

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 20th June, 2019

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

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

PRAYER

NOTICES OF MOTIONS

PLANTING OF TREES ALONG MAJOR INFRASTRUCTURE PROJECTS IN KENYA

Sen. Kibiru: Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, AWARE of the numerous benefits that trees play in environmental conservation, combating climate change, air and water purification, carbon sequestration, flood control, prevention of soil erosion, human and wildlife sustenance, urban planning, as well as other social and economic benefits;

NOTING THAT Kenya has and continues to implement various infrastructure projects across the country, among them railways, roads and highways, airports, sea and inland ports, pipelines, dams, among others;

CONCERNED by the extent of environmental degradation that takes place when undertaking such infrastructure projects, entailing clearance of trees, foliage, soils, rocks, excavation of quarries, interference with forests, wetlands, rivers, drainage systems and other embankments, as well as human and wildlife displacement along the paths of the infrastructure projects;

ACKNOWLEDGING THAT the Environmental Management and Coordination Act (No.8 of 1999) and the Guidelines issued thereon require an environmental audit to be undertaken before any infrastructure projects are undertaken, with a view to identifying potential environmental impacts of the proposed projects, assessing the significance of those impacts, and proposing mitigation measures to address the negative impacts of the said projects on the environment;

CONCERNED HOWEVER THAT the implementation of these provisions has failed to comprehensively address the continued large-scale environmental degradation that takes place during construction of these infrastructure projects, and that the mitigation measures undertaken thereon have failed to compensate for the damage

done to the environment as well as the negative effects to human and wildlife populations along the infrastructure project paths;

AWARE THAT the national Government has launched an ambitious plan to plant 1.8 billion trees by the year 2022, with a view to enhancing the country's tree cover from 6.2 per cent to the globally accepted minimum of 10 per cent, and that this entails, among others, planting at least 1 million trees annually in each of the 47 counties;

UNDERSCORING the need to balance between development and sustainable environmental management, for the benefit of present and future generations, as enshrined in the preamble to the Constitution of Kenya;

NOTING that planting of tree buffers alongside and around major infrastructure projects in the country would help offset the carbon footprint of these projects, enhance the beauty and aesthetics of the projects, create safe spaces for human recreation and for wildlife to thrive, and help in meeting the target of 10 per cent national tree cover by the year 2022;

NOW THEREFORE, the Senate resolves that the national Government, together with the county governments, formulate a policy mandating the planting of trees alongside and around all major infrastructure projects across the country, setting out the roles of various actors at both the national and county levels, and outlining incentives and penalties to ensure that the policy is complied with, in ensuring a balance is attained between development and environmental conservation.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, I can see that you are ready to give your notice of Motion.

STAFF RATIONALIZATION IN COUNTIES

Sen. (Dr.) Zani: Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, AWARE THAT the Senate represents the counties, and serves to protect the interests of the counties and their governments;

FURTHER AWARE THAT, the launch of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme was launched by the Inter-Governmental Steering Committee (IGSC) on 14th July 2014 with the objective of transforming the Public Service for efficient and effective service delivery at both levels of Government;

NOTING THAT, the implementation timelines for the CARPS programme of two years specifically with regard to the capacity assessment, workload analysis and staff redeployment and transfers, are of paramount importance in the counties as the terms of all second term county governors come to a close in 2022;

CONCERNED THAT, county governments are still engaged in uncontrolled hiring of staff in total violation of applicable laws, exposing a glaring imbalance between money spent on recurrent

expenditure, versus budgets for development projects which are the essence of devolution;

CONCERNED FURTHER THAT, contrary to Section 15(2)(b) of the Public Finance Management (PFM) Act, in counties such as Nairobi, Machakos, Garissa, Kisumu, Wajir, Baringo, Narok, Nakuru and Nyamira, staff salaries consumed in excess of 75 per cent of total expenditure, over and above the set limit of 35 per cent as provided in Regulation 25(1) of the Public Finance Management (County Governments) Regulations, 2015 during the FY 2018/2019;

DEEPLY CONCERNED THAT, although Section 65 of the County Governments Act requires that more than 30 per cent of the vacancies at entry level be given to members of ethnic groups that are not dominant in their precincts, the 2016 Ethnic and Diversity audit launched by the National Cohesion and Integration Commission revealed that 68 per cent of counties have hired more than 70 per cent of their staff from one ethnic group;

NOW THEREFORE in exercise of its oversight function, the Senate resolves that the Public Service Commission (PSC), Inter-Governmental Relations Technical Committee (IGTRC) and the Council of Governors (CoG) provide a comprehensive report on-

1. The progress and implementation status of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme indicating the county governments that are compliant; and

2. The number of employees in each county government showing the amount spent as wage bill vis-a-vis recurrent expenditure budgeted for FY 2018/2019 and submit these reports to the Senate within 60 days of this resolution.

The Speaker (Hon. Lusaka): Hon. Senators, we are using the Supplementary Order Paper.

RESOLUTION BY THE SENATE TO INSTITUTE LEGAL
PROCEEDINGS TO CHALLENGE LAWS ENACTED
UNPROCEDURALLY IN THE 12TH PARLIAMENT

The Senate Majority leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, WHEREAS Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments and Article 96 (2) of the Constitution provides that the Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113;

AND FURTHER WHEREAS Article 109(4) of the Constitution provides that a Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses;

NOTING that Article 110(3) of the Constitution requires that before either House considers a Bill, the Speakers of the National

Assembly and the Senate shall jointly resolve any question as to whether any Bill is a Bill concerning counties, and if it is, whether it is a special or an ordinary Bill;

AND NOTING in particular, that the Supreme Court in Supreme Court Advisory Opinion No. 2 of 2013; Speaker of the Senate vs The Attorney General reaffirmed the role of the Senate in the legislative process and particularly in the consideration and passage of Bills concerning county governments as well as the role of the Senate in the legislative process;

CONCERNED that despite the provisions of Articles 96(1) and (2) and Articles 109 to 113 of the Constitution and the pronouncement of the Supreme Court in the aforementioned Supreme Court Advisory Opinion No.2 of 2013, the two Houses of Parliament are yet to agree on the processing of legislation in Parliament as contemplated in the Constitution;

FURTHER CONCERNED that in the 12th Parliament, in respect of all the Bills originating from the National Assembly, the Speaker of the National Assembly has not sought the concurrence of the Speaker of the Senate as to whether the National Assembly Bills concern counties;

FURTHER CONCERNED that in the 12th Parliament, the National Assembly has originated and passed Bills without reference to the Senate despite the Bills containing matters concerning counties;

FURTHER CONCERNED that Bills originating from the Senate that are forwarded to the National Assembly for consideration are subject to the unconstitutional procedure of evaluation by the Budget and Appropriations Committee of the National Assembly as to whether or not they are money Bills and the consequent non-consideration of a good number of those Bills on the unilateral declaration of the National Assembly that such Bills are money Bills;

AWARE that the continued implementation of statutes for which there was no concurrence under Article 110 (3) of the Constitution and the continued introduction and consideration of new Bills without compliance with Article 110(3) of the Constitution is a breach of the Constitution;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution and that Article 94 of the Constitution requires Parliament to protect the Constitution and to promote the democratic governance of the Republic;

FURTHER COGNIZANT that the Senate is vested with the sacrosanct and high calling of fiercely protecting devolution;

OBSERVING FURTHER that persistent non-compliance with Articles 96(2), 109(4) and 110 to 113 of the Constitution is a threat to devolution and is unconstitutional;

NOW THEREFORE THE SENATE-

- (a) REITERATES AND REAFFIRMS its commitment in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

- (b) FURTHER REITERATES AND REAFFIRMS its commitment to protect the interests of the counties and their Governments;
- (c) REITERATES AND REASSURES the People of Kenya, on whose behalf it exercises its mandate under Articles 94 and 96 of the Constitution that it shall always, diligently and robustly prosecute that mandate and shall resist any actions or attempts to undermine devolution and the people's aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;
- (d) RESOLVES to institute legal proceedings to -
 - (i) challenge the laws that have been enacted unprocedurally in the 12th Parliament;
 - (ii) seek an interpretation of the term "money Bill"; and
 - (iii) seek a final determination of the procedure to be followed in respect of all the Bills that are pending before Parliament so as to ensure compliance with Article 110(3) of the Constitution and for the future.

The Speaker (Hon. Lusaka): Hon. Senators, let us now go back to Order No.5. Those who are seeking to speak, that was just a Notice of Motion.

Next Order, by the Chairperson of the Committee on Health.

PAPERS LAID

Sen. (Dr.) Mbito: Mr. Speaker, Sir, I beg to lay the following papers today, Thursday, 20th June, 2019-

REPORT ON THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL, 2018

Report by the standing Committee on Health on the Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No. 38 of 2018) and Report on the Mental Health (Amendment) Bill, 2018

Report by the Senate Committee Health on the Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018).

(Sen. (Dr.) Mbito laid the documents on the Table)

The Speaker (Hon. Lusaka): Proceed, Senate Majority Leader.

REPORTS ON FINANCIAL STATEMENTS OF VARIOUS COUNTY AGENCIES/FUNDS

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday 20th June, 2019:

Report of the Auditor-General on the Financial Statements of Makueni County Executive State and Public Officers Car Loan and Mortgage Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Makueni County Emergency Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Makueni County Youth, Men, Women, Persons with Disabilities and Table Banking Groups Empowerment Fund for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Limuru Water and Sewerage Company Limited for the Year ended 30th June 2018;

Report of the Auditor-General on the Financial Statements of Bungoma County Youth Empowerment Fund for the Year ended 30th June 2018;

The 2017/2018 National Cohesion and Integration Commission Annual Report;

National Government Budget Implementation Review Report for the First Nine Months of Financial Year 2018/2019;

Report of the Auditor-General on the Financial Statements of Kenya Health Sector Programme Support III – Danida Ref. 104.Kenya.810.300 – County Government of Kisii for the Year ended 30th June 2018; and,

Report of the Auditor-General on the Financial Statements of Nyamira County Executive Mortgage Scheme Fund for the Year ended 30th June 2018.

(Sen. Murkomen laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

RISING CASES OF MEDICAL NEGLIGENCE AND MALPRACTICES IN PRIVATE HEALTH FACILITIES

Sen. (Dr.) Milgo: Mr. Speaker, Sir, pursuant to Standing Order 47(1) I stand to give a Statement on an issue of general topical concern on the rise of negligence and medical malpractices in private health facilities.

As the House may already be aware, lately, there have been several cases of medical negligence and malpractices in private health facilities in the country that have led to the loss of lives of patients. Last week, a woman died while delivering a baby at Ruai Family Hospital. According to the late woman's husband, the hospital staff refused to allow him to transfer her to a different medical facility following a complication during birth. Consequently, the woman bled to death.

Mr. Speaker, Sir, this was not only such incident at the hospital. In 2017, the hospital was investigated by the Kenya Medical Practitioners and Dentists Board (KMPDB) for negligence after the foot of a three-week old newborn baby girl was amputated in a case of suspected medical negligence. The baby girl's foot had been cut off after it became carcinogenous after a needle for intravenous fluids administration was left in her foot for over three weeks.

Mr. Speaker, Sir, a few months ago, another incident was witnessed at Shalom Hospital in Athi River, where a woman was said to have been left to give birth on the floor unattended as nurses allegedly watched the television and took tea. As investigations on this particular incident was going on, the Machakos Branch of Shalom Hospital was facing accusations of medical negligence following the death of a seven-month old baby boy after being injected with a lethal dose of morphine. After

investigations, it was ascertained that the death of the infant could have been prevented and that the hospital lacked proper procedures, adequate staffing among a myriad of other medical processing lapses.

Mr. Speaker, Sir, all these cases of medical negligence and malpractices have caused untold pain and psychological torture to families affected. I would, therefore, urge the Standing Committee of Health to investigate the matter of rampant medical negligence in the country with a view to arresting the trend and succinctly establish-

1. Measures that have been taken to regulate the operations of private hospitals.

2. Measures that have been taken by the KMPDB in ensuring that all doctors serving in private hospitals are professionally qualified; and, finally

3. What measures shall be put in place to ensure that cases of medical negligence and malpractice are eliminated.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I do not see any interest.

Next Statement from Sen. Halake.

ZERO-RATING OF DUTY AND VAT ON LOCALLY MANUFACTURED MENSTRUAL HYGIENE PRODUCTS

Sen. Halake: Thank you, Mr. Speaker, Sir. This Statement was supposed to have coincided with the reading of the Budget, but I will still go ahead with it, because we are still going to push for zero-rating of these products.

Mr. Speaker, Sir, I stand pursuant to Standing Order 48(1) to request a Statement from the Standing Committee on Finance and Budget regarding the issue of zero-rating of duty and VAT on locally manufactured menstrual hygiene products.

In the Statement, I would like the Committee to explain-

(1) The status of implementation of the Senate Resolution on zero-rating of duty and exemption from VAT for locally manufactured sanitary towels which was made on 22nd November, 2018.

(2) State the plans being put in place to ensure zero rating of local production of sanitary pads and tampons in the 2019/2020 national and county budgets and in future.

(3) Outline long-term measures and pre-conditions by all counties and national Government to create non-discriminatory tax laws and to pursue gender-based budgeting generally going forward.

Sen. Sakaja: Mr. Speaker, Sir, I support that Statement by Sen. Halake on zero rating of menstrual hygiene products.

For too many years, we have just given lip service to our women and young girls in this country. Menstruation is a natural process. It is not a choice, but many of our young girls even have to stay out of school because we have not been able to provide for them appropriately.

I urge that the Committee on Finance and Budget to move with speed to make sure that all women in this country benefit from the zero rating of Value Added Tax (VAT) on menstrual hygiene products because it is not a choice that they make whether they go through the cycle or not. It is something that happens naturally and all over.

The Speaker (Hon. Lusaka): I do not see any other interest.

THE PSC'S RADICAL POLICY ON EMPLOYMENT OF
CIVIL SERVANTS ON CONTRACT

Sen. Sakaja: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No.51(1)(a), I rise to make a Statement as the Chairperson of the Standing Committee on Labour and Social Welfare regarding the Public Service Commission---

(Loud consultations)

Mr. Speaker, Sir, I urge---

The Speaker (Hon. Lusaka): Order, Members! Let us consult in low tones. The Statement being raised is very important.

Sen. Sakaja: Mr. Speaker, Sir, I am concerned that it is Members of my Committee who are not listening when they should be listening to this.

Pursuant to Standing Order No.51(1)(a), I rise to make a Statement as the Chairperson of the Standing Committee on Labour and Social Welfare regarding the Public Service Commission's (PSC's) radical policy on-

- (a) Freezing permanent employment in the public service
- (b) Employment of all civil servants under three years contracts only.

Mr. Speaker, Sir, the Senate Standing Committee on Labour and Social Welfare is considering this matter seriously and will address the following concerns that have been raised since this announcement was made.

(c) Whether public participation was conducted in line with Article 10 of the Constitution.

(d) Whether a feasibility study was done and conducted on the impact of this policy change showing different scenarios on the cost.

(e) The effect of the change of policy in relation to the national development agenda.

(f) The status of Kenya's job skills gap in the public service.

(g) The effect of the policy shift on service delivery in the public service sector of best international practice on human resource management in public service.

(h) The social and economic effects of the change of this policy.

Mr. Speaker, Sir, I beg to bring the above issue of general topical concern to the attention of the Senate and commit that we shall expedite this matter. We shall be inviting all concerned stakeholders like the PSC, Council of Governors (CoG), trade unions and representatives of workers so as to make sure this policy, if implemented, will be the best deal for our country and in line with what Sen. (Dr.) Zani has brought about the rationalization on the public service.

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

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

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. The Chairperson of the Standing Committee on Labour and Social Welfare has brought an important issue. Unlike on previous occasions where we, as Members of Parliament (MPs), had not been in consonant with the Executive side of Government in their attempt to do

one or two things, if there is an area that requires a broader spectrum view to the issues that are before us, then it is this issue.

Madam Temporary Speaker, I know for a fact and as they say, figures do not lie. You only need to look at our current Budget and see the amount of money we spend on remunerations benefits only a few people in the country. We have about 700,000 public servants in a country of almost 50 million people. Out of revenue collections of Kshs1.4 trillion, close to Kshs800 billion goes to funding these particular individuals. We, as a country, must have a holistic view to this issue.

I am not opposing it just for the sake of opposing, but we must also be convinced that the Cabinet Secretary (CS) for the Ministry of Public Service, Youth and Gender Affairs lays out a proper procedure. She must also justify before this House of Parliament because it is extremely important that they do so. We will then understand whether it is only about future public servants that are to be engaged on this and what happens to institutions that have already engaged public servants and their service is not needed at this particular time.

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Order, Senator! Hon. Senators, kindly consult in a manner that we can also follow the proceedings.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. My point is that we need to do a qualitative analysis to this process. We must ensure that 50 million of us citizens of this country get value for the taxes that we pay. As at now, the truth is that we do not. Every Kenyan pays taxes, but very few of us access public service courtesy of spending almost three-quarters of our revenue collection on paying public wages alone.

It will, therefore, be important that when the CS tables that policy before us, as we consider it, we look at it with those facts in mind. For example, it will be of interest to us to know that there are almost 300 parastatals in this country, but if you gave Senators a blank piece of paper this afternoon and asked them to list the parastatals that offer valuable service to Kenyans, very few of them will go above 10 or 20. There are so many institutions that were either rendered moribund or are no longer useful to the kind of services they offer to this country and yet people continue to earn salaries.

I urge that we look at this issue with a broad and open mind. The only thing that I warn against is that a trend is emerging in this Government where in the pursuit of what is considered to be public good, citizens end up suffering. We, as citizens, have continued to cheer them on and say we support what the Government is doing because it either makes our country better, or we have a sadistic view to life.

Madam Temporary Speaker, let me take an example of what happened to the residents of Nkoroi. Their houses were demolished and they were left out in the cold with their families. Imagine if you were to return to your home this afternoon and find that the place you and your family have called home is no longer accessible simply because the Ethics and Anti-Corruption Commission (EACC) and the National Land Commission (NLC) cannot agree on the amount of money they are supposed to pay you before you move out. It will be unfortunate.

I urge our colleagues who sit in the Committee on Justice, Legal Affairs and Human Rights to look into some of these issues. This is emerging to be a very bad public trend where individual human rights are being trampled upon and we are told

to celebrate it because it is in the pursuit of global good. There cannot be global good when private or individual human rights are being trampled upon. Therefore, I urge my colleagues in that particular Committee to address the concerns of those Kenyans.

I watched with a lot of pain and imagined what a father would do if he returned home and he is not able to explain to his 10 year old son why they do not have a place to call home anymore. As this demolition was going on, we could see police officers supervising. How did we sink so low as a country to a point where police officers can now supervise illegalities and demolitions that have not been sanctioned by courts? It is a bad trend which, if we do not speak against it as a Parliament, shall continue. Before we know, it will come closer either to our families or to us as individuals Members of Parliament (MPs).

(Sen. Murkomen stood in his place)

Madam Temporary Speaker, Senate Majority Leader is interrupting my contribution. Yet, if there is---

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, continue with your deliberations. The Senate Majority Leader is peaceful.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker, for protecting me from the Senate Majority Leader.

As I conclude, I support the issues that have been raised by our colleague. I hope that when we eventually get a chance to look into this policy, we shall properly give it our thoughts.

With those many remarks, I support.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I bring to your attention that there are a lot of interests on this Statement. We also have a lot of urgent business to transact. Kindly take two minutes or so to make a comment.

Sen. Halake: Thank you, Madam Temporary Speaker. I will take less than two minutes. I stand to support the Chairperson of the Committee on Labour and Social Welfare for his proactive measures to ensure that the feasibility study is done and that the effects on service delivery are guaranteed.

For the record, public service, as the Senator for Kericho County has said, only employs seven thousand people out of almost close to seven million people that are employed by the private sector. So, as we rationalize, the public service should provide good employment for our people. However, the rationalization should not be misconstrued to block out people from getting decent employment within our Government because we still need the services to be offered.

Madam Temporary Speaker, the real issue of human resource planning should be taken seriously. We make laws in this House, but most of them come with human resource components through authorities or commissions. We need to look at that as well as the bigger picture.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, the question of wage bill and unemployment in public sector must be looked at holistically as a public policy. Before that direction has been given by the Ministry, I feel like the Government is extremely disjointed when it comes to addressing the question of wage bill. This is because on one hand, they have a huge report lying somewhere and gathering dust about restructuring parastatals and State corporations. We have three, four or five State corporations doing the same thing with an overload

of staff. We have others that are doing county functions and others which are doing absolutely nothing yet they continue to receive a budget.

The point is we need to be serious as a nation and discuss the question of wage bill for the national Government and county governments. This issue is more serious than amending the Constitution. Therefore, it must have a serious national taskforce that leads to a national conversation on how we should reduce the wage bill from Kshs800 billion to something reasonable, for example, Kshs300 billion. That can only be done if we look at it holistically. The Government should look at all the sectors that are affected so that we can continue to deliver public service without the idea of *ad hoc* decisions.

Lastly, we cannot fault the hiring of teachers and doctors and put it to be part and parcel of non-development wage bill. We need a definition of a wage bill that is necessary for development, for example, that of nurses, doctors, teachers, both in Early Childhood Development Education (ECDE), high school and university. This categorization is important. We should not start to say that Teachers Service Commission (TSC) should not continue to hire teachers yet we want to achieve universal education. We cannot say we should not hire doctors and nurses, yet we want to achieve universal healthcare.

Madam Temporary Speaker, those things must be considered before we come to the conclusion. I agree with Sen. Sakaja that it must not be an *ad hoc* declaration; it must be informed by proper public conversation and participation.

The Temporary Speaker (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr., you have three minutes.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker, for the opportunity. I congratulate Sen. Sakaja and his team for the proactive approach to this matter. His Committee must reinforce what appears to be a mistake at Government level. Policy is not and will never be law. The Government cannot legislate through the back door. These policies are against the Constitution and the Employment Act. They are violating the rights of Kenyans who want to be employed and the ones in employment.

Madam Temporary Speaker, the Bill of Rights that safeguards trade unionism and employment law is under Chapter 4 of the Constitution. It is something that we fought for and cannot be amended without a referendum.

There is something about this Government. Every time we are faced with debt or borrowing, it says the problem is the wage bill, yet they have hired people called "Chief Administrative Secretaries" (CASs), whom I do not know what they do and they are well paid. The Government does not want to pay teachers, nurses and doctors well. It wants to put them on contracts. Social security is a right of every Kenyan which means that when they are 60 years old, they should get their pension.

Sen. Sakaja, as the Committee discusses this issue, it must take into consideration the people who have worked for this Government and are now queuing at the National Treasury looking for their pension. Teachers who have worked for so long are waiting for two years before they get their pension which is money they have been deducted.

The national Government and county governments are full of ghost workers. There are people who are taking double salaries. Those who transited from local Government and joined county governments are paid double the salaries of the people whom they found in service.

The Government says that it wants to create jobs yet it wants to fire people and it has never rationalized how people are paid. Cabinet Secretaries (CS) and Permanent Secretaries (PS) are paid so well for jobs which I do not understand.

Can we find a method where policy is first discussed at the Executive level and married to the law? We, the legislators, must speak about the law. The Executive must stick to policy. However, when it talks about *Huduma* Number and rationalizing civil servants and many other things, those are all policies where the national Government is taking over the work of Parliament. Slowly, they will take away everything through these sorts of policies.

Madam Temporary Speaker, we hope that the Committee on Labour and Social Welfare will save the labour workforce of this country. Any Government that cannot employ workers, create employment or pay for essential services is not a Government. We must reinforce human resources for essential services like health. A nurse who works for 18 hours must be paid well. Now that you are paid for sitting, are they paid for standing for 18 hours?

The Temporary Speaker (Sen. Nyamunga): Sen. Ochillo-Ayacko, you have two minutes so that we capture the rest that are remaining.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for giving me this opportunity to speak. I congratulate my brother, Sen. Sakaja, for proactively coming up with this matter.

Madam Temporary Speaker, issues of performance in the public service are directly related to service delivery which means good performance. Good wages also means good performance. In fact, good terms of employment are also related to good performance. Therefore, if the Government wants to talk about the cost of performance, it should propose that there should be non-performance so that the wage is delivered.

I urge Members of the Senate Committee on Labour and Social Welfare to ensure that the Government is committed to motivating people who are employed so that they perform. The Government should look for more money and they should know where to get it.

The idea of making the work environment bad for employees is an idea that is not in line with the Constitution. Therefore, Members of the Committee should ensure that the Government sticks to its lane, which is to ensure good performance and service delivery. Workers should not be subjugated and made to suffer.

I thank you.

Sen. Shiyonga: Thank you, Madam Temporary Speaker, for giving me this opportunity to support this Statement. The Government has taken its citizens for a ride when it comes to issues of employment and public service.

There are proposals to have civil servants employed on contracts of three years. That is something I do not agree with as a legislator. They claim that the aim is to reduce the wage bill. There are people who are more than 60 years with more than three jobs. What are they doing? They need to be at home resting. It is funny that they still have jobs and they are being paid. We need to look into that.

We have invested a lot in our children who are now being wasted. The Government has proposed to freeze employment, but I think there could be a hidden agenda. People have also invested a lot in the private sector. If the Government comes up with such proposals, what about the private sector? That is depriving Kenyans of their livelihoods. I have a lot of pain because Kenya is a suffering nation.

I beg to support and thank you.

Sen. (Dr.) Ali: Madam Temporary Speaker, I thank the Chairman of the Committee on Labour and Social Welfare for bringing this Statement. It is unfortunate because Kenyans who work in the civil service are already suffering. They do not have enough pay and houses and health cover. Now this Government wants to have people employed on contracts of three years. Who is going to work for this Government?

People have been working for the Government and retire at 60 years with pension. People have been working for the Government of Kenya, but now it wants to have people employed on contracts of three years. If that is the case, nobody is going to work for this Government. I am afraid that all workers could resign.

(Loud consultations)

Can I be protected, Madam Temporary Speaker?

The Temporary Speaker (Sen. Nyamunga): Order! Hon. Senators, kindly consult in a manner such that you do not interfere with the proceedings of the House. Consult in low tones.

Sen. (Dr.) Ali: Relax!

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, please, continue. Do not communicate directly to them because you are making the matter worse.

Sen. (Dr.) Ali: Thank you, Madam Temporary Speaker. Doctors and nurses are now leaving this country en masse because of the suffering. If there are required to be employed on contract basis for three years, nobody will be willing to work in this country. Teachers are already having a lot of problems. Who is going to work for this Government?

We have heard that they want everybody working for the Government of Kenya to be employed on contract for three years. Most of them are above 60 years and that is where the problem is. They should go home. They cannot decide for the people of this country anymore. They are already above 60 years, but want to limit people to be employed for only three years. What sort of a Government is this? Unfortunately, I am part and parcel of this Government---

(Sen. (Dr.) Ali's microphone went off)

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Ali, your time is up. Finally, we will have Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Madam Temporary Speaker, the issue of labour and employment is a big problem because we have about 60 per cent unemployment rate. That is a big problem for a developing nation. We cannot achieve development with that scenario.

Secondly, there are decisions that are being made without clear indication of the macro policies in place. Those working for the Government know that they are permanently employed and they will get pension, but suddenly the decision wants to be changed. That will have a lot of implication on productivity for people who will be employed on contracts for three years. How will they be productive when they know they will be employed only for a short time?

The other important thing is training and capacity building which is needed to ensure that people with jobs are trained properly. The implication is that people will be trained every cycle because those on contracts will be changed after every three

years. That means that people will be trained, but before they can deliver, they will be required to go. So, there will be a lot of disorganization.

It is important to have rationalization of human resources in this country, both at the county and national level, so that labour is linked to productivity. We should have job descriptions and what people do and the outcomes should be clear.

Madam Temporary Speaker, I thank you and support.

The Temporary Speaker (Sen. Nyamunga): The next Statement is by Sen. Seneta.

TRAFFIC OFFENCES BY FOREIGN REGISTERED
PSVs ON KENYAN ROADS

Sen. Seneta: Thank you, Madam Temporary Speaker, for giving me a chance to request for a Statement on Traffic Offences by Foreign Registered Public Service Vehicles (PSVs) on Kenyan Roads. This is specifically for vehicles from Tanzania.

Madam Temporary Speaker, pursuant to Standing Order No.48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation concerning traffic offences by foreign registered PSVs on Kenyan roads. In the Statement, the Committee should-

(1) Explain measures put in place to ensure foreign registered PSVs meet safety standards set by Kenyan authorities.

(2) State mechanism put in place to ensure drivers of foreign registered PSVs are compliant with Kenyan qualifications for the PSV drivers.

(3) Explain measures put in place to ensure drivers and owners of foreign registered PSVs are held accountable for accidents they cause within the country.

(4) State the regulatory framework under which Kenyan registered PSVs in Tanzania operate.

Madam Temporary Speaker, we have experienced a lot of accidents caused by Tanzanian vehicles along Namanga Road which links Tanzania to Nairobi. The Committee should undertake the assignment and table a report in this House.

The Temporary Speaker (Sen. Nyamunga): The Statement stands committed to the relevant Standing Committee.

The Senate Majority Leader is to issue the next Statement, but I cannot see him. I can see Sen. Dullo.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 2ND JULY, 2019

Sen. Dullo: Thank you, Madam Temporary Speaker. Pursuant to Standing Order 52(1), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 2nd July, 2019.

Before I proceed with the Statement, allow me to highlight the Bills that the House has passed within the period of 14th May, 2019 and 20th May, 2019. A total of 13 Bills, were passed, nine of which are at various stages of transmission to the National Assembly for consideration. The said Bills are-

1. The Public Participation Bill (Senate Bills No. 4 of 2018);
2. The Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018);

3. The Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018);
4. The County Early Childhood Education Bill (Senate Bills No. 26 of 2018);
5. The Tea Bill (Senate Bills No. 36 of 2018);
6. The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 27 of 2018);
7. The Prevention of Terrorism (Amendment) Bill (Senate Bills No. 20 of 2018);
8. The Care and Protection of Older Members of Society Bill (Senate Bills No. 17 of 2018);
9. The Impeachment Procedure Bill (Senate Bills No. 15 of 2018);
10. The County Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No. 18 of 2018);
11. The County Outdoor Advertising Control Bill (Senate Bills No. 19 of 2018);
12. The County Law Compliance and Enforcement Bill (Senate Bills No. 25 of 2018); and
13. The County Wards (Equitable Development) Bill (Senate Bills No. 34 of 2018).

Allow me to commend all hon. Senators who were present in the House during the processing and passing of the said Bills. I caution that there are still quite a number of Bills before the House for consideration. I request hon. Senators to show the same dedication and commitment to service during their processing as demonstrated in the passage of the aforementioned 13 Bills.

In addition to the Bills, the Senate debated and passed several Motions whose resolutions have been forwarded to the relevant agencies for necessary action.

*(Sen. Kwamboka entered the Chamber
without bowing to the Chair)*

The Temporary Speaker (Sen. Nyamunga): Sen. Kwamboka, kindly go back to the Bar.

*(Sen. Kwamboka walked to the Bar and
bowed to the Chair)*

Sen. Dullo: Hon. Senators, as you are aware, the Senate is scheduled to proceed on a 10 day recess beginning at the rise of the House today, and concluding on Monday, 1st July, 2019, pursuant to the Senate Calendar adopted on 14th February, 2019.

On Tuesday, 2nd July, 2019, the Senate Business Committee (SBC) will meet to schedule the business of the Senate for the week. Subject to further directions by the Committee, the Senate will consider Bills due for Second Reading and Committees of the Whole on Tuesday, 2nd July, 2019. The Senate will also continue with the consideration of business that will not be concluded in today's Order Paper.

On Wednesday, 3rd July and Thursday, 4th July, 2019, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

I urge Standing Committees with Bills, Petitions and Statements pending before them, to use the 10 day recess period to conclude them and table reports as required by the Standing Orders.

Allow me to remind the House that upon resumption of business on 2nd July, 2019, Select Committees of the House will be required to make half-year Statements or reports on the business transacted, pursuant to Standing Order 51(1)(b). A schedule of reporting is attached to this Statement.

Finally, I take this opportunity to wish all hon. Senators well as they take a break to be with their respective families and constituents during the recess period.

I thank you and hereby lay the Statement on the Table of the Senate.

(Sen. Dullo laid the document on the Table)

The Temporary Speaker (Sen. Nyamunga): Sen. Dullo, please, proceed to the next statement.

PROPOSED SCHEDULE OF STATEMENTS BY
COMMITTEE CHAIRPERSONS

Sen. Dullo: Madam Temporary Speaker, I will go through the Schedule for reporting by the Committees.

Pursuant to Standing Order No. 51(1)(b), Committee Chairpersons shall at least once in every three months, on such day as shall be assigned by the SBC, and at any other time if so required by the Speaker, make a Statement relating to the activities of the Committee.

Standing Order No.51(2) further provides a framework of the Statement by Chairpersons. Consequently, below is the proposed schedule to facilitate the aforementioned.

No.	Standing Committees	Date of Reporting
1.	Agriculture, Livestock and Fisheries	Wednesday, 3 rd July, 2019
2.	Devolution and Intergovernmental Relations	Wednesday, 3 rd July, 2019
3.	Education	Wednesday, 3 rd July, 2019
4.	Energy	Thursday, 4 th July, 2019
5.	Finance and Budget	Thursday, 4 th July, 2019
6.	Health	Thursday, 4 th July, 2019
7.	Information and Technology	Tuesday, 9 th July, 2019
8.	Justice, Legal Affairs and Human Rights	Tuesday, 9 th July, 2019
9.	Labour and Social Welfare	Tuesday, 9 th July, 2019
10.	Land, Environment and Natural Resources	Wednesday, 10 th July, 2019
11.	National Cohesion, Equal Opportunity and Regional Integration	Wednesday, 10 th July, 2019
12.	National Security, Defence and Foreign Relations	Wednesday, 10 th July,

		2019
13.	Tourism, Trade and Industrialization	Thursday, 11 th July, 2019
14.	Roads and Transportation	Thursday, 11 th July, 2019
	Sessional Committees	
15.	County Public Accounts and Investments	Thursday, 11 th July, 2019
16.	Delegated Legislation	Tuesday, 16 th July, 2019
	House Keeping Committees	
17.	Committee of Powers and Privileges	Tuesday, 16 th July, 2019
18.	Procedure and Rules Committee	Tuesday, 16 th July, 2019
19.	Liaison Committee	Wednesday, 17 th July, 2019
20.	Senate Business Committee	Wednesday, 17 th July, 2019

I thank you.

(Sen. Dullo laid the document on the Table)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THE PARLIAMENT OF UGANDA

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of a visiting delegation from the Legal and Parliamentary Committee of the Parliament of Uganda.

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. Oboth Jacob Marksons	-	Head of Delegation
Hon. Obua Devis Hamson	-	Member
Hon. Akampulira Prossy	-	Member
Hon. Byanugaba Alex	-	Member
Hon. Mwiru Paul	-	Member
Mr. Max Komakech	-	Staff
Mr. Edward Ngobye	-	Staff
Mr. John Tamale	-	Staff

The delegation is in the country on a benchmarking visit to our Centre for Parliamentary Studies and Training (CPST) to share experiences in relation to the legislation that the Parliament of Uganda is processing; the Institute of Parliamentary Studies Bill, 2019.

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

(Applause)

The Temporary Speaker (Sen. Nyamunga): We will allow two Members to comment.

Sen. Were: Thank you, Madam Temporary Speaker. I join you in welcoming the Members of Parliament from Uganda. I know that they have a unicameral Parliament which is different from the bicameral Parliament that we have in our country. However, they can still learn something from the Senate because they also have some devolved units. I know that they will learn a lot from us because we are their big brother.

I would also like to recognize the Parliament of Uganda because they have a woman for a Speaker, Hon. Rebecca Kadaga. I thank you for the respect that you have for women. Uganda just like Rwanda, have good standing in terms of gender consideration. Welcome.

Sen. Cheruiyot: Madam Temporary Speaker, I welcome the hon. Members from Uganda. I am a board member of the Centre for Parliamentary Studies and Training (CPST). Therefore, I get really excited when I see Members from other regional parliaments come to interact with us to learn about our parliamentary traditions and how we conduct our affairs.

I extend a warm welcome to them and look forward to interact with them if the opportunity is presented to me. On behalf of my colleagues and all the other board members of the CPST, I say *karibuni*.

Sen. Madzayo: Asante sana, Bi. Spika wa Muda kwa kunipa fursa hii. Nawashukuru waheshimiwa Wabunge wa Bunge la Uganda kwa sababu hao ndio majirani wetu wa karibu sana.

Hon. Senators: They do not know Kiswahili.

Sen. Madzayo: Nawapa wabunge wa Uganda kongole kwa kuja hapa kujifunza. Ingawa Maseneta wengine wanasema kwamba Wabunge hawa hawaelewi Kiswahili, naamini kwamba wengi wao wanaelewa Kiswahili.

Nina imani kwamba watajifunza mambo mengi sana hata lugha ya Kiswahili. Ningependa kuwashawishi kwamba Kenya ina mahali kwingi ambapo wanaweza kutembea jioni jioni. Kiongozi wa wengi wa Seneti, Sen. Murkomen, anajua sana sehemu ninazozungumzia, kwa hivyo anaweza kuwatembeza jioni.

(Laughter)

Bi. Spika wa Muda, nawashawishi Wabunge wa Bunge la Uganda wachukuwe nafasi hiyo ili waone Kenya inaweza *offer* kitu gani.

Asante sana, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I have a Communication to make.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST TERESA'S KABULA
BOYS SECONDARY SCHOOL, BUNGOMA COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from St Teresa's Kabula Boys Secondary School in Bungoma County.

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

I thank you.

(Applause)

I would like to give an opportunity to any Member from Bungoma County to welcome the students. Is there any Member interested in welcoming the students from Bungoma County?

Kindly proceed, Sen. (Dr.) Musuruve. Kindly make it brief.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I thank you for giving me this opportunity to welcome the boys from Bungoma County and the Members of Parliament (MPs) from Uganda to the Senate today. These are best international practices that need to be encouraged.

It is good to have students who are boys in the House because we have been talking about the girl-child at the expense of our boys. There is need for us to encourage our boys so that by the time they finish school, we will have boys who are ready to take the mantle.

Madam Temporary Speaker, I encourage the boys to work very hard because this nation believes in them. I trust that when they work hard in school, they will be good leaders. I encourage the boys to take the advice given to them by their teachers seriously. I urge them to shun from joining bad company because they need to know that wrong company can pollute morals. We would like to have boys who are morally upright.

I believe that their teachers are doing their best, but there is need to ensure that they listen to their teachers and parents. There is need for a tripartite relationship for them to become good leaders.

The Temporary Speaker (Sen. Nyamunga): Sen. Pareno, what is your point of order?

STATEMENT

HUMAN-WILDLIFE CONFLICT AFFECTING COMMUNITIES BORDERING GAME PARKS AND GAME RESERVES

Sen. Pareno: Madam Temporary Speaker, before we conclude on the statements, I would like to get the status of a statement that I had requested on the human wildlife conflict in Kajiado County. The Committee was given 14 days to report to this House. Today is the 14th day and I have not heard from the Committee. The elephants are still killing people. Children are not going to school and the animals are still being killed by the locals. I would like to hear the interventions that the Committee has made, so far.

The Temporary Speaker (Sen. Nyamunga): Is the Chairperson of the Committee on Tourism, Trade and Industrialization in the House?

Sen. Kibiru: Madam Temporary Speaker, I had indulged Sen. Pareno that we are still in the process of dealing with the statement. I am waiting for a call from the Director of the Kenya Wildlife Service (KWS) to see what can be done to resolve the situation. The Committee is working on the statement.

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, are you aware that we are going on a 10 days recess? This issue is important to be me because when Members raise questions, they should be attended to immediately. These issues are important to the people who bring such statements to the House.

Sen. Kibiru: Madam Temporary Speaker, I am aware that we are going on recess, but we agreed that we would deal with the statement even while on recess.

The Temporary Speaker (Sen. Nyamunga): Sen. Kibiru, how long do you require to come up with a conclusive reply to the statement?

Sen. Kibiru: Madam Temporary Speaker, we will have resolved the issues by the time we come back from recess. We will have a report ready.

The Temporary Speaker (Sen. Nyamunga): Sen. Pareno, are you okay with that?

Sen. Pareno: Madam Temporary Speaker, with due respect to my colleague, the Chairperson of the Committee on Tourism, Trade and Industrialization, I am really disappointed. Many lives have been lost because the elephants have gone on a rampage; killing people and animals, uprooting pipes and boreholes and destroying everything that they come across. This is a serious issue.

The Committee was given 14 days to report back yet we have not heard any interventions to date. I hope that we will resolve this issue soon now that the Chairperson has given an undertaking before the House and since he had talked to me earlier. I hope that the Committee will also visit the ground to see the amount of destruction.

The Temporary Speaker (Sen. Nyamunga): The Committee has two more weeks to report back.

Sen. Kibiru: Madam Temporary Speaker, we will deal with this issue in less than two weeks.

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

MOTION

RESOLUTION BY THE SENATE TO INSTITUTE LEGAL PROCEEDINGS TO CHALLENGE LAWS ENACTED UNPROCEDURALLY IN THE 12TH PARLIAMENT

The Senate Majority leader (Sen. Murkomen): Madam Temporary Speaker, I beg to move the following Motion-

THAT, WHEREAS Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments and Article 96 (2) of the Constitution provides that the Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113;

AND FURTHER WHEREAS Article 109(4) of the Constitution provides that a Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses;

NOTING that Article 110(3) of the Constitution requires that before either House considers a Bill, the Speakers of the National

Assembly and the Senate shall jointly resolve any question as to whether any Bill is a Bill concerning counties, and if it is, whether it is a special or an ordinary Bill;

AND NOTING in particular, that the Supreme Court in Supreme Court Advisory Opinion No. 2 of 2013; Speaker of the Senate vs The Attorney General; reaffirmed the role of the Senate in the legislative process and particularly in the consideration and passage of Bills concerning county governments as well as the role of the Senate in the legislative process;

CONCERNED that despite the provisions of Articles 96(1) and (2) and Articles 109 to 113 of the Constitution and the pronouncement of the Supreme Court in the aforementioned Supreme Court Advisory Opinion No. 2 of 2013, the two Houses of Parliament are yet to agree on the processing of legislation in Parliament as contemplated in the Constitution;

FURTHER CONCERNED that in the 12th Parliament, in respect of all the Bills originating from the National Assembly, the Speaker of the National Assembly has not sought the concurrence of the Speaker of the Senate as to whether the National Assembly Bills concern counties;

FURTHER CONCERNED that in the 12th Parliament, the National Assembly has originated and passed Bills without reference to the Senate despite the Bills containing matters concerning counties;

FURTHER CONCERNED that Bills originating from the Senate that are forwarded to the National Assembly for consideration are subject to the unconstitutional procedure of evaluation by the Budget and Appropriations Committee of the National Assembly as to whether or not they are money Bills and the consequent non-consideration of a good number of those Bills on the unilateral declaration of the National Assembly that such Bills are money Bills;

AWARE that the continued implementation of statutes for which there was no concurrence under Article 110 (3) of the Constitution and the continued introduction and consideration of new Bills without compliance with Article 110(3) of the Constitution is a breach of the Constitution;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution and that Article 94 of the Constitution requires Parliament to protect the Constitution and to promote the democratic governance of the Republic;

FURTHER COGNIZANT that the Senate is vested with the sacrosanct and high calling of fiercely protecting devolution;

OBSERVING FURTHER that persistent non-compliance with Articles 96(2), 109(4) and 110 to 113 of the Constitution is a threat to devolution and is unconstitutional;

NOW THEREFORE THE SENATE-

- (a) REITERATES AND REAFFIRMS its commitment in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

- (b) FURTHER REITERATES AND RE-AFFIRMS its commitment to protect the interests of the counties and their Governments;
- (c) REITERATES AND REASSURES the People of Kenya, on whose behalf it exercises its mandate under Articles 94 and 96 of the Constitution that it shall always, diligently and robustly prosecute that mandate and shall resist any actions or attempts to undermine devolution and the people's aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;
- (d) RESOLVES to institute legal proceedings to -
 - (i) challenge the laws that have been enacted unprocedurally in the 12th Parliament;
 - (ii) seek an interpretation of the term "money Bill"; and
 - (iii) seek a final determination of the procedure to be followed in respect of all the Bills that are pending before Parliament so as to ensure compliance with Article 110(3) of the Constitution and for the future.

Madam Temporary Speaker, this is a very straightforward Motion. This is a culmination of a continued struggle of the Senate since the year 2013. A decision has been made by the Senate in its own *kamukunji* to be affirmed, ratified and adopted by this House.

In the *kamukunji*, it was agreed that I would move this Motion because it is a co-sponsored Motion, seconded by the Senate Minority Leader; and that we would not debate the merits of this Motion because they will be before the High Court of Kenya.

Madam Temporary Speaker, suffice it to note that this process is very important for our Constitution. It has nothing to do with a competition between this House and the National Assembly. It has nothing to do with the political leanings of anybody in this House; it is about institutional integrity and protection of the Constitution.

In the past, it was negative for anyone to go to court. Overtime, under the current Constitution, it has become a positive thing. Even the Government itself seeks advisory opinions and directions from the courts because they are institutions recognized by the Constitution to give final decisions on matters affecting governance. Therefore, no one out there should imagine that when one goes to court, he is being adversarial.

It is also a mechanism we give people of Kenya to find the final determination of issues that we may disagree over or have a different interpretation on. The Constitution allows every citizen to interpret it the way they want but the final arbiter and interpreter of the Constitution is the court.

We are going there as the Senate because we want to help the country, to be defenders of the Constitution and to ensure there is observance of the Constitution. Perhaps, in many years to come, history will be kind to all those Senators sitting in this House when it shall be said the strength of devolution, institutional integrity of Parliament, and respect for the institution of Parliament was greatly enhanced when the Senate of the Republic of Kenya decided they would take a very bold and courageous step to ensure that the jurisdiction and integrity of the Senate is protected by the courts of Kenya.

Madam Temporary Speaker, this decision is unanimous. It is a 100 per cent decision of the Senate; 68 of the Senators are here. The Speaker of the Senate shall be

required by virtue of this resolution, to do certain things to facilitate the implementation of these resolutions. When the Speaker does so, he will not be doing so in his own personal capacity, it will be because the House has made a resolution and he has no choice, but to do it. No one should try to victimize the Speaker when he makes his decision. No one should victimize the Senate Minority Leader, Sen. Orengo for the required decision of the House. No one should victimize the Senate Majority Leader or any other Senator because this is a collective decision of the House of Senate.

We agreed that we will not go into the merits of this Motion nor accuse anybody now. We will leave that decision to our lawyers and the processes that will take place. I would like to inform the House that all the lawyers in this House who hold a practicing certificate; that is the three senior counsels in this House and I, will be part and parcel of this process to ensure we succeed as a nation.

Madam Temporary Speaker, I beg to move this important Motion and invite the Senate Minority Leader who is one of the few senior counsels in the country and one of the three who sit in this House, to second.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I wish to second this Motion. Not much needs to be said on this Motion. It is self-evident that there is need for us to go to court. Explanations are contained in the Motion itself.

I agree with the Senate Majority Leader that nobody should fault anybody for going to court. In the year 2012, when we could not hold general elections as stipulated in the Constitution, the Grand Coalition Government had to go to court to seek an advisory opinion as to when to hold the elections because the date stipulated by the court had already passed. Therefore, it is a positive thing to go to court. There is no other mechanism in the sense that if there is no agreement on this issue, the institution that is there in the Constitution for resolving such disputes is the court.

I want to assure this House that when you are defending the law, you can never be the victim. The victim is the person who is violating the law. Whether you remain one person, as long as you are taking action in accordance with law, you can never be the victim. I want to conclude by saying that the space for the Senate in the Constitution cannot be taken for granted. We are not occupying positions as sinecures. The Senate is not a dead duck. If anybody thought that that was the case, the court will have the final word on this issue.

Madam Temporary Speaker, with these few remarks, I beg to second. I think this, probably, will be one of the most important judicial matters raised in the High Court and the decision made by High Court will contribute greatly to the laws of this land and to the jurisprudence of this land.

Thank you, Madam Temporary Speaker.

(Question proposed)

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

(Sen. Mutula Kilonzo Jnr. spoke off record)

Hon. Senators, I will now put the Question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

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

The Temporary Chairperson (Sen. Pareno): Hon. Senators, we are doing the Committee of the Whole on the Data Protection Bill, Senate Bills No.16 of 2018.

Clause 3

Sen. Halake: Thank you, Madam Temporary Chairperson, I beg to move—
THAT the Bill be amended by deleting clause 3 and substituting thereof the following new clause –

Application 3. (1) This Act shall apply to –

(a) the protection of personal data of a data subject in the processing of such data by

–

(i) a data controller or data processor who is a Kenyan citizen or a legal entity established in the Republic of Kenya; and

(ii) a data controller or data processor not established in the Republic of Kenya but processes personal data of a data subject who is a resident of the Republic of Kenya; and

(b) the processing by automated or any other means of personal data which forms or is intended to form part of a filing system.

(2) This Act shall not apply to the processing of personal data –

(a) by or on behalf of a public body responsible for matters relating to national security the purpose of which is the prevention, detection, investigation or punishment of a crime; or

(b) by a person in the course of a personal or household activity.

(3) Despite the provisions of subsection (2)(a) and except where the security of the country, the life, safety or health of a person, or property is in imminent danger, a public body that intends to process personal data without the consent of the data subject shall make an application *ex parte* to a court for orders to process such data.

(Question of the amendment proposed)

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

Clause 4

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by deleting Clause 4 and substituting thereof the following new clause –

Principles
of personal
data protection

4. (1) The following principles shall guide the interpretation and application of this Act —

(a) personal data shall —

(i) be collected, processed, stored or dealt with in any other manner if it is necessary for or directly related to a lawful, explicitly

defined purpose and shall not intrude on the privacy of the data subject;

(ii) be collected directly from and with the consent of the data subject;

(iii) only be disclosed to a third party or put to a different use with the consent of the data subject;

(iv) not be kept for a longer period than is necessary for achieving the purpose for which it was collected;

(v) not be processed in a manner that is incompatible with the purpose for which it was collected; and

(vi) shall be accurate, up-to data and complete;

(b) the data subject shall be informed of the purpose to which personal data shall be put and the intended recipients of that data at the time of collection; and

(c) appropriate technical and organizational measures shall be taken to safeguard personal data against the risk of loss, damage, destruction of or unauthorized access to personal information.

(Question of the amendment proposed)

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

Clause 5

(Question, that Clause 5 be part of the Bill, proposed)

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

Clause 6

Sen. Halake: Madam Temporary Speaker, I beg to move-
THAT, Clause 6 of the Bill be amended in sub-clause (2) by deleting paragraph (a).

(Question of the amendment proposed)

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

Clause 7

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, Clause 7 of the Bill be amended –
(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause–

(1) A data controller or data processor shall, subject to subsection (2), where it requires personal data from a person, collect such personal data directly from the data

subject for a purpose which is specific, explicitly defined and lawful.

(b) in sub-clause (2) by –

(i) deleting the words “an agency” appearing at the beginning of the introductory clause and substituting therefor the words “a data controller or data processor”;

(ii) deleting paragraph (a) and substituting therefor the following new paragraph–

(a) the data subject has made the data public;

(iii) deleting paragraph (b) and substituting therefor the following new paragraph –

(b) the data subject or in the case of a child or a person who is legally incapacitated, the guardian of that child or person, has consented to the collection of personal data from another source;

(iv) deleting paragraph (c);

(v) by deleting the words “the interests” appearing immediately after the words “protection of” in paragraph (e)(ii) and substituting therefor the words “fundamental rights and freedoms”;

(vi) by deleting paragraph (e)(iv);

(vii) deleting paragraph (f) and substituting therefor the following new paragraph –

(f) if the life, safety or health of a person or property is in imminent danger.

(c) by deleting sub-clause (3) and substituting therefor the following new sub clause

(3) A data controller or data processor shall collect or process personal data using lawful means and in compliance with the right to privacy and this Act.

(Question of the amendment proposed)

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

Clause 8

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

THAT, Clause 8 of the Bill be amended by –

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

(b) deleting the words “an agency” appearing at the beginning of the re-numbered sub-clause (1) and substituting therefor with the words “a data controller or data processor”

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

(2) Where the data subject is in control of the means of inputting or processing his or her personal data, it shall be the responsibility

of the data subject to ensure that personal data is complete, accurate, up-to-date and not misleading.

(Question of the amendment proposed)

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

Clause 9

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

THAT, the Bill be amended by deleting Clause 9 and substituting thereof the following New Clause –

Rights of
the data subject

9. A data subject has a right to –
- (a) be informed of the use to which their personal data is to be put;
 - (b) access their personal data which is in the possession of a data controller or data processor;
 - (c) object to the collection or processing of all or part of their personal data;
 - (d) correction of false or misleading personal data;
 - (e) the deletion of personal data relating to the data subject which is in possession of a data controller or data processor;
 - (f) be informed of the period within which personal data is to be stored; and
 - (g) data portability.

(Question of the amendment proposed)

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

Clause 10

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

THAT, Clause 10 of the Bill be amended –

- (a) by deleting sub-clause (1) and substituting thereof the following new sub- clause –
 - (1) A data controller or data processor shall, before collecting personal data directly from a data subject, inform the data subject in a language the data subject understands —

- (a) the fact that personal data is being collected;
 - (b) the purpose for which personal data is being collected;
 - (c) the intended recipient of the personal data;
 - (d) the name and address of the data controller or data processor that is collecting the personal data and any other person who may access the collected personal data;
 - (e) where the information is collected pursuant to any law —
 - (i) the law requiring or authorising the collection of the information;
 - (ii) the procedure required to be undertaken in order to comply with the law; and
 - (iii) whether the giving of the personal data by that data subject is voluntary or mandatory;
 - (f) the consequences if any, where the data subject fails to provide all or any part of the requested information; and
 - (g) the right of the data subject specified under section 9 of this Act.
- (b) in sub-clause (2) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

(Question of the amendment proposed)

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

Clause 11

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

THAT, the Bill be amended by deleting clause 11 and substituting therefor the following New Clause –

When not to notify.

11 (1) A data controller or data processor shall not be required to take the steps specified under section 10 if the data controller or the data processor has, prior to collecting the personal data, taken those steps within the past twelve months when collecting the same personal data or personal data of the same kind from that data subject.

(2) Where a data controller or data processor collects personal data under subsection (1) to be used for a different purpose from the one for which the personal data was first collected or where the circumstances of the data subject have changed, the data controller or data processor shall notify the data subject of the new use to which the personal data shall be put to.

(3) A data controller or data processor shall notify a data subject that a waiver of his or her rights under this Act shall be construed as consent and authorization for the data controller or a data processor to collect the information.

(Question of the amendment proposed)

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

Clause 12

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

THAT, the Bill be amended by deleting clause 12 and substituting therefor the following new clause –

Lawfulness of
Processing personal
data

12.(1) A data controller or data processor shall not process personal data unless-

- (a) the data subject consents to the processing for one or more specified purposes;
 - (b) the processing is necessary-
 - (i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;
 - (ii) for compliance with any legal obligation to which the data controller or a data processor is subject;
 - (iii) In order to protect the fundamental rights and freedom of the data subject or another person;
 - (iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in a data controller or data processor;
 - (v) for the performance of any task carried out by a public authority;
 - (vi) for the protection of legitimate interests pursued by a data controller or data processor having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject;
 - (vii) for the purpose of historical, statistical or scientific research; or
 - (viii) for such other purpose as the Cabinet Secretary may prescribe.
- (2) Further processing of personal data shall be in accordance with the purpose for which the personal data was collected.

(Question of the amendment proposed)

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

Clause 13

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, Clause 13 of the Bill be amended by –

(a) deleting the marginal note and substituting therefor the following new marginal note –

Automated processing.

(a) deleting sub-clause (2) and substituting therefor the following new sub-clauses –

(2) Subsection (1) shall not apply to a data subject where the decision is –

(a) necessary for entering into, or performing a contract between the data subject and a data controller or data processor;

(b) authorised by a law to which a data controller or data processor is subject and which lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests; or

(c) based on the explicit consent of the data subject.

(3) Where a data controller or data processor intends to make a decision based on automated processing and which produces a legal effect or significantly affects the data subject, the data subject shall have the right to –

(a) be notified in writing before a decision is taken;

(b) be provided with an explanation of the reason for and the consequences of the decision; and

(c) raise an objection against a decision made under this section to the data controller or data processor for the protection of the data subject's legitimate interests.

(4) The data controller or data processor shall consider the issues under subsection (3) (c) and notify the data subject of its findings and decision within seven days of receipt of the objection.

(Question of the amendment proposed)

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

Clause 14

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

THAT, Clause 14 of the Bill be amended –

(a) in sub-clause (1) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

(b) in sub-clause (2) by –

(i) inserting the words “information on” at the beginning of paragraph (b);

(ii) inserting the words “information on” at the beginning of paragraph (c);

(iii) deleting the word “transmitted” appearing immediately after the words “is to be” in paragraph (d) and substituting therefor the word “disclosed”; and

- (iv) deleting the words “processed data” appearing immediately after the words “deletion of” in paragraph (f) and substituting therefor the words “data which has been processed”.

(Question of the amendment proposed)

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

Clause 15

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

THAT, Clause 15 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;
- (b) in sub-clause (2) by deleting the words “an agency” appearing immediately after the words “with subsection (1)” and substituting therefor with the words “a data controller or data processor”;
- (c) by inserting the following new sub-clause immediately after sub-clause (2) –
(2A) In implementing the measures under subsection (2), a data controller or data processor shall take into account –
 - (a) the amount of personal data processed;
 - (b) the nature of personal data being processed ;
 - (c) the extent of the processing of the personal data;
 - (d) special risks that exist in the processing of the personal data;
 - (e) the period of retention of the personal data; and
 - (f) the ease of accessibility.

(Question of the amendment proposed)

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

Clause 16

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

THAT, Clause 16 of the Bill be amended –

- (a) by re-numbering the existing clause sub-clause (1);
- (b) in the new clause (1) by –
 - (i) deleting the introductory clause and substituting therefor the following new introductory clause –
(1) Where there is a breach of security or there are reasonable grounds to believe that personal data has been accessed or processed contrary to this Act, a data controller or data process or shall –
 - (ii) deleting the words “as soon as reasonably practicable” appearing at the beginning of paragraph (a) and substituting therefor the words “within seventy two hours”;

- (c) by inserting the following new sub -clauses immediately after the new sub-clause (1) –
- (2) The notification under subsection (1)(a) shall set out sufficient information to enable the data subject to take protective measures against potential consequences of the data breach, including —
- (a) description of the nature of the breach;
 - (b) description of the likely consequences of the breach;
 - (c) description of the measures that the data controller or data processor intends to take or has taken to address the breach;
 - (d) recommendation on the measures to be taken by the data subject to mitigate the adverse effects of the breach; and
 - (e) where possible, the identity of the person who may have accessed or processed the personal data.
- (3) A data controller or data processor may delay notification to the data subject under subsection (1) (a) for the purpose of preventing, detecting or investigating a crime by the relevant public entity.
- (4) Where a data processor becomes aware of a personal data breach, the data processor shall notify the data controller within forty-eight hours of becoming aware of such breach.

(Question of the amendment proposed)

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

Clause 17

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

THAT, Clause 17 of the Bill be amended –

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) Where a data controller or data processor is in possession of personal data or where a person believes that a data controller or data processor is in possession of personal data relating to him or her, that person —

(a) may obtain from the data controller or data processor a confirmation as to whether the agency possesses such personal data and the purposes for processing the personal data; and

(b) shall have access to that data.

(b) by deleting sub -clause (2) and substituting therefor the following new sub-clause –

(2) A data controller or data processor to which an application for access to personal data has been made may charge a prescribed fee for the provision of the personal data and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the data subject.

(Question of the amendment proposed)

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

Clause 18

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

THAT, Clause 18 of the Bill be amended –

(a) in sub-clause (1) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

(b) in sub -clause (2) –

(i) by deleting the words “an agency” appearing immediately after the words “the constitution, request” and substituting therefor with the words “a data controller or data processor”;

(ii) inserting the words “outdated or such other personal data relating to the data subject as the data subject may request” immediately after the words “or misleading data”.

(c) by deleting sub-clause (6);

(d) by deleting sub-clause (7) and substituting therefor the following new sub-clause –

(7) Where a data controller or data processor approves a request under subsection (2), the data controller or data processor shall –

(a) correct or delete the data within seven days of approval of the request;

(b) in form the data subject of the action taken within seven days of taking the action under paragraph (a); and

(c) where the data had been shared with any other person, inform that other person of the action taken and require that person to correct or delete the data.

(e) by inserting the following new sub-clause immediately after sub-clause (7) –

(8) A data controller or data processor shall not correct or delete personal data which is the subject of a case before a court.

(Question of the amendment proposed)

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

Clause 19

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

THAT, Clause 19 of the Bill be amended –

(a) in sub-clause (1) by –

(i) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph – (c) the retention of the data is necessary for a lawful purpose

- related to the function or activity performed by the data controller or the data processor;
- (iii) deleting the words “parties to the contract” appearing immediately after the words “contract between the” in paragraph (d) and substituting therefor the words “data subject and the data controller or the data processor”;
 - (iv) inserting the following paragraph immediately after paragraph (d) – (e) the retention is for historical, statistical, journalistic literature and art or research purposes.
- (b) by deleting sub-clause (2); and
 - (c) in sub-clause (3) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;
 - (d) by inserting the following new sub -clause immediately after sub -clause (3) –
(3A) A data controller or data processor may, for purposes of subsection (3), anonymise or pseudonymise the data retained under subsection (3) in such a manner as to ensure that the data subject is no longer identifiable.
 - (e) in sub-clause (4) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor

(Question of the amendment proposed)

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

Clause 20

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by deleting Clause 20.

(Question of the amendment proposed)

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

Clause 21

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, Clause 21 of the Bill be amended by –

- (a) re -numbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub -clauses immediately after the new sub-clause (1) –
(2) A data controller or data processor that uses personal data for commercial purposes shall, where possible, anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.

(3) The Cabinet Secretary in consultation with the Commission may prescribe practice guidelines for commercial use of personal data in accordance with this Act.

(Question of the amendment proposed)

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

Clause 22

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

THAT, Clause 22 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or data processor”;
- (b) in sub-clause (2) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or data processor”;

(Question of the amendment proposed)

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

Clause 23

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by deleting Clause 23.

(Question of the amendment proposed)

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

Clause 24

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

THAT, Clause 24 of the Bill be amended–

- (a) in sub-clause (1) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or a data subject”;
- (b) in sub-clause (2) by –
 - (i) inserting the words “or in the case of a data subject who is a child or a person who is legally incapacitated, the guardian” immediately after the words “the data subject” in paragraph (a);
 - (ii) deleting paragraph (d) and substituting therefor the following new paragraph – (d) with respect to information that has been made public by the data subject.
 - (iii) inserting the following new paragraphs immediately after paragraph (d)

(e) necessary for the establishment, exercise or defence of a legal claim.

(Question of the amendment proposed)

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

Clause 25

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by deleting Clause 25.

(Question of the amendment proposed)

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

Clause 26

(Question, that Clause 26 be part of the Bill, proposed)

Division will be at the end.

Clause 27

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by deleting Clause 27.

(Question of the amendment proposed)

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

Clause 28

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, Clause 28 of the Bill be amended –

- (a) by deleting the words “an agency” appearing at the beginning of the introductory clause and substituting therefor the words “a data controller or data processor”; and
- (b) in paragraph (a) by deleting the words “or a social service institution” appearing immediately after the words “medical institution”.

(Question of the amendment proposed)

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

Clause 29

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

THAT, Clause 29 of the Bill be amended –

- (a) by re-numbering the existing clause as sub -clause (1);
- (b) in the new sub-clause (1) –
 - (i) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or data processor ”;
 - (ii) in paragraph (a) by deleting the words “or any other person having authority to make decisions on behalf” appearing immediately after the words “parent or guardian”;
 - (iii) by deleting paragraph (d) and substituting therefor the following new paragraph –
 - (d) in the best interest of the child.
- (c) by inserting the following new sub -clause immediately after the new sub-clause (1) –
 - (2) A data controller or data processor shall adopt appropriate measures for age verification and the giving of consent for processing of personal data.

(Question of the amendment proposed)

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

Clause 30

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by deleting Clause 30.

(Question of the amendment proposed)

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

Clause 31

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT, Clause 31 of the Bill be amended –

- (a) by re-numbering the existing clause sub -clause (1);
- (b) in the new sub-clause (1) by –
 - (i) deleting the words “An agency” appearing at the beginning of the introductory clause and substituting therefor the words “a data controller or data processor”;
 - (ii) deleting the words “third party” appearing immediately after the word “the” appearing at the beginning of paragraph (a) and substituting therefor the words “Commission is satisfied that the other country”;
 - (iii) deleting paragraph (c) and substituting therefor the following new paragraph –
 - (c) the transfer is necessary –
 - (i) for the performance or conclusion of a contract between the data subject and the data processor or data controller;
 - (ii) for the establishment, exercise or defence of a legal claim;

- (iii) for the protection of fundamental rights and freedoms of a person; or
- (iv) in the interest of the public.
- (iv) by deleting paragraph (d) ; and
- (c) by inserting the following new sub -clause immediately after the new sub-clause (1) –
 - (2) The Cabinet Secretary in consultation with the Commission shall prescribe guidelines for the transfer of personal data outside the country and the filing of reports on personal data transferred outside the country by a data controller or data processor.

(Question of the amendment proposed)

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

Clauses 32 to 35

(Question, that Clauses 32 to 35 be part of the Bill, proposed)

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

Clause 36

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

THAT, Clause 36 of the Bill be amended –

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause –
 - (4) Despite the provisions of this Act, a person whose personal data is collected or processed contrary to this Act or who suffers loss as a result of disclosure of personal data may lodge a claim before a court for an appropriate remedy.
- (b) by inserting the following new sub-clause immediately after sub-clause (4) –
 - (5) In determining a claim under sub section (4) a court shall consider –
 - (a) the nature and the seriousness of the breach;
 - (b) the categories of personal data affected;
 - (c) any benefit gained or loss suffered as a result of the breach;
 - (d) the number of previous violations;
 - (e) the duration of time over which the breach occurred;
 - (f) any action taken by the data controller or data processor to remedy or mitigate the breach; and
 - (g) the nature and status of the data controller or data processor.

(Question of the amendment proposed)

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

Clause 37

(Question, that Clause 37 be part of the Bill, proposed)

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

Clause 38

Sen. Halake: Madam Temporary Chairperson, I beg to move:

THAT, Clause 38 of the Bill be amended –

- a. in sub-clause (1) by deleting the words “five hundred thousand” appearing immediately after the words “not exceeding” and substituting therefor the words “one million”; and
- b. by inserting the following new sub-clause immediately after sub -clause (1) –
 - (1A) Despite subsection (1), where the offence –
 - (a) committed relates to special personal information the person shall be liable, on conviction, to a fine not exceeding five million shillings or to a term of imprisonment not exceeding ten years ; or
 - (b) is committed by a body corporate, the body corporate shall be liable, on conviction, to a fine not exceeding three million shillings or two percent of its annual turnover, whichever is higher.
- c. by inserting the following new sub-clause immediately after sub-clause (3) –
 - (4) In addition to any penalty prescribed under this section, a Court may make orders –
 - (a) for the forfeiture of any equipment or any article used or connected in any way with the commission of the offence; or
 - (b) prohibiting the doing of any act to stop continuing commission of an offence.

(Question of the amendment proposed)

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

Clause 39

(Question, that Clause 39 be part of the Bill, proposed)

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

New Clause 3A

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

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 3–

PART IIA—REGISTRATION OF DATA
CONTROLLERS AND DATA PROCESSORS

Registration of data controllers and data processors.

shall act as a data controller or data processor unless registered with the Commission.

(2) The Commission shall prescribe the threshold required for mandatory registration of a data controller and data processor, and in making such determination, the Commission shall consider –

- 3A. (1) Subject to subsection (2), no person
- (a) the nature of industry;
 - (b) the volumes of data processed;
 - (c) whether special personal data is being processed; and
 - (d) any other criteria the Commission may specify.

(Question of the New Clause 3A proposed)

(New Clause 3A read the First Time)

(Question, that New Clause 3A be now read a Second Time proposed)

(Question, that New Clause 3A be part of the Bill proposed)

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

New Class 3B

Sen. Halake: Madam Temporary Chairperson, I beg to move- THAT, the Bill be amended by inserting the following new clause immediately after Clause 3A–

Application for registration.

3B. (1) A data controller or data processor required to register under section 3A shall apply to the Commission for registration.

(2) An application under subsection(1) shall provide the following particulars-

- (a) a description of the personal data to be processed;
- (b) a description of the purpose for which the personal data is to be processed;
- (c) the category of data subjects to which the personal data relates;
- (d) contact details of the data controller or data processor;
- (e) a general description of the risks, safeguards, security measures and mechanisms to ensure the protection of personal data; and
- (f) any other details as may be prescribed by the Commission.

(3) The Commission shall issue a certificate of registration where a data controller or data processor meets the requirements for registration.

(4) A data controller or data processor shall notify the Commission of a change in any particular outlined under subsection (2).

(5) On receipt of a notification under subsection (4), the Commission shall amend the respective entry in the register.

(Question of the New Clause 3B proposed)

(New Clause 3B read the First Time)

(Question, that New Clause 3B be now read a Second Time proposed)

(Question, that New Clause 3B be part of the Bill proposed)

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

New Clause 3C

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

THAT, the Bill be amended by inserting the following new Clause immediately after Clause 3B-

Duration of the registration certificate.

3C. A registration certificate issued under section 3B shall be valid for a period of three years and the holder may apply for the renewal after expiry of the certificate.

(Question of the New Clause 3C proposed)

(New Clause 3C read the First Time)

(Question, that New Clause 3C be now read a Second Time proposed)

(Question, that New Clause 3C be part of the Bill proposed)

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

Register of data controllers and data processors.

3D. (1) The Commission shall keep and maintain a register of registered data controllers and data processors.

(2) The Commission may, at the request of a data controller or data processor, remove any

entry in the register which has ceased to be applicable.

(3) A person may request the Commission for a certified copy of any entry in the register.

(Question of the New Clause 3D proposed)

(New Clause 3D read the First Time)

(Question, that New Clause 3D be now read a Second Time proposed)

(Question that, New Clause 3D be part of the Bill, proposed)

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

New Clause 3E

Sen. Halake: Madam Temporary Chairperson, I beg to move- THAT the Bill be amended by inserting the following new clauses immediately after clause 3-

Cancellation of variation
of the certificate

3E. The Commission, may, on notice, vary terms and conditions of the certificate of registration or cancel the registration where-

- (a) any information given by the applicant is false or misleading; or;
- (b) the holder of the certificate of registration, without lawful excuse, fails to comply with any requirement of this Act.

