

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Tuesday, 25<sup>th</sup> February, 2020**

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

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

**PRAYER****COMMUNICATION FROM THE CHAIR****VISITING DELEGATION FROM MOMENTUM VISION-SWEDEN**

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of Ms. Celestine Davidsson and Mr. Djengo Esmer, both from Momentum Vision in Sweden. Momentum Vision creates sustainable and collaborative environment for European organisations in Africa.

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

*(Applause)*

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Deputy Speaker, Sir.

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, please allow me a few minutes to join you in welcoming Ms. Celestine and, Mr. Djengo, who says that there are only 13 people in the world with that name. I had interaction with them through my party because we are seeking some collaboration with the Swedish Social Democratic Party.

Allow me to join you in welcoming them and wish them a fruitful visit to Nairobi. I would like them to pass our greetings when they go back home.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Relay our greetings to Sweden.

Thank you, Sen. Mutula Kilonzo Jnr.

We move on to the Next Order.

**PETITION****AMENDMENT TO THE CONSTITUTION TO DELETE THE COCKEREL  
HOLDING AN AXE BOTH IN THE COAT OF ARMS AND THE PUBLIC  
SEAL OF THE REPUBLIC OF KENYA**

Hon. Senators, I hereby report to the Senate that a Petition has been submitted, through the Clerk, by Mr. Julius Masiva Obuga, a citizen of the Republic of Kenya and a resident of Vihiga County.

As you are aware, under Article 119(1) of the Constitution, I quote-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in the said Petition are as follows -

(i) THAT, during the former Kenya African National Union (KANU) regime, the late Tom Mboya was referred to as ‘Jogoo’ hence his inclusion in the Coat of Arms and the Public Seal.

(ii) THAT, according to the petitioner, the colours on the Kenyan flag are symbolic in that -

(a) black colour represents African inhabitants in Kenya;

(b) red colour represents blood-shed which brought Independence;

(c) green colour represents agriculture which is the economic backbone of the nation;

(d) white colour represents milk;

(e) the two spears represent weapons used during the struggle for independence; and,

(f) the lion represents Kenya.

(iii) THAT, the cockerel and an axe on the Coat of Arms and the Public Seal represents Mboyaism which has no relevance towards the struggle for independence. This is interesting!

The petitioner, therefore, prays that the Senate intervenes by amending the Constitution to delete the cockerel holding an axe, both in the Coat of Arms and the Public Seal.

Hon. Senators, pursuant to Standing Order No. 231, I shall now allow comments, observations or clarifications in relation to the Petition for a few minutes not exceeding 30 minutes.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Deputy Speaker, Sir.

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I will be brief. It is your jurisdiction to approve some of these Petitions but it is wrong to associate a cockerel with KANU. This is because the lion should be associated with FORD-K, the spear can be associated with WIPER---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator! The petitioner does not associate the cockerel with KANU. Instead, he thinks it is linked to what he calls Mboyaism.

**Sen. Mutula Kilonzo Jnr.:** True, but that is KANU. In fact, you are aware that I proposed an amendment to the ban on flying flags. This is because the late Tom Mboya on 22<sup>nd</sup> November, 1963, moved a successful Motion to ban Kenyans from flying flags. At that particular time, the colonialists were using the flag to create a problem. They were putting our flags in toilets *et cetera*. So, the ban on the use of our flag was moved by Tom Mboya and supported by Mbiyu Koinange so that our flag is not abused.

Whoever will determine this Petition must rest that a cockerel represents something other than a party.

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

**Sen. Mutula Kilonzo Jnr.:** It could be anything; it could be the song about *amkeni, twendeni tufanye kazi*, the cockerel that crows at 3.00 a.m. in the morning.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You are guessing, are you not?

**Sen. Mutula Kilonzo Jnr.:** No, I am not guessing. I am saying that it could be.

**Sen. Faki:** On a point of information, Mr. Deputy Speaker, Sir. I just want to inform my brother, Sen. Mutula Kilonzo Jnr. that the cockroach--- I mean cockerel---

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, you have introduced another symbol which does not exist in the Court of Arms.

**Sen. Faki:** The cockerel is a symbol of *ingokho* from Luhyaland.

(Laughter)

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

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, if you recall - because this is important - at the time somebody brought a Petition here to remove the word "Harambee", