for Kericho County. I want him to clarify if he wants to meet 'baba' or Arap Mibei?

*(Laughter)*

**Sen. Cheruiyot:** Madam Temporary Speaker, I have not defected and I do not intend to do so. However, 'baba' is an icon that we all admire and respect. Therefore, I will be more than glad to meet him. I met him a few days ago and I thought that he did not know me. However, he told Sen. Murkomen, "I know this young Senator. I see him on NTV on Tuesdays and he hits me so hard, but I do not take offence because he is a young man and he is still learning his ways." In a very subtle way, he told me to grow up. I respect him a lot.

Madam Temporary Speaker, I was speaking about the days of detention without trial coming back into this country courtesy of the work that is being done by the DPP. This was in relation to this particular provision where the Constitution has spoken about how long a suspect can be kept in custody without trying them or releasing them. However, as it happened this week with the Chief Executive Officer (CEO) of the National Hospital Insurance Fund (NHIF). He was charged and when the DPP was asked to lay the charges for one to take plea, they requested for more days to organise their case. One then wonders what the hurry for the arrest was.

It is something that this House needs to properly prosecute. I urge my colleagues who sit in the Committee on Justice, Legal Affairs and Human Rights to summon the DPP and get a better understanding of this particular issue. There might be need for us to properly word it so that we do not end up with the same scenario in our counties. The policemen are trained officers who have gone through an extremely rigorous training yet they do so. Can you imagine what enforcement officers who will, perhaps, be trained in a village polytechnic can do to members of the public if they are left on their own with this kind of a provision?

Clause 16(1) is of great interest to me because it further supports what I am saying. It states that;-

"Where an enforcement officer arrests a person, the officer shall immediately present the arrested person to the nearest police station."

It is important that we state that. We spoke earlier when we were contributing to The County Statutory Instruments Bill about the need for us to properly check the language that is used in the laws that we are passing. I love the fact that it has been stated that it is 'immediately' which does not have two meanings in the provisions of the English language. Therefore, I support that particular clause.

We, as a Senate, part of our mandate on many occasions is to make laws which are left to the respective 47 county assemblies to further legislate and domesticate to provide how a county wants to manage its officers. Clause 17 provides that:-

“An enforcement officer shall produce a service identity document when exercising a power under this Act or any other law”.

Madam Temporary Speaker, any other law in my understanding means the laws that will be done by the various and respective county assemblies on how they want these enforcement officers to behave and how they want to run their duties. For example, Kisumu County Assembly can legislate this law for their enforcement officers and say that 'there shall be set up the Kisumu County Enforcement officers who shall be dressed in orange uniform, shall prominently display their badges during working hours and shall be picked from a particular lot.

They can also go to the length and spread them out to the county to ensure that there is no skewed appointment of officers like what has happened in many of our security forces. Previously, all officers of a particular unit came from where a particular commander came from. Therefore, it is left to them to properly domesticate this law and ensure that they provide the guidance on how these enforcement officers shall work.

Madam Temporary Speaker, this is very important. Sen. (Dr.) Langat reminded me what non-regulation of county enforcement officer has led to in our counties. You find that because of their limited training and lack of proper guidance on how they are supposed to execute their role, they sometimes forcefully collect cess from *matatus*. One of them threw a spanner or wreck that they normally have, and inflated the tires of a Nissan that they were pursuing and ended up causing an accident where two people were killed.

In other incidences, during elections and campaign time, officers end up taking a particular leaning. There are the ones who are used as returning officers for candidates of the party that, perhaps, the governor belongs to because he is the one who employs them. However, with this particular law, they will know that they are proper civil servants who serve the county and not any particular interest. They will be properly uniformed and trained and shall execute their duty with decorum and dignity that comes with serving the people.

Madam Temporary Speaker, Sen. Khaniri, under the list of offences, I know that Clause 20 has provided that:-

“A person who is convicted of an offence under this Act for which no penalty is prescribed is upon conviction of that offence, liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.”

Madam Temporary Speaker, I wish that we specifically put the charge for enforcement officers who commit specific crimes so that we do not lump them together. Let them know that when they go out to harass and arrest *wananchi*, they should do it with a lot of respect understanding that a suspect is not a criminal until a court of law makes a determination on what they have assessed. If they catch somebody with

something they consider illegal, they are not yet a court of law to determine whether what he or she has is illegal. Therefore, the person does not need to be treated like a criminal. We have seen on many occasions what these enforcement officers have done to members of the public.

*(The red timer went on)*

Madam Temporary Speaker, I request for one and a half minute to conclude.

**The Temporary Speaker** (Sen. Nyamunga): Go ahead.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker. I support this particular proposal. I request my colleagues to support it so that we can expedite it. I am sure that this is one particular law that will be of interest to all our 47 counties. This is because they will effectively carry out their duties with respect and honour that is expected of them.

With those many remarks, I beg to second.

*(Question Proposed)*

**Sen. Wetangula:** Thank you, Madam Temporary Speaker, for giving me an opportunity to contribute to this very important Bill brought by the distinguished Senator for Vihiga County. This Bill goes a long way in furtherance of strengthening devolution.

Madam Temporary Speaker, if the existing laws were applied properly, probably, Sen. Khaniri would never have brought this Bill.

Under the Police Act, there is a provision for a County Security Service Board that will comprise the governor, the management of the county plus the local police and the remnants of provincial administration. However, it has increasingly appeared like the police would have nothing to do with it. Therefore, we live in the existence of violation of that law.

Madam Temporary Speaker, I urge Members to pass this law. If it is passed, it will fill that lacuna. In the old days, there used to be what I commonly call in colloquial terms *Kanjuaskaris*. I have seen on television women traders crying about them. They are distinguished for their extreme brutality on *wananchi*. They are extremely cruel in the execution of their duties and they seem to delight a lot of pleasure in distraction of the wares of common traders. So, we need some order.

This Bill brings some semblance of order, but Sen. Khaniri will have to fine-tune it towards the end to make sure that it serves both the enforcement team and that the regulations are enforced. Unless he balances the two, we will end up creating an instrument of terror on *wananchi*.

Madam Temporary Speaker, we have seen in the countryside that unless we do this, some governors will turn these enforcement officers into a private militia to deal with their opponents and people who hold contrary views. Unless we enforce and make the law very clear as to how the behaviour of these enforcement officers is done, it will become a chaotic situation.

First, we need to have some qualifications. I have not seen any educational qualifications for the enforcement officers. We should have at least a minimum education of, probably, standard eight graduates, but form four graduates would even be better.

Secondly, they need to be strictly trained on observance of human rights and human dignity so that they do not, in their work, continue violating people's rights.

Madam Temporary Speaker, fourth, they need to be trained in respect to the sanctity of property; that enforcing the law does not give anybody a licence to destroy property of others. In markets, when these enforcement officers arrive and there is some poor woman there with a trolley of bananas to, probably, at the end of the day, sell and go home with a *gorogoro* of *unga*, instead of asking: "Have you paid your license for the day? If you have not, why? If you have a good explanation, when can you pay?" All they do is arrive, take that trolley and splash it into the public.

**An hon. Senator:** It is terrible!

**Sen. Wetangula:** Madam Temporary Speaker, it is really bad. You will then see the public scramble to help themselves on the wares of a woman who, probably, borrowed this money from a *chama* to go and buy these trading wares and make some little money and go back and pay the loan and feed the family. She will end up going home with nothing.

The victims of this violence are routinely women because they are the ones who the whole day sit in the sun selling vegetables, tomatoes, bananas, roasting maize and doing all manner of things that help the ordinary traveler and the families live on.

Unless we control this, devolution becomes a mirage for people. It becomes a pipe dream because we devolved the system of Government to send money to the villages and help villagers in an organised and legal manner, so that they live a decent life. So, when we have these enforcement officers regulated in the manner that this law is proposing, it becomes orderly and good for everybody.

Madam Temporary Speaker, I would want to see a situation where these enforcement officers have a very clear structure of reporting. If you go to a big market like Luanda Market in Sen. Khaniri's county, there must be a superintendent in charge of the market on call throughout, to be able to deal with emerging issues. This is because on a day-to-day, hour by hour, there are issues arising. There are pick-pockets that *wananchi* want to feast on. *Wananchi* are so frustrated that the moment they hear the word "thief", they do not even ask who the thief is or what he has stolen; they all descend on anybody who is running and they can easily kill.

We need some superintendence in those markets. There are genuine pick pockets and there are victims of mischief where somebody that you have disagreed with simply starts shouting "thief" pointing at you and you can easily lose your life. When enforcement officers are there, they can keep that law and order.

Madam Temporary Speaker, another point that we need to look at is the remuneration that these officers get. They are so lowly paid in some situations like the police used to do, that they think that those who employed them pay them so little because they know that they take bribes to cover the shortfall. We will need to structure such that, first, they are well paid. Secondly, we must have serious governance structures covering them, so that anybody who goes around markets picking money from poor traders, commits an offence and must be dealt with.

I have seen in the section of offences, Sen. Khaniri seems to think that the only offenders are the public. You have forgotten to put in offences committed by these enforcement officers themselves. This is because they will routinely commit offences against the public and they must also be dealt with.

Now that I am talking about offences, in Clauses 18, 19 and 20, I want the proponent of the Bill to also note that we are going to deal with ordinary people – a *bodaboda* rider resisting an arrest or a woman with bananas in the market resisting misbehaviour of an enforcement officer. In honour of what they call *landis*, those small informal settlements on properties that they do not even own – they are squatters – being unable to account for permits of construction, the fines that Sen. Khaniri is proposing are out of reach for these people. We cannot impose this on *wananchi*.

I have been a magistrate before in my life and when you say: “Not exceeding Kshs500,000, of course, the ordinary interpretation is that it can be Kshs1 to Kshs500,000. However, an enthusiastic magistrate thinks that since it is Kshs500,000, it is fair to impose half of it. It still becomes Kshs250,000. There is nobody in the villages who can afford this kind of fine. There is nobody who can raise Kshs500,000 for a woman whose total quantum of trading wares is Kshs3,000 or even Kshs1,000. When you impose Kshs500,000, it will not work. We are just going to fill jails with these people.

Madam Temporary Speaker, what happens is that when they are arrested, they are taken to the police. The police station is a toll station. They are then taken to court. The court is another toll station. They are then taken to prison, which is another toll station. As a responsible man with one acre of land and your wife was arrested because she was selling bananas worth Kshs500, she has been hit with a fine Kshs250,000, you sell half of the little land that you own to go and get her out. This makes families even more destitute.

I want Sen. Khaniri to rethink these fines and make them as low and affordable. These days, there are varying degrees of corruption. When people are taken to court, the magistrate pulls the law and tells you: “A fine here is Kshs1 million. If you give me half, I will let you go.” This happens. You are aware of these things. I am preaching to the converted. We should not open this window at all. Corruption is endemic in Kenya. It is everywhere.

We saw the other day on television - I do not know whether the Senator for West Pokot County saw it - a young man riding a *tuktuk* fighting police who were roughing him up. The policemen, instead of exercising their powers of arrest, took stones and started throwing at the suspect. When you have this kind of crudity in the enforcement of the law, do not give them this window; they will hurt *wananchi*.

Madam Temporary Speaker, I would also want, in fact, harsher penalties in terms of enforcement of human rights, human dignity and respect for the rule of law. Harsher penalties should go to offending enforcement officers and not those on which the law will be administered. That way, if an officer is found guilty of maliciously destroying the wares of a trader or taking away money from traders in terms of bribes, those ones should be punished in accordance with the law relating to corruption and fairly harshly.

I would also want the distinguished Senator proposing this Bill to deal with the issue of delegated legislation. In Clause 14, he is talking about the County Executive Committee (CEC) member to publish fines to be imposed by the unit. Again, delegated legislation born out of this law must come to Parliament. I would want the Senator to expand this and, in fact, in-build small fines here that can be administered other than leaving to somebody else to go and misinterpret the law and write out things that will not help the administration of the law.

Clause 15 on the powers of arrest, we must also ensure that we make it very clear that the arresting authority and the powers to arrest must be in conformity with the law. You have already mentioned how brutal these people normally are in the course of duty, so that when you want to arrest somebody, tell them which law they have violated, the nature of the violation and tell them: "I am giving you a note. Go to the police tomorrow." This is because these are very petty offences in the villages. It is not an offence where you find somebody is being held by the back of his trousers and he is walking with suspended feet being frog marched to the police. It does not help. *Wananchi* also get to know that when you transgress the law, there is a law enforcement mechanism which is for good order of society and not for creating chaos and punishing people unduly.

Madam Temporary Speaker, we need to have phraseology in Clause 15 that will ensure observance of human rights as people get the law enforced on them. Clause 11 is very vague. I do not know what the proponent of the Bill intended to say by:

"An officer may impound any animal that is kept in a manner that is contrary to county law."

Which county law is this?

When you have this kind of vague law, you give room for abuse. Many counties do not even have laws that regulate how to keep animals. They will start imagining that, probably, if one has tied their animal on the road reserve to graze, it is contrary to law. You may know this because you come from a county where there are a lot of these issues. They will take their animals, go and sell them and share the money. That will be the end of it, and villagers will be frightened stiff; they cannot complain. They will just say: "I will get another animal in future." They will start calling relatives and sons in Nairobi saying: "*Nitumie pesa. I want to buy another animal. Yule mwingine ameenda.*"

Sen. Khaniri should either get rid of this or redefine it, so that it makes sense. *Wananchi* should be told in chiefs' *barazas* what keeping an animal contrary to the law means. Are you saying that failing to dip your cows and spreading ticks is contrary to the law? Which law? Are you saying that by keeping emaciated animals, you are breaking the law? We have the Kenya Society for the Protection and Care of Animals (KSPC) that arrests people with emaciated animals. Sen. Mutula Kilonzo Jnr. will remember the famous case of Amber May vs. the Republic; the woman who starved her horses and was jailed for cruelty to animals in Nanyuki. Amber May was my client too.

Madam Temporary Speaker, Clause 12 talks of unapproved buildings and structures. It is a very good thing when one looks at how people are building structures in the countryside. People have a mistaken belief that if you land touching on any road, you just wake up and build a commercial building without looking for approvals. As soon as one finishes the building they start putting pressure on everybody to get them electricity, water, telephone *et cetera*. Eventually, they want a police station next to them for security. There is no government in the world that can afford this, least of all Kenya with all the heavy debts and so on.

Madam Temporary Speaker, we would want, first of all, to define what structures we are talking about. Is it a market or a structure that has gone through the process of the county government? The Senator will then obligate the county government to roll out structures that are approved, so that *wananchi* know because a vague is bad law. *Wananchi* will then know, for example, that it is against the law to build a house one

metre from the road or block a passage and easement to a property behind their property, or block drainage.

Some of these laws, in fact, ought to have been promulgated in the counties themselves. However, of late, it has become so embarrassing that our assemblers spend a lot of energy fighting each other, their speakers and doing all manner of things, instead of legislating things that we are now obligated to legislate as a Senate. If they were doing their work properly, probably, we would not be doing this.

Madam Temporary Speaker, Clause 13 (1) is good. It says:-

“A notice required to be given shall be deemed to have been served if it is served upon the owner or the occupant of the premises.”

However, Clause 13(2) is a bit tricky. It states-

“Where the owner or occupant of a property cannot be traced, the notice shall be placed in a conspicuous place of the structure or buildings.”

Sometimes the owners of property do not live on the property. The Senator should obligate counties to have a database of owners of property, including their addresses so that when they break the law--- It is very easy to do that apart from big cities like Nairobi, Mombasa and Kisumu. For example, if you go to Bungoma County and want to take the addresses of every landlord, you can do so in less than a month. This can be kept so that when there is an offence committed, you know who to go for. I say this because when we are imposing these kinds of fines and it is a house worth Kshs20,000, some landlords would rather disappear and let the house go.

Madam Temporary Speaker, we need to have a law that says that if one has committed an offence and cannot be found, then they will be traced through an address that the county government has. It will be negligent on the part of the county government if they do not keep a database of their own people. This is because they have to levy taxes and provide services. You cannot levy taxes on people you do not know. Ingenious county governments must be having personal identification numbers of sorts for the people in their counties. In fact, if you go to my town, I can tell you literally whose property it is everywhere. It should be quite easy to do that. I would want Sen. Khaniri to look at that.

All in all, this is a very good law that is filling a void that exists. I would also want Sen. Khaniri to create at least a clause that obligates the police and the enforcement officers to have some synergy. This is because when an enforcement officer arrests an offending person and takes them to the police, the police could even refuse to cooperate. They could say: “We are not the ones who have arrested this person. We are few. What do we do?” We need to obligate the police also to be part and parcel of the structures of enforcement of the law that will bring order in the management of public business.

Madam Temporary Speaker, as I finish, what we must guard and protect is to save the ordinary man and woman in the villages from the brutality of what were commonly called “*kanjo askaris*”. We have seen how they destroy property in Gikomba and pitch battles with hawkers in the streets. Sometimes we may understand, but the level of violence they meet on ordinary people far exceeds the offences they pursue and presume to have been committed. We want to see that there is order that must be observed by everybody through public education and hearings.

Finally, Sen. Khaniri should obligate the county governments to carry out civic education in market centres and towns; to tell people their dos and don'ts within the law.

This will ensure that when they are operating they know the yellow line, amber line or red line that they cannot cross. Then we can have an orderly society.

Madam Temporary Speaker, I support and congratulate Sen. Khaniri for living to my expectations as my kid brother for bringing this wonderful Bill.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Senator.  
Proceed, Sen. Wambua.

**Sen. Wambua:** Thank you, Madam Temporary Speaker, for the opportunity to add my voice in support of this Bill by Sen. Khaniri. This country has been crying out for a Bill like this, especially on the issue of recruitment of agents to enforce county laws. I like the fact that this Bill, above all, seeks to define the roles and duties of enforcement officers in the counties.

One of the things that we have been crying out for as country, in regards to law enforcement officers in counties, is on their recruitment. The recruitment of enforcement officers, popularly known as *askaris* in the counties, has largely been an exercise shrouded in a lot of secrecy. I keep laughing at a situation that I witnessed in a county in this country, where a felon – someone who had broken the law - spent a night in a police cell for a petty offence of stealing chicken. He somehow gets out, and you meet the same person the following day wearing an *askari* uniform, wielding a club ostensibly to enforce the law and order, because he is now a county *askari*.

Madam Temporary Speaker, when Sen. Khaniri moved this Bill, he said that it is long overdue. However, this is a Bill that would not have come at a better time than this. In fact, as I speak, our national security organs are in the process of publicly recruiting law enforcement service men and women. Everybody knows who is being recruited, where they are being recruited, where they come from, where they went to school and their certificates. I would want to see a situation like this being replicated in our counties where the recruitment of the people charged with the responsibility of keeping law and order is also made public. This is so that it is not something that is done behind closed doors, and only known to the person being recruited and their recruiters.

Madam Temporary Speaker, sadly, as I speak today, a lot of these law enforcement officers in the counties have been reduced to tools which are at the disposal of the county executives to reign terror on people that do not think in the same line with county executives. Instead of them being enforcers of law and order, they become agents of impunity. I would urge the prosper of this Bill, Sen. Khaniri, to look into ways of ensuring that beyond specifying a code of conduct for these officers, we can enrich this legislation with general basic principles on a service charter for all county governments in the recruitment of these law enforcement officers.

In that service charter, let us have situations where there is continuous training and assessment of the officers to conform with the exercise of proper public relations exercises because these people deal with the public on daily basis. We have a situation where these officers are trained, as Sen. Wetangula said, you would pity situations where you find the law enforcement officers treating innocent people like hardcore criminals.

Madam Temporary Speaker, I will give an example of a woman who is found on the streets selling bananas, and an *askari* grabs her, literally throws her into an old moving vehicle. The *askari* then throws away the wares she was selling, takes that woman to a cell and she is treated as though she has committed murder. There is,

therefore, the need for these officers, through proper legislation, to be trained in human dignity and respect for human rights.

In conclusion, Madam Temporary Speaker, when this Bill becomes law, it should also have provisions for proper implementation so that the people who have been recruited as agents for keeping law and order do not become a law unto themselves. This is because this happens all the time; yes, you have been recruited through a proper process. Once you get into office, you then want to behave as though the law begins and ends with you.

With those few remarks, Madam Temporary Speaker, I beg to support.

Thank you.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. From the outset, I congratulate Sen. George Khaniri who is a senior member of this House. He is also my very good neighbor because we share a common border. I am happy that I am contributing to this Bill. I thank him for bringing such a Bill. From where I sit, this is a very important Bill. My colleagues have espoused that it is timely. These are legislations that we are bringing into place to try to buttress, flesh and oil the wheels of devolution of in this country.

Madam Temporary Speaker, I suffered the effects of political thuggery in the name of enforcement officers in Nandi County in 2014. At the beginning of this year, many Senators noticed that I was using an extra pair of crutches. People were wondering how this young man, at this age and time, can be walking with crutches. It was because of political thuggery in the name of enforcement officers. I, therefore, assure Sen. Khaniri that I am clear testimony and he is at liberty to use me as an example of what rogue enforcement officers can do to *wananchi*. Up to now, I do not have the full use of my legs. I have the full use of the other things. I thank God that they only attacked and maimed my legs. Had they attacked other areas, it could then have been challenging.

*(Laughter)*

That is why I am a passionate defender and supporter of this Bill. I know that most governors, with the excitement of the titles---

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

**The Temporary Speaker** (Sen. Nyamunga): Just a minute, Senator. Sen. Mbogo George Ochillo-Ayacko, what is your point of order?

**Sen. Ochillo-Ayacko:** Thank you very much, Madam Temporary Speaker. Did you hear the Senator talk about being able to use other parts of his body, other than his legs? Is it in order for him to say so without disclosing those other parts?

*(Laughter)*

**The Temporary Speaker** (Sen. Nyamunga): Senator, can you come clear on what you meant?

*(Laughter)*

**Sen. Cherargei:** Yes, I can, Madam Temporary Speaker. I meant my eyes and hands. My hands and legs can now work very well. There was a Senator in this House, Sen. Shiyonga, who talked about ‘scooping;’ so, the use of such areas is very important because if they would have been attacked, then I would not have had an opportunity of exposing what God gave us in Genesis 1:28, when he told us:-

“God blessed them and said to them, be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground.”

From there, you can infer what I meant.

(Laughter)

Madam Temporary Speaker, if my good Senator from Migori – Sen. Mbogo George Ochillo-Ayacko, the former *Waziri* – can see me *in camera* for further elaboration so that he can understand.

(Laughter)

We will not go into details because the children are watching. This is a parental guidance issue. It is not good to say such things on the Floor of the House.

Madam Temporary Speaker, I have looked at the functions under Clause 6 which ensure compliance of all county laws. There are many laws that our county governments pass. Sometimes, it is challenging to always pass them. I agree with most of my colleagues that some of these issues have exposed the excitement of titles by governors. Huge resources and good intentions of having enforcement officers can sometimes mutate. Some of the county *askaris* are turned into their militia, to perpetuate their political agenda. We have seen cases where their *modus operandi* is to ensure that they frustrate their opponents. In fact, there is a reported case where some of these enforcement *askaris* could not allow an elected leader to speak to the wananchi, because the public address system belonged to his Excellency the Governor! Those are some of the challenges.

The issues of alcohol licensing at the county level has been a challenge. We have been having a problem; sometimes some people feel that they should be given the license, while others think that they should not be given. I hope by the time some of these compliance and issuance of licenses is done, in terms of doing business at the county level, we expect it to be done in sobriety and compliance under the Urban and Cities Act of 2012.

Nowadays, towns are run like parastatals. I know Sen. Khaniri has talked about the code of conduct among enforcement officers. Before such is done, because we do not want to appear vindictive, the city or town board should sanction such issues so that these enforcement officers can walk into town centers and shops and when they inspect, they have full authority so that they are not abused or misused in any way.

Madam Temporary Speaker, on the issue of legal compliance with all county revenue collection requirements, I think they are doing it but we do not want to be over zealous. Sometimes the fight that comes with paying cess, royalties and landlords, for instance in Nandi, we have a problem where cess has not been paid for some time.

However, these matters should be taken to the courts of law. I think they have been doing their work.

Last week when we were in Mombasa for the Kenya Private Sector Alliance (KEPSA) meeting, some of the concerns the private sector raised, especially on the collection of cess, royalties and land rates, is that when you are coming from Baringo County, you get revenue collection points as you get into Elgeyo-Marakwet County, around five kilometres from the border, you get another one. When you are getting into Uasin Gishu County from Elgeyo-Marakwet, you get another one. So, there is concern and I know there is a law that governs these regulations. However, we should relook how we do this so that we do not appear as if we are overtaxing or not creating a good business environment for our people. I think they are doing it at the moment.

On the issue of protecting public property, I want to thank the Mover of this Bill because this is very important. During the transition period, when you look at Transitional Authority (TA) which was led by Mr. Wamwangi, there were a lot of unaccounted for assets and liabilities. This is because when counties took over, there was no unit, as Sen. Khaniri is proposing, to guard and protect these assets that belong to the counties. In fact, in one instance, one of our tractors in Nandi County disappeared and we got it in the middle of a tea farm with all spare parts taken.

No one could account for the tractors, collection lorries or anything that belonged to the County Government. Therefore, I agree that even when there is change, I know we are in the second generation of governors, some people can become mischievous and decide to cart away property that belongs to the public. However, when we have a synchronized system that gets single command and whose agenda is to protect, we can hold somebody accountable.

Madam Temporary Speaker, Sir, that is why in Sen. Wamatangi's Bill on assumption of office by the governor, we are saying that when you are leaving, you declare everything that you have left in the office. When such units come into place, it will assist that part of the law also, so that if something disappears, we can hold some people accountable. This is such that the governor who is bitter after losing an election - I know losing an election is not an easy thing, I can see my colleagues are looking at me as if I have not lost an election - I have lost twice for the record of this House. So, I know how painful it is to lose an election. Sometimes, somebody might feel that he or she wants to destroy everything. Therefore, I agree with this Bill, that we need to protect our issues. Let me rush because most of my colleagues want to contribute.

Madam Temporary Speaker, I agree on the protection of the property, that we need a unit such that if, for instance, in my neighboring County of Uasin Gishu, a tyre that belongs to graders that are being used disappears, it is good if they can go and ask somebody who is in charge what happened in guarding of the property. It will be in the interest of Kenyans to ensure that.

Madam Temporary Speaker, Clause 8 talks about where an enforcement officer has reasonable grounds to suspect that any property has been--- I agree with this that you need any other law. The enforcement may make an application to the relevant court, to seize that property and for other relevant order. My good Senator, Professor Kabaka, senior counsel and a renowned scholar, will agree that we need to protect human rights. The right to property is so sacred.

(Sen. (Dr.) Langat consulted loudly with other Senators)

Madam Temporary Speaker, I do not know why Professor Langat, a former lecturer in Moi University, is shouting behind me. You need to protect me.

Madam Temporary Speaker, we need to protect the right to property. That is constitutionally provided, even that trolley that belongs to *sukuma wiki* and tomato sellers. County *askaris* descend on helpless women and tear their clothes, cart away their mangoes, kales, trollies and destroy their property. They have so much power than even the President of this country. They just walk into your house and decide that they need ---

**The Temporary Speaker** (Sen. Nyamunga): Sorry, Sen. Cherargei for the interruption. Sen. (Dr.) Langat, what is your point of order?

**Sen. (Dr.) Langat:** Is it in order, Madam Temporary Speaker, for the Senator from Nandi County, to satirically call us names and titles that we have not earned? Kindly correct the situation. I am Dr. Langat and not Professor. I am not aware when Sen. Kabaka became a professor. That can be clarified also, so that we may refer to him officially.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Charargei, can you come clear on those big titles you are conferring on honorable Members? They are actually not interested at all.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. Sen. (Dr.) Langat is refusing the blessings. I come from the Talai; people that can see the future. You know he taught me, so I thought with time you earn papers and upgrade. You grow from a doctor to a professor, but now he is declining the blessings. I know he is a man of God. Maybe he is still consulting God on the way forward. However, I apologize. It should have been Dr. Lang'at. I am sorry for that hitch.

So, as I was saying the right to property is so sacred that it should not be taken carelessly. That is why when you see county *askaris* use bush tactics that were used before, when we were fighting colonialist, they just screech to a halt, come down and take everything. It borders on robbery with violence. I have looked at Clause 8 and I am happy about it, such that even if they come and inspect your premises and they get something that is there illegally, they should go to court and get an order. This is a country of law and order.

I thank Sen. Khaniri for including that proviso that we need a court order before effecting, although there is a perception in the country that people do not respect court orders. However, I hope the county governments will respect this such that before they chase our women and young people who are trying to earn a living around, they should find out whether they have complied or paid and where their licenses are, as Sen. Wetangula said.

Madam Temporary Speaker, you can add me one more minute so that I canvass Clause 9.

**The Temporary Speaker** (Sen. Nyamunga): You are still within the one minute. Continue.

**Sen. Cherargei:** Madam Temporary Speaker, thank you. You know you are my neighbor and good friend. So, add me more minutes.

Finally, let me just canvass so that I allow my colleagues to also contribute to the Bill, in the interest of time. When I was practicing law where I was, and even in this

town, these people are mischievous; they take away your property and re-steal it after, of course, taking it forcefully. Then, when they come to court, they say that, that property was destroyed or it disappeared. They cannot account for it.

We need an account. I agree when they say, preservation or destruction of seized property. There should be a procedure such that when you appear in a court of law, they should tell you where your property is. These people are taking it forcefully, they take away those tomatoes and prepare their supper and tell you that they disappeared. In fact, nowadays it is even safer to park your vehicle in a petrol station than in an enforcement place. I was shocked the other day, there was an accident and there was a rundown case we were doing and then when you go to a police station, the tyres of the car have disappeared.

So, I agree with this Clause 9, because I know it will ensure that if your property is carried away and you are fined, you can get back your property. These are poor people.

The County Compliance and Enforcement Bill is a good thing that will happen to county governments. It will assist to ensure that we own the way devolution works in this country. I hope it will put a stop to where the governors are misusing or abusing this to create militia, intimidate some of us, their opponents and trying to be mischievous. I hope with a single national legislation, it will ensure that we bring issues into focus.

I want to thank Sen. Khaniri and call upon our colleagues that let us ensure that this Bill is canvassed immediately and we pass it and proceed to the next level, so that our people at the ground level, the *mama mboga*, the *boda boda* riders and any other small time business people at the county level across the 47 counties will have the joy of working in a good and safe environment.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Thank you Senator. It is also good for us to clarify that we are always in a learning process. Therefore, if you see the yellow light it does not mean that your time is up, but rather that you should be trying to wind up.

Proceed, Sen. (Dr.) Gertrude Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker, Sen. (Dr.) Gertrude Musuruve.

**The Temporary Speaker** (Sen. Nyamunga): What did I say? Sen (Dr.) Gertrude Musuruve?

**Sen. (Dr.) Musuruve:** Yes. Musuruve

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

**Sen. (Dr.) Musuruve:** Thank you. I did not hear it clearly.

Thank you, Madam Temporary Speaker, for giving me an opportunity to add my voice to this debate. I thank Sen. Khaniri for coming up with this Bill. This is a Bill that speaks to all of us and to all the counties.

I remember some years back I was in Nairobi County and I saw people running here and there and wondered what was happening. There was a lot of panic in the City around where I was and then from nowhere, I saw women being bundled in vehicles and there was a lot of disorder. What was happening was that the City *askaris* were running after some vendors.

Madam Temporary Speaker, this law will bring order in our counties so that even when the law enforcers are working, they work in an orderly manner and it does not mean that everyone else must be part of the work they are doing.

There is need for managing city *askaris* and this Bill will help manage the way they behave regarding execution of their duties. There are instances when city *askaris* can take a mean approach when it comes to executing their duties. There are instances when they just bundle people in their vehicles; they pick one person who has committed an offence, passers-by are not aware of what is happening, people are screaming all over and they bundle people in vehicles.

Sometimes you can really sympathize with the way they bundle people in their vehicles. I have seen a situation where even someone with disability was bundled minus his wheel chair. First, he was bundled in a vehicle, then his wheel chair followed. It is very unconstitutional and very inhuman. There is need for a law to ensure that even as city *askaris* carry out their mandate, they do it with decency and respect for the common man because it is constitutional that people need to be respected. Even persons with disabilities need to be treated with respect.

This Bill speaks to that. City *askaris* need to be keen about special needs even when they are doing their work. I have also seen where the common man, especially women, go through harrowing moments. You find a woman selling her vegetables or fruits and from nowhere, the city *askaris* come, they do not sometimes say a word. They just take the vegetables and fruits and throw them all over whereas this is a woman who has decided that she will not look for illegitimate alternative ways of getting money but will look for legitimate ways of getting money to feed her family, ensure her family has shelter, food and clothing.

This woman needs to be protected and helped. There is need for the Senate to ensure that this Bill sees the light of day so that when the Act comes into force, we can protect the common man because we have been mandated to oversight what happens in the counties and to even protect *mama mboga*. This Senate will be held accountable if we do not look for a mechanism to ensure that *mama mboga* is protected.

We are here to serve the common man. This Bill has actually come at the right time; a time when the Senate needs to interrogate the county government and ensure that city *askaris* go through some form of training, so that they have some ethics in them. Some of them could be ethical but most of them are heartless. Some behave in a manner that you just want--- Some of them are even corrupt and they do not care. They take money and move on like nothing has happened.

In such situations, you will find that when a city *askari* has been corrupted, he is answerable to no one because the following day you will still see him working. In a situation where a city *askari* has been corrupted and has been unethical, they need to be brought to book in a situation where he has infringed on people's decency and rights so that he or she is answerable. This will instill discipline in them.

As a Senate, we are saying that we agree that city *askaris* need to work, but in the process of working, there is need for them to be ethical and respect the common man because these are the people we represent as the Senate.

Madam Temporary Speaker, the issue of capacity building is very important. There is need for county governments to ensure that they build capacity for market vendors and the *mama mboga* who are struggling to eke a living and do not know what to

do. For example, the packaging paper they are supposed to use. Sometimes the vendors do not even have the money to stock those papers.

There is need for county governments to ensure that there is capacity building for vendors. Apart from that, there is need for support with regard to capital so that the city vendors get licences. These licences should be provided for free for this woman trying to ensure that her children and her family get fed. What this *mama mboga* is doing is constitutional. Article 43 of the Constitution speaks to economic and social rights.

This Bill has come at the right time, when the Senate is feeling the common man. Kenyans must know that the Senate is not joking. This Senate wants to ensure that we have deliverables for the people of Kenya. We are here for the purpose of the counties, to represent *mama mboga* and speak on issues that affect the common man. There is need for enforcement officers to do what they are supposed to do.

Madam Temporary Speaker, the Bill also talks about enforcement officers ensuring that they care about the health of the people in their hands. There are times when enforcement officers just throw people into vehicles like garbage and they get hurt. They do not care to even take them to hospital. This Bill speaks to that. The county *askaris* should do their job in a decent and diligent manner that does not hurt the citizens.

There are also instances where property is confiscated from city vendors. In the process some of them are bundled into vehicles with their wheelchairs, *mboga* or whatever it is. However, when they are taken before a court of law in the counties, those exhibits are not there. Sometimes people end up losing their property and that is unconstitutional. The Constitution is very clear that there is need to protect peoples' property. Therefore, we need to protect the property of *mama mboga* and other vendors. We are here to ensure that they live in a country that cares about them. We must address this issue, so that we can be counted as a Senate that really cares about the common man.

Madam Temporary Speaker, I am happy that this Bill talks about disciplinary procedures for officers who breach the code. Sometimes officers just break this code and do not care, because they know very well that there is no one to report what they have done. Sometimes the information they give about the offenders is pure lies, but since someone has been arrested, they are helpless. This Bill seeks to address this issue. In a situation where officers are undisciplined, there is need for disciplinary action to be meted on them. If disciplinary action is taken against the rogue city *askaris*, for example, they will be keen on how they treat the vendors who flout the city county laws. However, we must also protect the county *askaris* as they execute their duties.

We know very well that employment is not easy to come by. Therefore, the vendors have decided to create employment for themselves and their families. We must, therefore, protect them.

Madam Temporary Speaker, I support this Bill and congratulate Sen. Khaniri for coming up with it.

**The Temporary Speaker** (Sen. Nyamunga): That is good, Sen. (Dr.) Musuruve. Sen. Mbogo George Ochillo-Ayacko, you may proceed.

**Sen. Ochillo-Ayacko:** Thank you very much Madam Temporary Speaker. I want to depart from the position of my colleagues and from the outset say that Sen. George Khaniri has been a friend of mine and continues to be a friend that I hold dear. We have come a long way with him. We attended the same primary school and also served in

Parliament for a considerably long period of time. So, my opposition to this Bill is not personal, but is from a very serious understanding and friendship with Sen. Khaniri.

If you have been listening to what fellow Senators have been saying, they have been lamenting about the misconduct of the enforcement officers. The able Senator, who is also my very good friend and has just spoken before me, has cited instances where the enforcement officers bundle citizens of this country into vehicles and are manhandled.

Sen. Wetangula has also mentioned several instances where county governors use enforcement officers as militia. My very good friend, the Senator for Nandi, has even complained that he has lost use of some important parts of his body because of the excesses of these people.

Sen. Khaniri has very good intentions. He has brought a Bill that seeks to professionalise the enforcement of regulations. However, there is no safeguard for citizens who will encounter the misbehaviour of certain executives or leaders of counties. Take for instance the county I represent, which is Migori County. We have an informal militia called *Sangwenya* that is headed by the executives in my county. Those fellows called *Sangwenya* are responsible for enforcement of regulations made in the counties and have no regard for human rights whatsoever.

In fact, without specifying what is going on at the national level, you know that some very senior leaders in my county are facing serious charges for violating the law. I do not know what the courts will adjudicate regarding this matter. If that is what is going on and we, as the Senate, are to legislate and give them authority to continue recruiting militia and people, when they, as the executives, are not mindful of the human rights of the residents that are charged with the responsibility of looking after, I believe that we will be abdicating our duty.

When we were campaigning sometime last year, we had a very constitutional rally. It was our right to have a rally somewhere in Migori County. We invited the then Senator, who is now the governor in your county. We also invited the Senate Minority Leader and other Senators and a militia was brought by the same county government, and all of us nearly died. That is evidence of impunity that is a bound in counties where we come from.

When you go to a county like Machakos, you will find that altercations and standoffs are very rampant when it comes to political issues that are supposed to be sorted out amicably. These things are perpetrated by the leadership that we are trying to give the power to recruit, discipline and enforce laws.

We, as a nation, already have problems with the police force. If you talk to human rights agencies, you will find that we already have a problem with the National Police Service (NPS); a body that has had many years of experience; on which the nation has spent a lot of money to train and which is oversighted by a constitutional commission. This is because of extra judicial killings and high handedness in handling suspects. In response to this, we have established a Human Rights Commission and other commissions to look at their excesses.

When I look at this Bill, I do not see such horizontal commissions or horizontal safeguards. What I see is the fact that we should recruit people and defining what they are doing. We are even giving them rights, such as to enter premises without search warrants and to arrest people. When you look at the backdrop against which the 2010 Constitution was made, it intended to safeguard our rights as the citizens of this country. I believe that

most governors – I am not saying all of them – are people whose heads are filled with power. Most executives are people who are full of power and do not have moments for humble people and citizens, who are taxpayers. Therefore, when we, as a Senate, proceed to legislate and create a framework through which these illegal activities can be carried out without first looking at ways and means of protecting traders, women and children against such potential militias, we will be taking this country and the rights of our citizens in a direction that we should not take them.

One way out is to find a way that the NPS can donate certain enforcement rights or responsibilities to the county governments as we mature through good governance. If you look around the City of Nairobi, you will see the running battles that our hawkers are subjected to. These are people whose only crime is to try and vend or offer something for sale to us. These are people who have not come here, seeking employment from the government, but they are trying to eke a living from the difficult situation that we have, as a nation. However, what do we see? We find city *askaris* running after them, hurting them and we do not see any action being taken against these *askaris*.

This Bill indicates, as a safeguard, the fact that if there is excessive or wrongful action by one of the compliance officers, you can initiate a complaint against them. I want to state, without fear of contradiction, that I am absolutely sure that if you were to report or complain against any compliance or regulation enforcement officer, nobody will take that complaint seriously. Even in the police force, where there is a proper legal framework, when you complain against a police officer to another police officer, no action is taken.

I, therefore, believe that, as a nation, we should first concentrate on cleaning the NPS and ensuring that the human rights of our people are respected. We must ensure that once we can formally deal with the NPS, we will then acquire the ability to deal with the compliance officers and ensure that they behave in an orderly, civil and respectful manner to the citizens of this country. As it is now, we are unable to deal with the NPS, who arrest, destroy property, assault people, do as they please and do many things if they think that you are challenging their authority. It is the same nation where human rights are abused left, right and centre by law enforcement agencies; that we are trying to imagine that by bringing this piece of legislation, the county operations will be different from what is obtaining in the national context.

I want to propose to my very good brother, Sen. Khaniri, that we need to prioritize bringing legislation that will create a regulated environment for how enforcement officers behave in the counties, because they are already in existence. The problem that I hear most of the times is not the absence of officers, but the misuse of their authority when it comes to handling citizens and their property. Therefore, in my view, the legislation that is of priority is one that is going to defend the public – the small trader and small people living in the counties – and deal with potential impunity that is practiced by governors in the counties, who convert these compliance officers into militia, particularly for political purposes.

In a country like Kenya, you will find that, more often than not, the people who hold offices and are seeking re-election will use their incumbency, their office staff and resources to ensure that the playing field is not level. When the Senate, which besides protecting the interests of the counties and ensuring that human rights are looked after in the counties, gives legitimacy to the hiring of militia, we will have abdicated our

responsibilities to the citizens of this country. I would, therefore, like to register my very strong and profound opposition to this piece of legislation as it does not prescribe a solution to an already bad problem in the counties.

With those many remarks, I beg to oppose.

**Sen. (Dr.) Langat:** Thank you very much, Madam Temporary Speaker, for giving me this opportunity to also add my voice to this very important Bill. I congratulate Sen. Khaniri for bringing this Bill to this House.

First, Madam Temporary Speaker, I want to emphasize on the importance of this bill. Various counties in our country have different law enforcement officers, as it was said by the Sen. Ochillo-Ayacko, and that they have different names which are not in line with their functions. It is my suggestion that to create uniformity among these law enforcement officers who have been messed up by several people, particularly the governors--- I saw in the last regime during the campaigns where this group of people was abused so much in an attempt to protect their governors. By extension, they said that they were protecting their jobs.

We saw a lot of distraction and abuse of human rights by these particular people. I want to suggest that if possible, they all be referred with one name like in the case of the police. We have the Kenya Police all over the country. It is my suggestion that all the county law enforcement officers be given one name. It is also my suggestion that their training be uniform. I have seen some counties training some of them for two months while others train for three months and the only work that they are trained to do is matching. Other things such as basic laws, arresting people and the rest do not exist. A curriculum for training these people should be proposed to create uniform training and by extension, uniformity when it comes to their functions, the extent and the limits of their roles.

In my place, they used to call them the governor's bulldozers. I would like to suggest that a proper curriculum be put in place to create uniformity in their training. Legal framework, as it has been suggested in this particular Bill, should also be put in practice for these people to know their limits. Some of them have overstepped their mandate and taken over the roles of the assistant chiefs and the police. Some of them are doing things brutally as the Senator for Kericho has said. We witnessed two cases in Kericho when these people were chasing a *matatu* and the policemen, who know the law, tried to assist them to do the right thing. However, they chased the *matatu* and when it took off; they threw a rake full of nails which punctured the *matatu* and a Nissan, leading to a terrible accident. Two people, including one student from Kisii University, died.

This Bill is important because it will create some code of regulation, a framework for training these people and creating limits on what they are supposed to do. When it comes to recruitment, transparency in various counties does not exist. Most of them were the chief campaigners of the governor and they are the people who qualify; nothing else and nothing more. From the onset, their work is to defend the governor. The framework on recruitment or policies on recruitment must be put in place including their qualifications so as to create uniformity. They should be selected from various wards and be subjected to a thorough recruitment process for them to qualify and be impartial when working.

I also want to address the remuneration of these people. In the County where I come from, these people are remunerated better than the Early Childhood Development

Education (ECDE) teachers. They are given better salaries. I hear that the teachers are earning something like Kshs10,000 but these particular *askaris* are earning salaries from Kshs20,000 to Kshs30,000. They have given people a lot of headache. You can hear some asking for the need of education if a teacher who has a degree or diploma in ECD is earning less than an *askari*. Their jurisdiction must be drawn clearly. What is their work? Where are they supposed to work? You find them in at the stages and even in the villages chasing the local brewers up and down and they are terrible. It is time that this Bill comes to life to regulate and put systems concerning the recruitment, placement and professionalism of these people.

Madam Temporary Speaker, I stand to support and congratulate Sen. Khaniri for being visionary and insightful to the extent that he was able to see what most people could not and brought forth this particular Bill.

I support this Bill.

**Sen. (Dr.) Kabaka:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I have sat here waiting but it is time.

I will not take much time like my colleagues have done. I wish to contribute to this important Bill that has been initiated by the distinguished Senator for Vihiga County, Sen. Khaniri.

Madam Temporary Speaker, I support this very important Bill. I will not say what the distinguished Senator for Migori has said but it is his constitutional right to not support this Bill.

The objectives for which the distinguished Senator for Vihiga brought this Bill is the very reason the Senator for Migori, *wakili* Ochilo-Ayacko should contribute and seek amendments so that we can accommodate his feelings and sentiments rather than rejecting it because we will just go round in circles.

Madam Temporary Speaker, having said that, the character of most of these *askaris* at the county level is wanting. It is akin to the French Revolution of 1789 when we had the reign of terror. The problem is not the *askaris* or the 'militia group' but the intentions of individuals, for example, governors who act mischievously. Therefore, there is need to fashion or improve the contents of this important Bill to streamline the ethical conduct for these county *askaris*. If they breach any established law, they will be punished because they are not above the law.

Madam Temporary Speaker, the *askaris* are known to be notorious in Nairobi especially at night. They harass women in the streets and call them prostitutes. We have seen from television clips the way they mishandle women yet these women are their sisters. This is a total violation of the provisions of the Constitution on the dignity of Kenyans. Therefore, they should be prosecuted for that. They also mishandle people who are physically challenged.

Indeed, that is the point which I cannot overemphasize. The same has been put very well by Sen. (Dr.) Musuruve. Kenyans are very sad when they see such events happening.

Madam Temporary Speaker, a lot has been touched on. For now, these persons are supposed to enforce the regulations or even the by-laws of counties but at the end of the day, the buck stops with the governor. From time to time, governors should hold meetings with their directorate of inspectorates and have these people trained. They will

stand to be surcharged for any properties of citizens which they damage. They could also be sacked.

To summarise my submission this evening, I would say that in this country, we do not have a shortage of personnel who can handle the county inspectorate. We have well-disciplined youth known as the National Youth Service (NYS). I, among others here like Sen. Ochillo-Ayacko, were lucky to join the pre-university NYS training and we know the kind of discipline that goes on there. Indeed, we know we have over 10,000 of these hard working and brilliant men and women who can be recruited and take positions of the county askaris because they are known to be well behaved and are also known to respect human dignity.

I stand to support this important Bill with certain modifications as has been suggested by various Senators who spoke before me.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I do not see any more interest on this Bill. May I now call upon the Mover to reply?

**Sen. (Dr.) Kabaka:** Thank you, Madam Temporary Speaker. On behalf of the distinguished Senator for Vihiga County, Sen. Khaniri, I am sitting in for him. I understand he is traveling and he requested me to respond and reply to this important Bill.

First of all, I thank all the Senators who have contributed in support and also in defence of this Bill starting with Sen. Cheruiyot who seconded the Bill, Sen. Wetangula, Sen. Wambua, Sen. Cherargei, Sen. (Dr.) Musuruve, Sen. (Dr.) Langat and of course myself. I am not blowing my trumpet.

On behalf of the distinguished Senator for Vihiga County, I wish to thank all of them for their very insightful contribution towards this Bill. I wish to state that the good Senator will try to incorporate all these important suggestions given by these distinguished Senators. However, I wish to also add that a lot of panel beating needs to be done especially during the Third Reading, where all the concerns of these Senators will be considered, without leaving all the donkey work to the said Senator.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senator, where panel beating implies?

**Sen. (Dr.) Kabaka:** Perfection, Madam Temporary Speaker. We need to perfect the imperfection in the Bill as suggested. I am saying that all these other Senators need to have another chance to interrogate this Bill at length during the Third Reading. I am sure all those suggestions will be well catered for.

Madam Temporary Speaker, I also need to reiterate what I have stated in my contribution that the voice of dissent by the distinguished Senator for Migori, Sen. Ochillo-Ayacko is also important. However, in this regard, the said Senator's suggestions which he gave are exactly the reason this Bill was initiated in the first place. Although it is his constitutional right to dissent, I submit that his suggestions will also be taken into consideration.

As I wind up, I invoke Standing Order No. 61 (3) and request that you defer the putting of the question to another date.

I thank you.

**The Temporary Speaker** (Sen. Nyamunga): I defer putting of the question to any time next week that is on Tuesday, Wednesday or Thursday as it will be listed on the Order Paper.

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

**Sen. (Dr.) Kabaka:** I thank you, Madam Temporary Speaker.

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

*Second Reading*

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

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I beg to move that the County Early Childhood Education Bill (Senate Bills No. 26 of 2018) be now read a second time.

The relevant Articles of the Constitution in support of the enactment of this Bill include the following-

Article 6 (3) of the Constitution which deals with devolution and access to the services of the State which very clearly states as follows-

“A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.”

Madam Temporary Speaker, another Article in support of this is Article 174(c), (f), (g) and (h) of the Constitution which deals with the objects of devolution.

Article 186 of the Constitution deals with functions and powers of the national and county governments. Article 186(1) of the Constitution provides that-

“Except as otherwise provided by this Constitution, the functions and powers of the national Government and the county governments, respectively, are as set out in the Fourth Schedule.”

Article 186(4), further provides that-

“For greater certainty, Parliament may legislate for the Republic on any matter.”

Madam Temporary Speaker, I want to state that this particular Bill is very important and as far as the current situation is concerned, the position is as follows-

Currently, there is no legislative framework, especially in regulating early childhood education in Kenya. The private sector also seems to have monopolized the provision of early childhood education in the country. This is despite the fact that public education caters for 90 per cent of the children in primary and secondary schools. The Basic Education Act, 2013 focuses on primary and secondary education and provides very little regulation for the crucial foundation needed to ensure the success of the education sector.

There is, therefore, need to provide a robust legislative framework for the legislation of Early Childhood Education to ensure the quality, efficiency and uniformity of standards in the sector, so that all the children going to primary schools are relatively at par in all counties. I want to state also in conjunction to this that it has made it very hard for this House to do the oversight work on issues to do with ECDE, which is a devolved function in our counties, because of the absence of an effective framework that guides oversight of the same.

Madam Temporary Speaker, the objectives of this Bill include the following. The principal objective of this Bill is to provide a framework for the establishment of a comprehensive early childhood development and education system by the Government, in line with the functions as set out under the Fourth Schedule of the Constitution. The Bill also seeks to provide a framework for the establishment of the infrastructure necessary to support the provision of quality Early Childhood Education.

It further seeks to provide a framework for the establishment of appropriate early childhood care and education systems, including the implementation of programme models, standards and curriculum based on research and best practices. The Bill also seeks to foster partnership among the national Government, county government, private practitioners and other relevant stakeholders with an interest and expertise in early childhood care and education.

Madam Temporary Speaker, the major provision of this particular Bill includes the following. The Bill specifically sets out the right of the child to education and imposes duties on the parents or guardians of the child, as well as teachers of the early childhood education centres, to ensure that children attend early childhood education centres. It also poses obligation on the national Government and county governments to put in place the necessary strategies, plans, structures and mechanisms that will ensure that the right to early childhood education is achieved.

Madam Temporary Speaker, the Bill also provides for the manner in which early childhood education centres shall be established and the process of registration of such centres. Currently, such particular process of registration and monitoring does not exist. This Bill imposes a number of requirements for registration. Currently, anybody can start an early childhood center anywhere. There is no proper structure or framework that can guide the registration and establishment of these particular important centres for the foundation of education and life for our children.

The Bill also provides for the establishment of mobile early childhood education schools, which are also required to undergo a registration process akin to that of permanent early education centres, albeit with few modifications. It also provides for the management of early childhood education centres by boards of management.

Madam Temporary Speaker, an Early Childhood Development Education (ECDE) center is also expected to have its own separate board of management from those of other education sectors, like in primary and secondary schools. The reason for this is that ECDE centers have their own unique needs which tend to be overshadowed by those of primary schools, and which are often overlooked or ignored. It also provides for the establishment of Parent Teachers Association (PTA) in each ECDE center. The Bill takes into account the fact that public ECDE centers may be sponsored by private persons or religious institutions. It, therefore, provides that such sponsors should not influence the curriculum or in any way compromise the quality of education to be administered.

Madam Temporary Speaker, the Bill calls for the provision of administration of early childhood education system in the county, including the manner in which curriculum is to be administered in ECDE centers. The Bill also provides for free admission into public ECDE centers and it sets the age of admission into the center as three years of age and not more than six years. It also provides that the school may use child birth certificates or immunization cards to determine the age of the child. The

Bill also prohibits the administration of exams for purposes of admission into ECDE centers.

The Bill also imposes, on application, on every ECDE center administering or intending to administer a foreign curriculum, to apply and to obtain accreditation from the respective County Education Board under Section 17 of The Basic Education Act. The Bill sets out the application and evaluation process and circumstances under which such accreditation may be revoked. It further provides for the establishment of an Early Childhood Quality Assurance Committee (ECQAC) in each county. This committee is to be responsible for implementation and ensuring adherence to the standards and guidelines on quality assurance development by education standards and the Quality Assurance Council (QAC), as established under Section 64 of The Basic Education Act.

Madam Temporary Speaker, the Bill also provides for the safety and protection of children in education centers by imposing an obligation on the board of management in each education center to ensure that the education centers meet the requirements of the safety and health regulation, to ensure that the environment is safe and secure for learning.

Madam Temporary Speaker, I have just summarized my contribution, otherwise the importance of this Bill cannot be underestimated. In fact, our counties are currently running different programmes. Teachers in ECDE centres have got different names; some counties call them 'care takers' while others call them different names. Therefore, this Bill will provide a framework for the employment, remuneration and professional development of teachers in early childhood education.

This includes a structure of how they will be remunerated, professionally developed and even promoted. Therefore, this Bill had gone to a higher level, but it was overtaken by events during the elections. Otherwise, it would have been enacted to become an Act of Parliament. This Bill is very important and most of the counties are waiting for it so that it may enable them to proceed and continue providing ECDE effectively and systematically.

Madam Temporary Speaker, I beg to move and ask Sen. (Prof.) Ongeru to Second it.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Madam Temporary Speaker, I want to second this Bill because I believe it lays the foundation upon which we should be able to get our educational system running. The early childhood education is the one that has been most abused and mishandled. We are talking about children at the age of four and five years. In fact, some of them from three to five years. Unless we have an organized system of handling these children, it is going to make a mockery of the free primary education later on leading to free secondary education because the foundation would have been very faulty. It would have been laid on awkward premise and therefore people will not be in a position to translate these children into gainful education.

Right from the outset, I wish to state that Article 53 of our Constitution gives every child the right to have a name and a nationality. That can only happen if they are in well-established centers because it is one way of doing the enumeration of these children. That Article gives the right to a child to free compulsory education. It also gives right to health and other related facilities and nutrition.

Madam Temporary Speaker, you will see where I am coming from. If we are going to establish the early childhood day care centers, then they must have all those ingredients required for the growth of that child. I think we should appreciate one factor; that will be deemed the most captive period of developmental milestones in these children. If we do not do anything more positive - I think our mothers know it very well - that this is the time you are trying to remove the child from the family settings to a day care center where they are going to socially and physically associate with the other children within the community.

Just like the concerns of parents are that our children should be in a safe and secure environment, this Bill goes to a greater length in prescribing the type of center we must put up at the Early Childhood Development Education (ECDE) level, how they should be built - because they should not be built in the same model as they do with the primary education system. There should be safety in terms of play, how the children run around so the type of objects being left around may be injurious to the children in that surrounding.

Therefore, the Bill goes to a great to define how these centres should be established. People must be careful about how they are established. When this center is established, there will be breaks for small refreshments and meals and, therefore, there must be water, clean toilets or otherwise, you create a place where you get all forms of diseases. Instead of children gaining in that association, the day care center will be sending diseases to their homes. I do not think we will make the parents happy. So, sanitation, public health, safety and the surroundings are critical in the management of these children.

There is also another element that we must consider in this Bill; that these children must be culturally developed because they have been brought up in a particular culture. They must be nationally involved in terms of the language they are going to use. Remember we have said in the Bill that the best medium of instruction may obviously be the mother tongue. However, there are certain differences in the urban centers where we have multi-nationalities and therefore no one single language will fit in. I think in most of our day care centers, it will vary from station to station that we need to capture this element so that there is both the culture that develops around the surroundings in that area, the language that is important and the development itself.

This Bill also seeks to harmonize curriculum development. That is why we should create time and energy to speak to the curriculum that should be taught in these ECD centres. We have worked alongside the Kenya Institute of Curriculum Development (KICD) and they have provided insights on how this curriculum will be developed, because this is the time children start vocalising various areas. They try to associate objects with what they are seeing and the names of those objects. They try to associate characters and the types of things they are seeing with those characters. They are trying to mentally differentiate between a grown-up person and a non-grown-up person.

If I would say from the medical profession, the brain growth of a child and its potential occurs in the first six months. In fact, the head circumference attains its maturity at almost 80 per cent of the head circumference. If you see when a child is growing, the head grows faster than any other thing, to be able to accommodate the brain. Within the brain, you have the cells that would now start developing and associate memory: place

and things that come and dangerous things that come. Therefore, the curriculum has taken into account these elements.

Since this will be streamlined and connected with free primary education, one of the biggest headaches that we have today is what will happen to our current primary schools. This is because most of the ECD centres are in those places. If those ECD centres must be connected with the primary school, then the format and the area in which they are allocated must be clearly defined.

Children like playing, that is their pleasure; they will always be very effective in playing. Therefore, you must provide a variety of toys and items for children to play with. That is the only way they enjoy early childhood learning. Do not go in for serious businesses, you must diversify their minds and create a favourable environment for them to say: "Yes, I think we have done the right thing and everything is well".

Apart from the right to early childhood education, we have provided the methodology on the registration of these items. We have also provided that there will be management of early childhood centres and I have spoken very extensively on that subject. The administration of early childhood centres is critical to the success of this. There may be other private sectors that may want to establish the ECD centres and the method of accreditation must be critical and at the end of it all, the quality assurance both in terms of the building structures, curriculum and methodology, must be clear.

I do not want to dilate this; I would have talked at great lengths on what we should do with these ECD centres. We commend that the rest of the Senators who will be debating this Bill, may do so with pleasure.

I beg to second and support this Bill. Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I will now propose the question.

*(Question proposed)*

## ADJOURNMENT

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m. time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 29<sup>th</sup> November, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.