(Question of the New Clause 3E proposed)

(New Clause 3E read the First Time)

(Question, that New Clause 3E be now read a Second Time proposed)

(Question that, New Clause 3E be part of the Bill, proposed)

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

New Clause 3F

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following new clauses immediately after
clause 3-

Compliance
and audit.

3F. The Commission may carry out periodical audits of the process and systems of the data controllers or data processors to ensure compliance with this Act.

(Question of the New Clause 3F proposed)

(New Clause 3F read the First Time)

*(Question, that New Clause 3F be now
read a Second Time proposed)*

*(Question that, New Clause 3F be part
of the Bill, proposed)*

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

New Clause 3G

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following new clauses immediately after
clause 3-

Designation of the
Data Protection
Officer

3G. (1) A data controller or data processor may designate or appoint a data protection officer on such terms and conditions as the data controller or data processor may determine, where-

- (a) the processing is carried out by a public body or private body, except for courts acting in their judicial capacity;
- (b) the core activities of the data controller or data processor consist of processing operations, which by virtue of their nature, scope or purposes, require regular and systematic monitoring of data subjects; or
- (c) the core activities of the data controller or the data processor consists of processing of sensitive categories of personal data.

4) Where a data controller or data processor is a public body, a single data protection officer may be designated for several such public bodies, taking into account their organisational structures. (5) A person may be designated or

appointed as a data protection officer, if that person has relevant academic or professional qualifications which may include knowledge and technical skills in matters relating to data protection.

(6) A data controller or data processor shall publish the contact details of the data protection officer and communicate them to the Commission. (7) The responsibility of a data protection officer shall be to— (a) advise the data controller or data processor and their employees on data processing requirements provided under this Act or any other written law; (b) ensure on behalf of the data controller or data processor that this Act is complied with; (c) facilitate capacity building of staff involved in data processing; (d) provide advice on data protection impact assessment; and (e) Cooperate with the Commission and any other authority on matters relating to data protection.

(Question of the New Clause 3G proposed)

(New Clause 3G read the First Time)

(Question, that New Clause 3G be now read a Second Time proposed)

(Question that, New Clause 3G be part of the Bill, proposed)

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

New Clause 7A

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

THAT the Bill be amended by inserting the following new clause immediately after clause 7 –

Con
ditions of
consent.

7A. (1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of personal data.

(2) A data subject may withdraw consent for collection or processing of personal data at any time.

(3) The withdrawal of consent under sub-section (2) shall not affect the lawfulness of processing of personal data before consent was withdrawn.

(Question of the New Clause 7A proposed)

(New Clause 7A read the First Time)

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

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

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

New Clause 16A

Sen. Halake: Madam Temporary Chairperson, I beg to move- THAT the Bill be amended by inserting the following new clause immediately after clause 16 –

Data protection

Impact assessment

16A. (1) Where processing of personal data is likely to result in high risk to the rights and freedoms of a data subject due to the nature, scope, context or purpose, a data controller or data processor shall, prior to processing, carry out an impact assessment.

(2) The impact assessment shall include –

(a) a systematic description of the intended personal data processing operations and the purpose for processing;

(b) an assessment of the necessity and proportionality of personal data processing operations taking into account the purposes for processing of personal data;

(c) an assessment of the risks to the rights and freedoms of a data subjects; and (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Act, taking into account the rights and legitimate interests of data subjects and other interested persons.

(2) Where an impact assessment indicate that the processing of personal data would result in high risk to the rights and freedoms of a data subject, a data controller or data processor shall consult the Commission prior to processing personal data.

(3) The Commission shall set out the guidelines for carrying out an impact assessment under this section.

(Question of the New Clause 16 A proposed)

(New Clause 16A read the First Time)

(Question, that New Clause 16A be now read a Second Time proposed)

(Question that, New Clause 16A be part

of the Bill, proposed)

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

New Clause 18A

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

Right data portability.

THAT the Bill be amended by inserting the following new clause immediately after clause 18 –

18A. (1) A data subject has the right to receive personal data which the data subject has provided to a data controller or data processor, in a structured, commonly used and machine-readable format. (2) A data subject has the right to transmit the data obtained under subsection (1) to another data controller or data processor.

(3) Where possible, the data subject shall have the right to have the personal data transmitted directly from a data controller or processor to another.

(4) The right under this section shall not apply to circumstances where — (a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority; or (b) it may adversely affect the rights and freedoms of another.

(5) An data controller or data processor shall comply with data portability requests, free of charge and within a period of seven days from the date of the request or as may be determined by the Commission personal data is numerous or complex.

(Question of the New Clause 18 A proposed)

(New Clause 18A read the First Time)

(Question, that New Clause 18A be now read a Second Time proposed)

(Question that, New Clause 18A be part of the Bill, proposed)

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

New Clause 31A

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

THAT the Bill be amended by inserting the following new clause immediately after clause 31 –

Safeguards for special
Personal data

31A. (1) A data controller or data processor shall, for the purposes of this Part, adopt appropriate measures to ensure that the data subject is not identifiable including anonymising or pseudonymising the data used for statistical or research purposes. (2) The Cabinet Secretary in consultation with Commission may provide additional guidelines on protection of special personal data.

(Question of the New Clause 31A proposed)

(New Clause 31A read the First Time)

*(Question, that New Clause 31A be now
read a Second Time proposed)*

*(Question that, New Clause 31A be part
of the Bill, proposed)*

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

New Clause 39A

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following new clause immediately after clause 38 –

Codes guidelines and
certifications.

39A. The Commission may –

- (a) issue guidelines or codes of practice;
- (b) offer data protection certification standards and data protection seals and marks in order to encourage compliance with this Act;
- (c) require certification or adherence to a code of practice; or
- (d) develop sector specific guidelines as the Commission may determine.

(Question of the New Clause 39A proposed)

(New Clause 39A read the First Time)

*(Question, that New Clause 39A be now
read a Second Time proposed)*

*(Question that, New Clause 39A be part
of the Bill, proposed)*

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

Clause 2

Sen. Halake: Madam Temporary Chairperson, I beg to move-
THAT clause 2 of the Bill be amended –

- (a) deleting the definition of the word “agency”;
- (b) by deleting the definition of the word “data controller” and substituting therefor the following new definition
 - “Data controller” means a natural or legal person, public authority, Agency or other body which, alone or jointly with others, determines
 - The purpose and means of processing of personal data;
- (c) by deleting the definition of the word “data subject” and substituting therefor the following new definition –
 - “Data subject” means an identified or identifiable natural person
 - Who is the subject of personal data;
- (d) by deleting the definition of the word “disclosure” and substituting therefor the following new definition –
 - “disclosure”, in relation to personal data, includes the disclosure of information extracted from such data and the transfer of such data to another person but does not include a disclosure made directly or indirectly by an agency to its employee or agent for the purpose of enabling the employee or agent to carry out its duties and, where the identification of a data subject depends partly on the data and partly on other information in the possession of the agency, the data shall not be considered as disclosed unless the other information is also disclosed;
- (e) By deleting the definition of the word “exempt information”;
- (f) In the definition of the word “personal data” –
 - (i) by deleting the words “about a” appearing immediately after the words “means information” in the introductory phrase and substituting therefor the words “relating to an identified or identifiable natural”
 - (ii) by deleting paragraph (d) and substituting therefor the following new paragraph – (d) the biometrics of a person;
 - (iii) by deleting paragraph (g); and
 - (iv) by deleting paragraph (h);
- (g) in the definition of the word “processing” by inserting the word “storage” immediately after the words “collection, organisation” in paragraph (a);

(h) By deleting the definition of the word “special personal information” and substituting therefor the following new definition – “special personal information” means the personal data of a child, biometric data or data revealing a natural person’s race, health status or ethnic origin.

(i) By inserting the following new definitions in their proper alphabetical sequence –

“consent” means any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;

“data processor” means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller;

“personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to personal data;

(Question of Clause 2 proposed)

(Question, that Clause 2 be amended a Second Time proposed)

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

The Title

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

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

Clause 1

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

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

The Temporary Chairperson (Sen. Pareno): Hon. Senators we now report Progress on the Committee of the Whole on the Data protection Bill (Senate Bills no.16 of 2018). Mover.

Sen. Halake: Madam Temporary Chairperson, I beg to move that the Committee of the Whole do report to the Senate its consideration of The Data Protection Bill (Senate Bills No.16 of 2018) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

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

Sen. Pareno: Madam Temporary Speaker, I beg to report progress; that the Committee of the Whole has considered the Data Protection Bill (Senate Bill No. 16 of 2018) and seeks leave to sit again tomorrow.

Sen. Halake: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report and ask Sen. Moi to second.

Sen. Moi seconded.

(Question proposed)

(Question put and agreed to)

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

MOTION

COMPLETION OF STALLED COUNTY PROJECTS THROUGH
BUDGETARY MANAGEMENT

THAT, AWARE THAT Kenya has had a development blueprint of Vision 2030 since 2008 which has guided planning and development for the last decade, with a focus to making Kenya an industrialized middle-income economy with a higher per capita income for its citizens;

FURTHER AWARE THAT, the development planning of the country is funded from the Consolidated Fund through the annual budget whereby revenues generated by Kenyans through taxes, levies, and fees that are supplemented with support of development partners in the form of outright loans, conditional loans, grants and/or unconditional grants to support growth and development across the country;

COGNIZANT THAT, any diversion from the Vision 2030 blueprint as well as the President's Big Four Agenda, would negatively impact the development trajectory that seeks to ensure a long-term microeconomic stability resulting in a revision of targets on the goals for socio-economic, cultural, environmental, technological and political transformation;

NOTING THAT, whereas the National Government's Budget is based on Vision 2030 and Big Four Agenda, the County Governments' Budgets are based on their respective County Integrated Development

Plans, (CIDPs) which are expected to dovetail with the overall national development blueprint;

CONCERNED THAT, there are glaring discrepancies in progress made in development among counties, particularly among the 14 devolved functions caused by lack of accountability, integrity, professionalism and remaining a blemish on the successes of devolution;

ACKNOWLEDGING, the tribulations, ridicule, pecuniary embarrassment and negative socio-economic impact that pending bills have had on the local business community who supplied or undertook a service for the county governments, and the attendant slowdown in actual project completion, the rise in stalled projects dotting counties, with County Governors prioritizing new projects instead of the completion of those which have stalled;

FURTHER ACKNOWLEDGING THAT, the National Treasury in its circular No. 9/2018 detailed the five hundred and forty five (545) projects which have stalled in the 47 Counties, and their status of completion, collectively amounting to an estimated project cost of three hundred and sixty six (366) Billion Kenya shillings;

NOW THEREFORE, the Senate recommends that the National Treasury in partnership with the Controller of Budget, Commission on Revenue Allocation, the Council of Governors and the County Assemblies Forum to-

1. Ensure that all the County Integrated Development Plans (CIDP's) and Annual Development Plans (ADP's) are aligned to Vision 2030 with an implementation, monitoring, and evaluation framework in place;
2. Address Pending Bills by prioritizing their payment, creating clear timeframes for payment and publishing a schedule of payment of the same; and
3. Prioritize the completion of stalled development projects prior to undertaking or funding new projects.

(Sen. Kibiru on 18.6.2019)

(Resumption of debate interrupted on 18.6.2019)

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

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

The Temporary Speaker (Pareno): Sen. Halake, proceed

Sen. Halake: Thank you, Madam Temporary Speaker, for giving me the opportunity to contribute to this important Motion. It is worrying to think that we have so many stalled projects or what we call white elephants. Last night, I thought about this Motion.

In this country, there are two types of elephants. The living and breathing elephants that we articulated on human-wildlife conflict and the white elephants that dot our country. The latter is a disturbing one.

Madam Temporary Speaker, whereas we are supposed to have completed projects which contribute to Vision 2030 as has been articulated here, we have many county and national Government projects that have become a dead-end and have not added value to the economy or the lives of the people of this country.

From airports, roads, markets, stadiums and pipelines, money has been put and nothing has come out of it. It begs the question whether these projects were designed for corruption or so that some people could just line their pockets. The more we look at these things, the more we are convinced that these projects were never meant to serve Kenyans; they were meant for corruption and siphoning taxpayers' money.

Madam Temporary Speaker, a few months ago, I asked about the Isiolo International Airport that we were told will open up the north, handle cargo from Ethiopia, Sudan, Somalia and as far as Egypt. However, as we speak today, there is Kshs2.7 billion down the drain. It is a 1.4 kilometre tarmac and cannot handle anything bigger than a 12-seater caravan.

What happened to the Vision 2030 where we were told that the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor Project will be one of the flagship projects that would open up the resort city of Isiolo, the surrounding areas and countries? This is only an example of what I am familiar with. It has been a source of anguish for the people from that place who are told that they have an international airport which is 1.4 kilometres and needs to be redone.

In 2017, just around elections, His Excellency the President launched the airport. However, to date, no aircraft that is bigger than a caravan can fly to 'Isiolo International Airport'. This is one example of what we see every day. For example, there are bridges that have been started and are still life-threatening for the people. We have seen water projects that have been started and have never served anybody, including the northern collector tunnels.

Madam Temporary Speaker, there are some projects that have been paid for in full and others that had been commissioned but have not been paid for. We do not know what the problem is. If these projects were not supposed to be implemented, the people who are culpable should be brought to book and made accountable; to pay back the money that was already invested in part of these projects so that Kenyans get value for money.

Madam Temporary Speaker, as you are aware, we are debt-burdened. Our debt burden has reached Kshs5 trillion. Most of the money that this country has goes to pay the debt. While it is okay to borrow money, it is not okay to sink it into projects that will never provide social or economic benefits to the country and to the people of Kenya. This is a disturbing case.

We see these projects at county and national levels. However, we are told that there is no money to complete them. How is it that projects that have no budgetary allocation were implemented and not completed? Did the money go somewhere else? These are questions that this House needs to make sure that the responsible people are put to account. If there is any corruption case, the Ethics and Anti-Corruption Commission

(EACAC), Director of public Prosecution (DPP) and Director of Criminal Investigation (DCI) should look at all the projects around this country.

One, they should check for value for money and two, whether they were priority projects. We know of counties where there are so many other priority needs but projects like these are prioritized because they are a quick win for the people who want to steal from the county and national Government coffers.

Madam Temporary Speaker, this is a big elephant in the room in our country. We must make sure that this House stands up to be counted. If there was pilferage of our resources, the culprits should be brought to book.

Madam Temporary Speaker, I had the privilege of sitting in the County Public Accounts and Investment Committee when my county executive was invited. I looked at the list of priority projects and wondered who thought of those projects as priority. I know that this goes for everyone countrywide. You see a project being prioritized and implemented and you wonder the criteria that was used to prioritize some of the projects. That is why the projects are not completed because they were not meant for service delivery but for other things.

I do not want to belabor this. I know that many Senators are queuing to speak on this matter because it is a pertinent issue for us. I support this Motion and congratulate Sen. Kibiru for bringing it up. This is because a country is only as strong as its institution and how it uses its resources.

Madam Temporary Speaker, there are four things that ensure the success of any project, that is; the resources, the relevance of the services of the projects and the process used to prioritize the project. From what we have seen from all the white elephant projects that dot our country, a lot of this criterion was never applied. So, we wonder what criterion was used to prioritize these projects.

Also, the financial stewardship and value for money is in question. So, we must be told how these projects will be finished and who will resource them. We must get into the bottom of this. I look forward to working with whichever Committee or whoever that will implement this to make sure that we pronounce ourselves on this issue and stand up to be counted.

Madam Temporary Speaker, there are three kinds of people. We have people who are victims. In this case, Kenyans are victims of this kind of project which is not providing them the services they require and also putting them in debt which our grandchildren will pay. We have the aggressors. These are the people who have designed projects to steal and they must be brought to book. The most important category of people is the by-standers. I hope that this House does not by-stand as Kenya freezes and these projects put us in debt that we cannot pay for the rest of our lives and that of our children.

I support and look forward to this issue being handled with the care, importance and priority that it deserves.

Sen. (Dr.) Langat: Thank you, Madam Temporary Speaker, for giving me this opportunity. First, allow me, as the Chairperson of the Committee on Education, to welcome the teachers and pupils seated in the Gallery. I would like to tell them that once upon a time, we were seated like them. However, we worked hard in school and most of us were disciplined. That is why we are here today. I wish them the best in school. I ask

them to work hard, respect their teachers and be disciplined. I assure them that, one time, they will be in this House.

The Temporary Speaker (Sen. Pareno): Order Sen. (Dr.) Langat. May be, we should start by the Speaker welcoming them.

(Interruption of debate on Motion)

The Temporary Speaker (Sen. Pareno): I have Communication on the visiting teachers and pupils from Fr. Kuhn Academy School.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM FR. KUHN
ACADEMY SCHOOL, NANDI COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting teachers and students from Fr. Kuhn Academy School, Nandi County.

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

Thank you.

(Applause)

Sen. (Dr.) Langat, you may proceed, because you were on the Floor.

(Resumption of debate on Motion)

Sen. (Dr.) Lang'at: Thank you very much, Madam Temporary Speaker. I know that Sen. Cherargei is the Senator of the respective county, but thank you for allowing me to welcome them on your behalf.

Madam Temporary Speaker, concerning the stalled projects in our counties, I want to say categorically that I support this very important Motion by Sen. Kibiru.

First, I would like to encourage that thorough financial audit be done before anything is done on the stalled projects in various counties in this country. This is to make it possible to understand what led to the stalling of these particular projects. Where I come from, there are so many stalled projects including bridges. However, when you ask for the reason behind the stalled projects, you are likely to be told that money had been paid and completed. Therefore, it might not be prudent to just look for money elsewhere to complete the stalled projects.

It is my advice that a thorough audit be first of all done, so that the root cause of the stalled projects may be established. We have heard of interesting stories. In some counties, whenever some governors start some projects, they are juxtaposed with the projects that they are running in their homes. More often than not, you will find the

private projects of the executives being completed on time, when the county projects have not been completed.

The Government should commence a thorough audit to establish the reason behind these particular stalled projects. This will make us understand if there was a shortage of money within the Government or whether the contractors failed to complete the projects because of carelessness or corruption.

Once the root cause of the failure to complete these projects is established, I would like to advise that in the good spirit of fighting corruption, the particular people who are responsible, ranging from the contractors---

There is a bridge where I come from which could have provided an economic linkage between two sub counties in Bomet County. That particular bridge connects Bomet Central and Bomet East. I understand that about Ksh32 million had been spent on that project and it was not completed. I understand that the contractors are still getting money from various projects that are going on in the counties surrounding Bomet. Such contractors who always fail to complete projects must be blackmailed, so that it be known that they are victims of incomplete projects.

The other reason behind incomplete projects is that there is no proper handing over whenever a new governor is getting into office. There are no proper structures for handing over in our county governments. We, therefore, need to come up with a proper framework for handing over, so that when a new governor comes into office, they are able to get a clear picture of the stalled projects and the reasons those projects have stalled. This will ensure that governors complete projects during their tenure, because they will know very well that they will be held responsible for stalled projects.

Some of the stalled projects in our counties are very important. In the county that I come from, there are so many projects that were not completed within the hospitals. In addition, some Early Childhood Development (ECD) schools were not completed, yet the taxpayers' money had been spent. Therefore, a thorough audit of these projects needs to be done before we rush to completing them, without knowing exactly what stalled them.

Madam Temporary Speaker, I support this particular Motion. We must expand on it and make sure that the stalled projects in our counties are completed.

Thank you.

Sen. Were: Thank you, Madam Temporary Speaker, for this opportunity to contribute to the Motion by Sen. Kibiru, on the completion of all stalled projects under county governments through budgetary management. I would like to thank the Senator for coming up with such a thoughtful opinion on this.

We have had several problems in relation to Vision 2030 projects. I have asked in this House before what happened to the blueprint of Vision 2030. So much thought had been put into this idea by the former President, His Excellency, Mwai Kibaki and his Government. There was even a Ministry in charge of Vision 2030. So, the issue of projects not being thought out properly does not arise. They were well thought out and resources allocated to those projects. It is the subsequent Governments and implementers who have let us down.

Vision 2030 is still a good thing for this country, and we should continue to make its implementation, monitor it and evaluate the framework in which it was placed. If there are any shortcomings, which for me I would consider more politics than otherwise, they should be looked into and sorted out.

On the issue of pending bills, we have had auctioneers putting up advertisements in newspapers every Monday. They have even come to be known as the pink pages, where auctioneers sell property of business people who have not been paid by county governments. This is something that we need to address as Parliament. If we do not do so, it will not be possible to grow the economy by 6.3 percent or double digit especially the small businesses will be affected.

We should also prioritize the completion of stalled development projects because we have already spent taxpayers' money on them. Whether or not the reason behind them has changed, we should know that this is money from hardworking Kenyans. These projects must be completed before new ones start, so that before another project starts, the National Treasury must ensure that all the projects that have stalled in a particular county are provided for in the Budget, as proposed by Sen. Kibiru.

There is already an indication from the Government that pending bills will be sorted out, from the last Intergovernmental Budget and Economic Council (IBEC) meeting. However, some bills will still be pending. We urge the Government to speed up and pay all the genuine business people, whose bills are pending in the counties before we can move forward and say that our country is moving in the right trajectory in terms of economic development.

With those few remarks, I support this Motion.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker for allowing me to continue from where I left. The issue of County Integrated Development Plans (CIDPs) is critical. During the first phase of devolution, many counties did not understand how to properly constitute CIDPs because the first sets of CIDPs were just plans that were not categorically put together.

However, with time, the capacity---

The Temporary Speaker (Sen. Pareno): Order, Sen. (Dr.) Zani. I am told that you already spoke on this Motion. Therefore, you cannot speak twice on the same.

Sen. (Dr.) Zani: Madam Temporary Speaker, yesterday I started speaking five minutes to 6.30 p.m. and I have 15 minutes to continue.

The Temporary Speaker (Sen. Pareno): According to our rules, you should have been there to start at the time when we started. It is unfortunate that you will have to lose your minutes. Otherwise, you will have spoken twice on the same matter. Sorry of that.

I will allow Sen. Kwamboka to make her contribution.

Sen. Kwamboka: Thank you, Madam Temporary Speaker, for giving me this opportunity. As I support this Motion, I thank Sen. Kibiru for coming up with it because we have many stalled projects. It is good for the Government to come up with new projects but they must ensure that all stalled projects are completed. If new projects are proposed, there must be finance set aside for them.

When I was a Member of County Assembly (MCA), during FY 2014/2015, I wanted some works done on Thiong'o Road. Money had been set aside but the road has not been completed up to now because I left the county and joined the Senate. However, I thank Governor Sonko because he has done something about it and the progress is good.

Many things happen when projects are started but somewhere along the journey they are stopped. Thieves take advantage when projects are not finished. There is a section of Ngong Road which was supposed to have been completed but it is not. During rush hour, there is massive traffic jam and air pollution. This should stop.

Madam Temporary Speaker, I support this Motion fully. If we do not ensure that stalled projects are completed, we will not be going anywhere as a country because they impact on the economic growth of this country.

I thank you.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for the opportunity to make remarks regarding this Motion. This Motion is appropriate and it captures the spirit and seeks to solve some of the problems that affect project implementation in the counties.

If you look at the first two recommendations, the Motion seeks to ensure that the CIDPs are aligned to our national vision. We have one nation with quite a number of governments. In our Constitution and the manner in which our nation is structured, we need to move uniformly and in a structured way. We do not want to have a nation where part of it moves east, another part moves west, another part moves south and yet another part moves northwards.

If we talk about access to universal health, we need to move in a structured way and in a manner that all counties benefit. If we talk about food security, it is important that all parts of the country move at the same speed and in one direction, so that ultimately we achieve what is called equal development and progress in all fronts that are prioritised in the Vision 2030 and other programmes like the Big Four Agenda that have been put forward.

In order to solve the issue of hackneyed or unstructured development, it is important to have some harmonisation. The primary document that would advise how we align our programmes should be the Vision 2030. Other county development programmes should be individual programmes for the counties, so that all of them fit into that.

Secondly, it is important that all projects that were commenced are completed and made available for public use. Having a lot of money and putting it into projects that do not serve the public after passage of a long time gets us into trouble. The kind of trouble is what is called value for money.

If you go to my County of Migori, there is one stadium that Migori County government has been pumping money into year in, year out. Pumping of money commenced with the advent of devolution. This is the seventh year and not a single football match, athletics activity or sporting event has been held in the stadium. That is Migori Stadium in Suna West Constituency which we should take pride in as the people of Migori County because that is our only stadium. The whole project has stalled. Money has been used but it has not been put to any form of use to date.

There are several Technical Vocational Education and Training (TVET) institutions which should be under the national Government. There is one in Nyatike Constituency, one in Suna East Constituency, one in Suna West Constituency, one in Uriri Constituency, one in Awendo Constituency and another one in Rongo Constituency. The way the TVETs are structured, there ought to be partnership between the national and county governments with a clear objective that technical and vocational training of the youth should be available to residents of a county like Migori.

This is the seventh year and we have been bragging that devolution is working. Not a single child has benefited from those projects. They are incomplete and there is no indication when they will be completed. There is no further indication when people may be recruited to make use of those facilities that have been abandoned. Some of them

provide shelter for bats, birds and other wild beings, which is not what they were intended for.

It is sad that in the seventh year of devolution, we still have projects that we have sunk millions and millions into but they provide homes for animals that do not need shelter. In the Bible, it is written that God takes care of them. We do not have to build such shelters for them.

It is, therefore, important that County Governments only have projects that are tied to the tenure of the Government in Office. If you become Madam Governor in the next session, and you are to start a project, then that project should be one that you should be able to complete during your tenure. If you started a project because you wanted a big budget and somewhere down the road, it is incomplete and you are committing the incoming administration to something that they perhaps do not share with you as a matter of priority, that again is another problem.

Madam Temporary Speaker, therefore, as we manage public projects in these counties, it is important that the following be repeated and emphasized to the county managers; they should only initiate projects that can be completed during your tenure or that can be graduated in such a manner that a usable phase can be completed in your tenure.

As a Governor, you have two tenures of five years each, and you can structure it in your two phases. This should be done such that phase one is completed and perhaps commissioned during your tenure so that whoever comes in can continue with your good work. Unfortunately, some people start projects – for the sake of it – that are going to continue forever.

In my County, Migori – which is the one I am familiar with – there is a tarmacked road that starts next to my village, at a place called Uiri Sub-County Headquarters. It has been tarmacked and left to stop somewhere in the middle of nowhere. If you look at what this road, if it was completed, was intended to achieve, it would have achieved opening up Uiri Constituency and Nyatike Constituency, linking them to Homa Bay by passing through Rapogi, Oria and, therefore, opening up a larger area.

However, the manner in which it has been executed, it appears as if it was intended to start at the gate of the Governor's residence, which is at a place called Rapogi. It does not have any commercial or public utility value. It is, therefore, important that we emphasize, keep on pointing out and resolve – as an institution – that projects must be completed within specific timelines and made available for public use.

With those very many remarks, Madam Temporary Speaker, I beg to support and give accolades to my colleague, Sen. Kibiru, who has thought of this very wonderful Motion, to which I pray that all of us support.

Thank you, Madam Temporary Speaker.

Sen. Cherargei: Thank you, Madam Temporary Speaker, for this opportunity to support this Motion. From the outset, I congratulate Sen. Kibiru, the Senator for the great people of Kirinyaga County, and also the Chairperson of the Committee on Tourism, Trade and Industrialization for this well thought out Motion. This Motion will assist all our counties in the completion of all stalled projects through budgetary management.

Madam Temporary Speaker, this Motion comes at a time when, at some point, I was discussing with some Members on the possibility of looking at the Public Finance Management (PFM) Act; the regulations on how to ensure that when a project is being

started, especially by the county governments, the law should obligate them to complete such projects. This Motion is informed by the fact that some of the Governors we are having are either serving their first term and, therefore, they think it is politically incorrect or not economically justifiable to finish or continue with the projects that their predecessors started.

I want to encourage Sen. Kibiru to ensure that he comes up with amendments to look at the PFM Act and the County Governments Act so that we can make county governments to be obligated. For example, if in Kajiado County, where you come from, they decide to build 30 Early Childhood Development (ECD) centres in 30 wards or in three sub-counties today, there should be a possibility of obligating the county government, through the budgetary allocation, to ensure that, that project is completed.

Madam Temporary Speaker, I have seen our President saying that we have the Presidential Delivery Unit (PDU). Similarly, the counties, even through the Council of Governors (CoG), in one way or another, must come up with service delivery units or county delivery units which we can use to ensure we benchmark.

Madam Temporary Speaker, on this issue of stalled projects, we have had Kshs366 billion and 545 projects that were being named. I was in the meeting where the President, his Excellency Uhuru Kenyatta, was the chief guest during the launch of the Strategic Judiciary Report for the next five years. One of the major impediments, especially to the stalled projects nationally, is because of many court cases.

The meeting of the Intergovernmental Budget and Economic Council (IBEC) meeting yesterday, which was chaired by the Deputy President and other members of the CoG, released Kshs365 billion to try and pay the pending bills. This is in accordance to the Presidential directive on Madaraka Day, which took place in Narok. Therefore, the President implored the Judiciary, through its Chief Justice, David Maraga, to ensure it does not become part of the impediment.

I know that the stake in some of these Government projects is so high – it is high octane – such that many people would want to move to court and maybe block a project. Because of procurement procedures and the existence of the Public Procurement Oversight Authority (PPOA), people would move to court because of lack of public participation; or maybe the fact that there were vested interests, and somebody else was awarded the projects. This has led to some of the stalled projects in counties.

What does this tell us? We do not want to reduce the Judiciary to become a rubber stamp of illegalities in terms of ensuring that the projects go on. If public participation was not done in particular projects in Machakos County, then that illegality cannot be sanctified through a court of law. What we are saying is very simple; that governors must be aware that there are procedures to be followed in developing and putting in place the projects that we have in the counties. Therefore, as much as there is this partnership that the President was requesting for between the Judiciary and the Executive Arms to solve some of these things through arbitration, we should do so in such a way as to ensure that we resolve some of these issues in a non-adversarial and non-strenuous manner such that we have amicable solutions for the projects. I am happy that the PDU and President Uhuru Kenyatta are very keen on that.

Madam Temporary Speaker, I have even seen in some counties, led by the PDU, some County Commissioner there, perambulating and masquerading on which projects were being done by the national Government. However, I suspect there is mischief there.

This is because there are some clever governors who have seized the national Government projects and are doing politics about it by saying that they are the ones who have done those projects. Therefore, the PDU is just being mischievous; they are just guarding their territory so that governors do not continue getting credit on national Government projects, which is very good. We want everybody to show us what they have sown, because what you reap is what you have sown.

My second point on the issue of stalled projects, is the pending bills. You will find that some contractors are on site, but because they have raised a certificate, they were not given mobilization resources after being given the letter of award of that contract. They, therefore, go ahead and leave that project.

There are so many roads in this country that some companies were given to construct. For example, if you go to Makueni, Machakos, across the 47 counties and even in your County, Kajiado, the roads there have stalled. I have heard Sen. Ochillo-Ayacko telling us that in your next life, you will be 'Madam Governor,' and we wish you well for that. The aspect we are pointing out to is that, in a way, some of these people are frustrating---

The Temporary Speaker (Sen. Pareno): May God hear your prayers.

Sen. Cherargei: Amen, Madam Temporary Speaker. Sen. Kibiru should look at the stalled projects in terms of pending bills and procurement up to the point where the services are delivered. Some of those projects have stalled because of cases that are in court. There are cases where the contractor has not been paid hence he just wants to frustrate that project. It is good that Sen. Kibiru is sitting with Sen. (Eng.) Maina, who has a wealth of experience in dealing with mega projects in this country. I hope that he will assist him develop some of the ideas that we are sharing here.

We have never been told the role of Transition Authority (TA). What else did they do apart from handling the assets and liabilities? Were there projects that were being handled by municipalities? If they were there, what happened to those projects? Was there transition in terms of pending bills? Those are some of the things that Sen. Kibiru should have captured in his Motion. In fact, it is under the watch of the TA that most counties lost their assets. We had a new tractor in my County but we later found it without wheels in the middle of a tea farm. Therefore, we need to look at that. Counties must look at the viable projects.

I wish Sen. (Dr.) Kabaka well now that he is salivating for the governor's seat in Machakos at the end of his term. I challenge the governors to look at the viable projects that are there. They should not just do projects for the sake of it. According to the Auditor-General's Report, out of 60 Early Childhood Development (ECD) centres in Nandi County, 39 are not complete. In fact, the Auditor-General's Report states that Nandi County Government paid Kshs97 million for the Governor's office which is 94 per cent of the total cost yet the contractor left the site.

We are made to understand that there were differences between the contractor and the County Government because they wanted a variation of Kshs21 million. That is on record and it is captured in the Auditor -General's Report. This is sad! We have a problem with the new governors. John Githongo said that the new governors feel that it is their time to eat. There is a saying in Kikuyu that says that even if your mother is too old, she is still your mother. That is what our governors are doing. They are saying: 'let us do some variation' and that is what has affected most of the Government projects.

In Uasin Gishu County, Kshs8.3 million was paid for a bridge but no work has been done on that bridge. Over 50 per cent of the money has been paid for the construction of Kamariny Stadium but the work is incomplete. Instead, you will find the cows grazing in the field. There are many issues on these projects. In Nandi County, the former Governor was constructing the stadium but the new Governor does not want to complete it. He has started building something that looks like a kiosk next to the old stadium. That makes you wonder the rationale for that. Why should you build a different stadium yet there is a stadium that just needs completion? That is total wastage of resources.

We must look for legal amendments to deal with the stalled projects. We must obligate the county governments. If Sen. Mutula Kilonzo Jnr. becomes the Governor of Makueni County, he does not have to walk away from the projects started by Gov. (Prof.) Kibwana. The law must obligate him to complete those projects and he should not do it for his or Gov. (Prof.) Kibwana's benefit but for the benefit of the people of Makueni. This Motion has our support.

We welcome the President and his Deputy to Rivatex in Eldoret tomorrow. We want to move forward and achieve the Big Four Agenda.

Thank you, Madam Temporary Speaker.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. I rise to support this Motion. This matter bothered us in the last Assembly and that is why we came up with the Assumption of the Office of Governor Act, 2019. This Senate had envisioned this problem and we must address it.

There are a few terms in Kenya which are the euphemism of corruption. The first one is budget deficit which is the euphemism for corruption in the counties and the national Government. The second one is stalled projects. The third one is pending bills. The one identified by Sen. Kibiru is another euphemism for corruption and we also have own source revenue.

On the legal basis, I may not agree with the recommendations given by Sen. Kibiru. This is because every planned project has a budget. Therefore, it is not possible to have a stalled project. In law and in financial terms, a stalled project presupposes that you cannot finance it any further. However, the correct position is that there is no project that any county or national government can start without a budget.

How did Machakos County, where Sen. Kabaka was the attorney general, end up with a pending debt of Kshs4 billion and above? How did Nairobi City County have a pending bill of Kshs50 billion? How did that happen? The previous governors who suspected that they were going to lose elections engaged in shady contracts. Can we have a legal provision that will stop capital projects at some point before elections? Before the elections, the counties pending bills were Kshs13 billion but they got to around Kshs70 billion or Kshs80 billion and counting after the elections. What does that tell you? It tells you that the governors who suspected that they would lose their seats went and engaged in shady contracts. We must find a method of dealing with this.

The law under the Public Finance Management (PFM) Act requires a new governor to first pay the debt. If God blesses any of us to become a governor, you will be faced with a debt of Kshs5 billion yet you are getting Kshs8 billion. You will end up fighting with contractors as Governor Ngilu is fighting contractors who have done legitimate work.

Madam Temporary Speaker, people have lost their houses and families because of pending debts or stalled projects yet for some strange reason, these projects have contracts, completion periods and have been signed. The reason I do not agree with some of the recommendations is because there is no project which is assigned to a governor. If it is Makueni, the people of Makueni in a certain ward have said we want “X”, “Y” or “Z” done. The county assembly appropriates, a plan is made and bills of quantities are done. Therefore, that project is not Professor Kivutha Kibwana’s project. Why would it stall? Why would the next governor of Makueni abandon a project which was started by the people, not by the governor? The governor is the person who is executing. It is a fundamental concept which must be addressed.

I am glad that Sen. (Eng.) Maina is sitting here because he is a contractor. What method is being used to cost projects to the extent that you start a project today, it is varied to such a large extent that you do not know what it was meant to be initially? That function in the Public Finance Management Act (PFM) that mandates every procuring entity not to value a contract by 15 per cent is just academic. Governors have varied contracts; county executives are varying contracts to a very large extent. Where did these bad manners begin?

It began with the Galana Kulalu Irrigation Project. I am glad the Senator of Tana River County is here. That is not just a white elephant, that is a monster, a dinosaur created in his county; cheating by the national Government - Kshs6 billion down the drain. If you do the mathematics, was the money allocated for that project spent? No. That money was stolen.

So, we are doing big projects which are called headquarter projects in counties. These ambiguous things they put in programmes that nobody understands and then they pilfer the money, and nobody knows. So, the recommendation by Sen. Kibiru which says: “Ensure that all the County Integrated Development Plans (CIDP’s) and Annual Development Plans (ADPs) are aligned to Vision 2030 in terms of monitoring, and evaluation”, there must be a fund in every project for monitoring and evaluation at the national level.

Secondly, they recommend that we should address pending bills by prioritizing their payment, creating clear timeframes and publishing a schedule of payment. This means that at the end of every term, a governor will create pending bills. I would have recommended no pending bills. I would have recommended that they ensure that all projects are completed by the time they leave office. If they are not completed, there should be a report of why they were not completed and no payment should be made until every project is complete.

They also recommend that we should prioritize the completion of stalled development projects prior to undertaking or funding new projects. That is the other contradiction. Assuming that the next governor is Sen. Kibiru and he finds stalled projects, will he complete them without starting new ones yet he has promised roads, dispensaries, and Early Childhood Development (ECDs)? He will not. It is just human.

Madam Temporary Speaker, you are going to start by pleasing the people who voted for you. Projects should not stall. Can we start a new standard in this country of doing the right things? I said these stalled projects, pending bills, own source revenue and debts are a euphemism for corruption. The minute you allow governors to create pending

bills, to create an avenue for stalled projects, you are going to find 100 stalled projects which you must complete, and you do not know where the money has gone.

You will fire fight like one governor I know in the North Rift who is busy firefighting throughout because the previous governor hired relatives and commissioned projects just a month before elections. He does not know whether to fire the workers or complete the projects; the governor is stuck firefighting. That is the problem about some of the things that we have allowed to get into our dictionary of acceptable standards. Pending bills is one of them. Stalled projects is another one. Government borrowing is another one.

Madam Temporary Speaker, when we sat in the Mediation of the Division of Revenue Bill, we discovered that the pending debt of this country is not Kshs565 billion as budgeted for in the Division of Revenue that was tabled. It is Kshs800 billion. We are almost getting to the threshold of Kshs1 trillion in debts. I can bet by the end of this financial year, we will have debt at almost Kshs1 trillion. By the time President Uhuru leaves, we are possibly going to have a debt of Kshs2.5 trillion. We have allowed terms like pending bills, stalled projects and borrowing to become part and parcel of our dictionary of words of acceptable standards of financial mismanagement.

When I make a speech, I always ask God to help this country because we are reaching almost Kshs1 trillion debt. We cannot get Kshs300 billion for county governments. County governments have pending bills of Kshs100 billion. The Chinese are all over the place.

Dear Senators, what makes you think that you are not going to cut a piece of this country to the Chinese? How are you going to pay these debts? They are going to auction this country at the national and county levels.

Madam Temporary Speaker, what is worse is that we are going to kill businesses. The young people who are not like the Nyeri tycoon are not going to get a tender. They will not ask for a tender because they will not be paid. Somebody wants to raise the cap for borrowing. God help this country. Thank you for highlighting these issues, Sen. Kibiru. I hope we can get some solutions. My feeling as I support Sen. Kibiru's Motion is that we need to get rid of these terms in our legal dictionary of financial mismanagement. Let us not have stalled projects and pending bills. They are a euphemism for corruption. We are allowing corruption through the backdoor.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): Sen. (Dr.) Musuruve

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for this opportunity to air my views concerning this very important Motion.

I commend Sen. Kibiru for coming up with such a timely Motion because all nations of the world are talking about their vision for the future. Kenya is not an exceptional. Kenya is looking at Vision 2030, and when you are talking of Vision 2030, you are looking at a situation where at the end of the day we want Kenya to become an industrialized nation, and improve the middle-income economy. This would translate to a higher per capita income for citizens.

Madam Temporary Speaker, the annual budget is funded from Kenyans through taxes. Therefore, there is a need for projects to have a positive net effect on Kenyans with regard to Article 43 of the Constitution.

Madam Temporary Speaker, Article 43 of the Constitution speaks about economic and social rights. When you are talking about economic and social rights, and look at nations of the world, they are talking about sustainable development goals. These are enshrined in Article 43 of our Constitution. When we look at Article 43, it talks about the highest attainable standards of health for the citizens, accessible and adequate housing free from hunger, social security and education.

Madam Temporary Speaker, Article 43 (2) talks about issues of emergency in terms of medical treatment. As we speak now, there are some people who find themselves in emergencies but do not receive medical treatment. This is uncalled for and not constitutionally right. There are instances where one hears that mothers have given birth by the roadside and have been helped and patients die when waiting for medical attention. This is unconstitutional and should never arise.

The Constitution also speaks about social security for persons who are not able to defend themselves. In this Senate, quite a number of Senators have talked about insecurity. Insecurity should not be condoned. If we are going to walk the talk about defending Article 43(2) of our Constitution, we must ensure that everyone has security. This includes the vulnerable and helpless. It is a constitutional requirement that if they are not able to provide security for themselves and their dependants, the State should come in.

There are some counties where one finds that in some villages there are no police posts. If someone is attacked, thugs will even take their time cooking and laughing in that house and search everywhere to see whether they will get any valuables. In some situations they even pack all the belongings in a lorry and go. This should never occur in a country that seeks to defend the Constitution; that says that even people who are vulnerable should be given protection by the State.

There should never be incomplete projects. This is because in every county there is need for an assessment to know what the needs of the county are. If security is an issue, then it should be in the budget so that a police post is erected and security measures are even taken for the purpose of mwananchi.

Madam Temporary Speaker, when we are talking of the Big Four Agenda, they are what I am articulating about now because it is enshrined in Article 43 of our Constitution. When it comes to counties, the development agenda should be aligned to the Big Four Agenda and the Constitution. A county should not just come up and decided they are going to do this and that.

There is need for a needs assessment to find out what the needs of the county are. Even after doing the needs assessment, there is need for public participation for people to say what they need in their county; lack of security, insufficient schools, hospitals and all that. Developments done in the counties should serve the common man.

Madam Temporary Speaker, there is need for indicators of development in every county because each county is given a budget for development. There is need for indicators of development in every county. If you go to any of the 47 counties, there is need to see a physical indicator of development. It should not just be paper work where many people say that what they spent in a certain year, for example, Kshs800 million or Kshs100 million. What are these things that are being done? There is need for the Senate to oversight and that is our work.

We need to be facilitated so that we are able to go to the counties and confirm with the paperwork and the physical development that money has been used in such a way that the *mwananchi* will benefit from devolution.

There is need even for development projects to be measurable. Every year I believe that a county has projects that are intended to be completed. Those projects must be measurable so that they are completed within that financial year. If not, someone must be held accountable.

Madam Temporary Speaker, in some counties one will find a road or hospital was being constructed and was not completed yet the contractors have already been paid. I want to suggest on the Floor of this House that contractors' payment should be staggered. There is no reason of paying a contractor before we see deliverables.

In some counties, contractors are paid money even before the project starts. Therefore, by the time the project starts you find some contractors will end up using the money for unintended purposes. That should not arise because we are talking of public funds and money that belongs to *mwananchi*. That money is not being utilised in such a way that the common man can say: "Yes, I can say in my county that if I am sick I will go to this hospital and will get treatment."

There is no reason why someone should die while waiting for medical attention. You will find in some counties they do not even have Early Childhood Development centres (ECDs). Some schools do not have water. It defeats the purpose of devolution. Money should be set aside, but it must deliver for the purposes of devolution.

The Temporary Speaker (Sen. Pareno): Kindly, try to conclude. We still have a number of people who want to contribute to this.

Sen. (Dr.) Musuruve: Thank you Madam Temporary Speaker. Is my time up?

The Temporary Speaker (Sen. Pareno): Your time is not up but I have asked you to kindly try to conclude so that we give a chance to the rest.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I am trying to bring out issues that are pertinent in this House concerning the counties. There is need for accounts to be oversighted and also for deliverables. There is no need of having yester-year projects still pending.

Madam Temporary Speaker, I suggest that there is need for capacity -building on financial management for County Executive Officers so that people are aware of what they are supposed to do. As it stands, someone needs to be answerable and accountable for the stalled projects. A county should not be added money because of stalled projects. Additional allocation should not be given for stalled projects. There is need to find out why the projects stalled. If money was allocated and the projects were measurable, how come they are not complete and not serving the common man?

As the Senate we must be serious and ensure we are serving *mwananchi*. We can only do so when we carry out our oversight role and ensure we are delivering.

There is need for public participation for county projects and a needs assessment of what is required in a county. There is also need to implement and monitor the project; do evaluation, write a report and launching of mega projects by County Executive Officers. The launching should be for functionality and utilisation by the common man.

When it comes to devolution, the buck stops at delivering and when devolution can work for *mwananchi*. That is the essence and beauty of devolution. We must defend devolution. We can only do so when there is accountability, transparency, honesty and

sincerity in the use of money that goes to the counties. This is so that we are able to say: "This money went to county "X" and these are the indicators and wananchi are happy about it."

Madam Temporary Speaker, I have more to say but due to limited time I stop there. I believe that this Motion will go a notch higher. It is supposed to be a Bill. I encourage the Senator to go a notch higher and ensure that this Motion is translated to a Bill so that it become the law of the land and can be followed.

Thank you, for the opportunity. I support.

The Temporary Speaker (Sen. Pareno): I now reduce the time to 10 minutes for the next speakers.

Sen. (Eng.) Maina: Thank you, Madam Temporary Speaker. I rise to support this Motion by Sen. Kibiru.

The Temporary Speaker (Sen. Pareno): Are you on a point of order? You are next in line to speak.

Sen. (Eng.) Maina: Madam Temporary Speaker, you read my mind. I meant to ask that you reduce the time for each speaker.

The Temporary Speaker (Sen. Pareno): Okay, then you can proceed.

Sen. (Eng.) Maina: Madam Temporary Speaker, please, start counting my time now.

(Laughter)

The Temporary Speaker (Sen. Pareno): You have 10 minutes.

Sen. (Eng.) Maina: Thank you, Madam Temporary Speaker.

I support this timely Motion. Why does a project stall? It is either because the money that was allocated to it is not enough or the projects were started when they had not been budgeted for or from the onset, the projects were meant for nothing else, but to be a conduit to get money out of the kitty.

I ask my colleague, Sen. Kibiru, it is not enough to say that we pay for all the projects. There is need for this Motion, when it becomes a Bill, to look further and ask the cause of the stalling projects. That is even more important. Stalling of projects in this country is a characteristic everywhere. To this day, there are some Nyayo projects that have never been completed. You will find a district headquarters which was started 20 years ago, but it has never been completed.

There is another reason today as to why projects stall. Sometimes projects are commissioned politically and there is no money. This is done by governors and even the national Government. Therefore, this Motion needs to somehow state that it is a crime to start a project with some deliberate move or another purpose, and then it stalls. This should not be allowed.

Madam Temporary Speaker, Members in this House can keep talking about county governments and that they should do this or that. Nobody follows the law deliberately or willingly. That is why when God created the earth, he saw that man will

not follow the law and he gave 10 commandments and serious consequences in case anyone disobeyed.

It is not enough for this House to keep shouting that we want this and that in the counties. Let me repeat what I said in the morning; it is high time we told Kenyans why we are sometimes unable to enforce things in counties. Of course, there is the question of legislation. Besides that, it is the capacity that we have. We have no capacity and this House being deliberately denied to go and do oversight that the Constitution has put on this House.

I think a referendum is coming from what I read around. Nobody needs to think deeply. It is not algebra but simple arithmetic. It seems to be coming. When the referendum comes, this House must position itself. It should create the mood in this country with wananchi where they will support this House to be the real Upper House with powers to oversight, save this country's money and ensure that the money that goes to the counties is put into useful expenditure.

Projects stall because it is not very interesting or appealing to county governments to buy drugs. The reason is that we buy drugs from the Kenya Medical Supplies Authority (KEMSA). I am not very sure, but I do not think there are systems there where you will decide to buy drugs for Kshs10 million but the invoice is for Kshs100 million.

Madam Temporary Speaker, when you say that you are building a road from point A to B, there is all manner of games that go on. Let us not pretend that we do not know this. Six people are called. In fact, they are individuals who have formed companies and they are told to present documents and they are called for the tenders. The story then begins. The money is even paid upfront and once it is paid, there is no motivation to keep on pushing the project. This is because in the first place, the project may not have been necessary.

The stalling of projects also happens because of what the Constitution envisaged is not happening. Members of County Assemblies (MCAs) were supposed to oversight controlling the governor and his executive. Unfortunately, today, they just sit down and all is quiet. This is the truth that is happening.

In the first term, there used to be a lot of squabbling between MCAs and governors. Today, it is very quiet. The reason is that during the sit down, each of them will get Kshs30 million for building roads in their area. You will bring the contractor and supervise him but whatever you do, just take care of the headquarters. That is the reality. It is all quiet and the only person suffering is Wanjiku. There is no road and money is being paid. Some of the things that are happening are actually criminal.

As long we continue turning a blind eye to the reality in this country, let us not think that devolution will succeed this way. Devolution is a good idea and was there in the 1960s and 1970s. In fact, in my primary school, books and other equipment were being delivered by a big lorry written District Education Board (DEB). County councils were building and maintaining roads and they used to do it effectively. However, the laws then were clearer than today. Devolution will not succeed the way we are, unless in the few counties where the governor has a moral heart for his people. That is just a minority and that is the reality.

How can anybody tell me that you go to 90 per cent of the clinics in this country and you cannot get malaria drugs? Wananchi cannot do simple blood tests. They are given sheets of paper to go to some private places. We better re-think devolution. What is

it doing to education? They say that they are dealing with Early Childhood Development centres (ECDs). What ECDs are they dealing with when the schools in most areas are in deplorable situations? I saw somewhere children taking their lessons outside. Surely, you do not need even Kshs5 million to put up five basic classrooms for the children.

Madam Temporary Speaker, the people who are being entrusted with devolution in this country are not the people the Constitution envisaged. The stalled projects will remain because they serve the purpose of the planners of these projects.

The other one is politics. Governors will come and some of them deliberately want to stop the--- When we were inaugurating the new Constitution, President Moi asked: "You say you will elect a Governor, but what will happen to those who did not vote for him?"

(The red timer went on)

Madam Temporary Speaker, this people did not add me the three minutes which we wasted. Can I have the three minutes? I am talking about the former President who was a great leader---

(Laughter)

The Temporary Speaker (Sen. Pareno): You are still on. You have not been stopped.

Sen. (Eng.) Maina: Thank you, Madam Temporary Speaker. President Moi asked: "*Wale watu ambao hawakuchagua huyu mtu wataenda wapi?*" That question still remains.

The Temporary Speaker (Sen. Pareno): Sen. (Eng.) Maina, you need to translate what you have just said in the language that you started with.

Sen. (Eng.) Maina: Madam Temporary Speaker, he asked where the people who did not elect a governor will go to.

In a county where a governor was elected by about half or less the people, and there could have been rigging, will only have a heart for the people who elected him. So, what will happen to the rest? This is the key question that President Moi asked when he opposed this Constitution. I want to be on record that I was with him at heart, but I did not have the courage to stand up and argue against the Constitution depending on where I came from.

However, I can say today that I was with him at heart. Therefore, let us relook the referendum that is coming. For example, education and health should not be devolved; they should be functions of the national Government. Governors should not say that security should be devolved so that every one of them can have their small garrison. This is a pathetic situation.

The issue of stalled projects is the norm even in the national Government because of the corruption that we are talking about. Bad planning is corruption. Starting a project for the purpose of getting money out of the National Treasury is wrong and it is corruption. It is also wrong for a governor to refuse to pay for a project that was started by his predecessor. It is corruption too.

Madam Temporary Speaker, the Bill that we will come up with should tie and link all these kinds of bad practices on the laws that govern crimes, for example, corruption. This is because the intention is obvious.

The issue of cost over-run comes up because people are looking for something to eat. Therefore, we should know that when we do not pay for the projects, we get a cost over-run. That is the reality. Therefore, I support the Motion as it stands. The lawyers should advise the Mover of the Motion so that it becomes law which has some teeth.

Madam Temporary Speaker, some of us care about Wanjiku and support devolution from our hearts, for the purpose of service to Wanjiku. That was the purpose of devolution; it was not for the governors to put up mansions and get away with it or put money in their daughters account. When a person becomes a governor, he or she should not save money in Cayman Islands. That was not the intention.

Therefore, I urge county governments, from the governor and their Members of County Assembly (MCAs) to visit the miserable people especially in various clinics in their counties. They should also visit the miserable children that are learning under pathetic situations. They should remember that there is a God in heaven and try to rethink of doing some good as intended in the Constitution.

Madam Temporary Speaker, I support this Motion on completion of stalled projects. If this House had a real oversight role, it would establish a unit to find out why projects stall and order county governments to ensure that they are completed.

Sen. Wario: Thank you, Madam Temporary Speaker. I rise to support this timely Motion by my good friend, Senator Kirinyaga.

The Temporary Speaker (Sen. Pareno): The Motion is by Sen. Kibiru. Sen. Kirinyaga only rose up to support it.

Sen. (Eng.) Maina: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): What is your point of order?

Sen. (Eng.) Maina: Madam Temporary Speaker, Sen. Wario is quite in order. Sen. Kirinyaga is my name. It is the original name of Mt. Kenya. I am proud of it. This gentleman comes from a small enclave called Kirinyaga.

Sen. Wario: Madam Temporary Speaker, I thought Sen. Kirinyaga is Sen. Charles Kibiru, who is also the Chairperson of the Committee on Tourism, Trade and Industrialization.

The Temporary Speaker (Sen. Pareno): Sen. Kibiru is the Senator for Kirinyaga County.

Sen. Wario: Madam Temporary Speaker, the great Kirinyaga is Sen. (Eng.) Maina. The point is taken.

I rise to support this Motion. As I said before, the Motion is timely. All the stalled projects are in those areas where the first governors have been voted out. Their predecessors feel that when they are elected, they should come up and run new projects. They think that these projects do not belong to the Government but to the former governors who have been voted out, which is wrong.

Madam Temporary Speaker, I come from Tana River County where the major stalled project is situated, that is, Galana-Kulalu Project. I travelled to Galana-Kulalu some few weeks ago and found that nothing is going on there. Instead of improving the livelihoods of people who live around Galana-Kulalu, the situation has worsened. Most Wanjikus who live around there are impoverished. This is because the project blocked the

corridors where livestock go through to drink water. Therefore, people are in a pathetic situation.

We were told that when the Galana-Kulalu Project was started, Kenya would be food secure and people who live around there would become rich. However, today, we are seeing the *visé versa*. People living around the project are impoverished and cannot access the river to fetch water for their livestock and for domestic use.

Madam Temporary Speaker, when such a mega project is brought to an area, we need to find out how people living nearby will benefit from it. However, the people of Tana River and Kilifi counties are living in a pathetic situation. It is good for the whole country to go and see how that project has impoverished the people who live there. The project has totally stalled and there is nothing going on.

There are many stalled projects in the vast Tana River County, some of which are funded by the national Government while others are funded by the County Government. There are also some projects which were initially started using the Constituencies Development Fund (CDF) but they have not been completed up to date. We have the area Member of Parliament (MP) and the Governor but it is like they see no need of completing projects that were started by the former governor.

From this Motion, we should come up with a law to ensure that projects which are started by any individual are completed because people have to benefit.

Madam Temporary Speaker, with those few remarks, I support this Motion.

Sen. (Dr.) Kabaka: Thank you, Madam Temporary Speaker, for giving me this opportunity to also add my voice in support of the Motion by my brother from Kirinyaga County, Sen. Kibiru. I will be brief and, therefore, I may not utilise the 10 minutes.

I wish to go on record, as the Senator for Machakos County, having undertaken a pertinent research on the reports of the Attorney-General on various stalled projects throughout the country. A lot has been said here about stalled projects under county governments. I wish to state that the law is very clear. I will read Article 226(3) which states as follows-

“Subject to clause (4), the accounts of all governments and State organs shall be audited by the Auditor-General.”

The Auditor-General always prepares elaborate audit queries for counties every financial year. Sen. (Dr.) Zani and I did an analysis and came up with a comprehensive analysis of stalled projects. Out of the 47 counties, there are 14 which I am not giving a clean bill of health, but they do not have many queries on stalled projects. Before I go into that, I wish to state that every time the Auditor-General raises audit queries, the buck should stop with the governor. That is why we have the County Public Accounts and Investments Committee (CPAIC).

More often than not, governors are known to appear and play some ping pong games with Members of that Committee and nothing comes out of that. Even when audit reports for counties are tabled, the game ends at the Senate. The procedure is clear, that upon presentation of audit reports, bodies charged with carrying out investigation should take play. I am referring to the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) because I have not seen them working comprehensively. The Auditor-General's reports are public documents and anyone can read and see the audit queries.

There are governors who use public funds without accounting for them. Article 226(5) of the Constitution is very clear. It states as follows-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.”

In other words, governors should not escape from the dragnet of the law. Even if they left office, they should be followed, even if they invested stolen funds at the end of the world.

I have some of the Auditor-General’s reports for the FY 2017/2018. I have extracted some excerpts which clearly show mammoth loss of millions of shillings from the taxpayers. For example, Machakos County Government awarded a contract amounting to Kshs11 million for construction of a microwave shredder house to safeguard machines from vagaries of weather. Despite the projects stalling, a whopping Kshs4.9 million was paid to the contractor. The payments were never supported by any documents or even the completion certificate. That is sad!

Baringo County Government paid a sum of Kshs16 million to a contractor who abandoned the stalled Kabarnet Stadium. That is another aspect where the county lost a lot of money. The county also lost about Kshs18.4 million for construction of Barwessa Slaughterhouse in Baringo North Sub-County.

Nandi County – I am happy the Senator for Nandi County spoke before me – also lost Kshs21 million on a project whose total value ought to have been Kshs97 million. The variation caused loss of funds to the said county.

We also have Homa Bay County. In 2015, Homa Bay County Government entered into a deal for construction of Kadongo-Gedia Road to bitumen standards at a cost of Kshs687 million. Three companies were contracted and paid a lot of money. One of them known as Nairobi Logistics & Construction Company Limited was paid Kshs240 million. Another one known as Bridgestone was paid Kshs 207 million and another one known as Pepeta Holdings Company Limited was paid Kshs239.3 million. This is loss of money.

Madam Temporary Speaker, even your county which is Kajiado lost money. The Auditor-General reported that the County Government of Kajiado entered into a contract of Kshs198 million for construction of a modern sports complex in Ngong Town. So far, Kshs37 million has been paid for the project but no works have been done at the sports complex since 2016. That is money that got lost.

Samburu County Government, which is always in trouble, paid about 96 per cent of the contract sum which is equivalent to Kshs256 million for construction of the County Government’s office block yet the contractor abandoned the site leaving it incomplete. In Kiambu County, the construction of Kikuyu Level 4 Hospital in Thogoto stalled and it cost Kshs211 million. The construction of Thogoto-Ndeiya Road also stalled after they had paid Kshs181 million.

The construction of Kimbo-Matangini Road cost Kshs170 million and also stalled. In Limuru, we have the hawkers market which cost Kshs14 million and the Community Hall in Kiambu town also stalled when they had paid Kshs14 million. Rehabilitation of Kanjahi Road cost Kshs145 million and the refurbishment of

Gikambura and Ruiru football stadium cost Kshs38 million. All that money was paid but the projects have not been completed.

In Kitui County, where Sen. Wambua comes from, they paid Kshs20 million for the construction of a mortuary at Mwingi Level 5 Hospital. The contractor received the funds but abandoned the mortuary before fixing the windows. They say that dead people do not tell tales but that is disrespect to the dead. Despite receiving Kshs41 million out of the contract sum of Kshs43 million, the firm constructing the outpatient block at Kitui Referral Hospital were demobilised from the site without completing the project.

In Turkana County, we have stalled projects that amount to Kshs170 million. This includes the construction of Kanaodon Service Water Irrigation Scheme where they paid Kshs74.5 million. They spent Kshs19 million in the construction of Loruugum Social Hall. The Construction of the administrator's office in Nakalale Ward was at a cost of Kshs12 million yet all these projects stalled and a lot of money was lost.

(The red timer was switched on)

The Temporary Speaker (Sen. Pareno): Your time is up.

Sen. (Dr.) Kabaka: Kindly give me two minutes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): I will give you one minute.

Sen. (Dr.) Kabaka: Madam Temporary Speaker, the Auditor-General's Report indicates that this country has lost a lot of money and that has happened by design and not by fluke. It is the governors who do not have the human heart who are stealing left right and centre. All those governors should be behind the bars.

The Temporary Speaker (Sen. Pareno): Good research. I now call upon the Mover to reply.

Sen. Kibiru: Thank you, Madam Temporary Speaker. I thank all the Senators who have supported this Motion. This Motion has attracted 16 Senators and that includes Sen. Olekina.

A number of issues have come up and we have established that we need to do an audit and we should have timelines for those audits. We have also agreed that we should identify the stalled projects and we will be working on that as we move forward.

A number of Senators have recommended issues of feasibility studies, the need for timelines so as to avoid having new projects just before elections. There is recommendation that we amend the PFM Act and the County Governments Act for us to have value for money. Most importantly, we have to make the people who put our money in such projects accountable.

In the interest of time and because of the overwhelming support that the Motion has got, we will move it up and see if we can come up with a Bill.

I wish to ask the Senators present to support this Motion by voting for it. With those few remarks, I beg to reply.

(Question put and agreed to)

The Temporary Speaker (Sen. Pareno): Hon. Senators, in view of our programme for the day and noting that the House is going on a short recess, I will, therefore, defer Orders No. 11 to 18. We will proceed with the next Order.

MOTIONS

WAIVER OF INTEREST ON HELB LOANS FOR GRADUATES

THAT, AWARE THAT Higher Education Loans Board (HELB) has, for over the last two decades, become the leading financier of higher education in Kenya whose mandate is to source funds and lend them as affordable loans, bursaries and scholarship to students pursuing higher education in recognized institution;

COGNIZANT THAT, the Ministry of Education announced that the government has lost Kshs. 7.2b through people defaulting payment on loans issued by HELB translating to 74,692 graduates who have defaulted the loans payment;

NOTING THAT, measures were taken to enhance the HELB loan recovery process which included a six month waiver of accumulated interest and penalties, and working with law enforcement officers to make sure the defaulters who are employed payback the loans;

CONCERNED THAT, there are graduates from institutions of higher learning who have not been gainfully employed for many years after graduation, and are therefore burdened with loans that have accumulated interest and penalties that they have no means to repay;

FURTHER CONCERNED THAT, when beneficiaries fail to remit their monthly installments for more than three months, HELB reports them to the Credit Reference Bureaus (CRB) preventing them from accessing loan facilities with any financial institution in Kenya, accessing employment opportunities in the government and major private and publicly listed companies and the loan guarantors are pursued and forced to service the HELB loan;

NOW THEREFORE, the Senate recommends that the Ministry of Education and HELB—

1. institutes a six (6) month full waiver of all the interest and penalties accrued, including the lifting of Credit Reference Bureau blacklisting, for defaulters who are willing to repay their loans in entirety, within the six (6) month period; and

2. embarks on a forty-five (45) day sensitization exercise preceding the waiver, no later than ninety (90) days after the passage of this motion.

(Motion deferred)

RENAMING OF MURANG'A UNIVERSITY OF TECHNOLOGY
TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY

THAT AWARE THAT, Murang'a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act, 2012, and is positioning itself to develop a distinctive profile as a progressive and international Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang'a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD –Asili under which he ran for presidency in 1992 general election;

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba's contribution to our Nation, to rename Murang'a University of Technology to Kenneth Matiba University of Technology.

(Motion deferred)

IMPROVING ALLOCATION OF RESEARCH FUNDS TO INSTITUTIONS OF HIGHER LEARNING

AWARE THAT, early childhood education and village polytechnics are a function of the County Governments. Secondary schools, Universities, Tertiary institutions and other institutions of research are a function of the National Government under the Fourth Schedule of the Constitution;

FURTHER AWARE THAT, institutions of higher learning have two basic functions, teaching and conducting research;

CONCERNED THAT, such institutions largely concentrate on “teaching” rather than “research”, as a method of enhancing and imparting the practical application of skills, attitude and knowledge by learners;

NOTING THAT, funds allocated towards community and development oriented academic research are neither sustainable nor adequate;

ACKNOWLEDGING THAT, various national policies on research and innovation are available, but fragmentation in the sector has short-changed the vision of a progressive national research agenda, thereby emboldening low science culture among the population, low global competitiveness ranking, inadequate funding, and poor linkages between academic research and commercial industry;

NOW THEREFORE, the Senate urgently calls upon the Ministry of Education, Science and Technology:

i. To provide a comprehensive report from all institutions of higher learning on the status and performance of Research & Innovation Programs in the Country;

ii Re-assess Sector Policies, and Develop new work-plans towards:

a. Improving allocation of funds for Academic as well as Sustainable Community Based Research to public institutions of higher learning.

b. Providing subsidies, and frameworks for partnerships between public & private institutions of higher learning to enable collaboration and better organization in research and innovations for community/county development Projects.

(Motion deferred)

CREATION OF SUPPORT SERVICES FOR THE DISCIPLINED FORCES AND THEIR FAMILIES

THAT APPRECIATING the commitment and sacrifice by members of the disciplined forces in protecting our country from both internal and external aggression;

AWARE of the risky and stressful environment that the officers are exposed to daily in the line of duty, combined with the increased terrorism threats at home, and abroad;

NOTING that members of the disciplined forces, and by extension, their families are exposed to traumatic incidents both at home and abroad that manifest as living in constant fear, debilitating depression, nightmares, crippling anxiety and thoughts of suicide commonly referred to as Post Traumatic Stress Disorder (PTSD) leaving them exposed to the stigma of society and unable to care for themselves and their families the way they could before;

RECOGNIZING that there is no structured national comprehensive program for posttraumatic stress counselling either for active or returning soldiers and their families;

NOW THEREFORE the Senate calls upon the Ministry of Interior and Co-ordination of National Government, in partnership with the Ministry of Defence, to establish counselling and support centers in all premises housing disciplined forces, and provide mandatory counseling to all service personnel and the families of those currently serving, and those who may have been killed in the line of duty.

(Motion deferred)

NOTING OF REPORT OF 50TH SESSION OF THE ACP AND
35TH SESSION OF THE ACP-EU JOINT ASSEMBLY

THAT, this House notes the Report of the Parliament of Kenya delegation to the 50th Session of the ACP Parliamentary Assembly and the 35th Session of the ACPEU Joint Parliamentary Assembly held in Brussels, Belgium, from 13th to 20th June, 2018, laid on the table of the House on Wednesday, 20th February, 2019.

(Motion deferred)

NOTING OF REPORT ON THE 5TH GLOBAL SUMMIT
ON OPEN GOVERNANCE PARTNERSHIP

THAT, this House notes the Report on the Global Summit on Open Governance Partnership held in Tbilisi, Georgia, from 17th to 19th July, 2018, laid on the Table of the House on Wednesday, 20th February, 2019.

(Motion deferred)

NOTING OF REPORTS OF THE PAN AFRICAN PARLIAMENT

THAT, this House notes the Reports of the Sixth Ordinary Session of the Fourth Pan- African Parliament held in Midrand, South Africa, from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, 24th July, 2018; and, the First Ordinary Session of the Fifth Parliament of the Pan African Parliament held in Kigali, Rwanda, from 18th October to 3rd November, 2018, laid on the Table of the House on Tuesday, 12th March, 2019.

(Motion deferred)

NOTING OF REPORT ON THE 3RD STATUTORY MEETING OF THE
FP-ICGLR COMMITTEE ON ECONOMIC DEVELOPMENT

THAT, this House notes the Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the Forum of Parliaments of the International Conference of the Great Lakes Region (FP-ICGLR) held in Bujumbura, Burundi, from 13th to 14th March, 2019, laid on the Table of the House on Tuesday, 21st May, 2019.

(Motion deferred)

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE SENATE PURSUANT TO THE APPROVED CALENDAR FOR THE 2019 SESSION

Sen. Kwamboka: Thank you, Madam Temporary Speaker. I beg to move-

THAT, pursuant to Standing Orders 28 and 29, the Senate do adjourn until Tuesday, 2nd July, 2019.

I request the Senators to adopt this Motion because we are supposed to go for a short recess as per our Calendar. I know that the Senators will do the oversight work when they go back to their counties. I also thank the Members for what they have done during this period. A lot of Bills, Motions and Statements have been transacted.

I request Sen. (Dr.) Zani to second this Motion.

The Temporary Speaker (Sen. Pareno) Proceed, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I stand to second the Adjournment Motion. We all know that we are proceeding on a recess for about a week. This is a good time to refresh ourselves, touch base with the counties and do some of the committee work. This recess is part of the activities in the Calendar of the Senate. The Calendar is already in place.

Therefore, Madam Temporary Speaker, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Pareno): Sen. Olekina, I will give you one minute to contribute to this Motion.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this Adjournment Motion. It is time for us to go and support our citizens and constituents and, most importantly, follow-up on some of our resolutions.

Earlier on, there was a Motion on the stalled projects. This should actually give us the opportunity to go out there and have a physical verification of these projects. We are hearing a lot and learning about why projects are stalling. In most cases, the information we get from the Auditor-General and the Controller of Budget (CoB) is that there could be a mismatch in terms of what is being budgeted for versus what is being appropriated.

Therefore, Madam Temporary Speaker, this is a great moment for us. Having been here for the entire Session, it is not a bad thing to take a week off so that we can go and meet our constituents.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Pareno): Proceed, Sen. Wario.

Sen. Wario: Asante Bi. Spika wa Muda, kwa kunipa nafasi hii. Wakati huu tunapo enda likizo ni wakati mzuri kabisa kwenda kuonana na watu wetu.

Vile vile huu ni wakati tunapo hitajika hapa Bungeni na huko makwetu, ili tuende kuona ni mambo gani gavana anayo fanya huko. Tunafanya *oversight*, kwa kutembea kwenye kaunti na kugharamika kila siku. Natarajia kwamba wakati tutakapo rudi na tutakapo enda wakati mwingine, tutapata pesa za *oversight* ili kutuwezesha kufika na kuangalia ni yapi yanayo jiri katika kaunti zetu.

Kwa hivyo, Bi. Spikawa Muda, nachukua fursa hii kusema asante, kwa sababu tumepata wakati mwema. Ubarikiwe. Asante.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Order, Senators. There being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 2nd July, 2019, at 2.30p.m.

The Senate rose at 6.30 p.m.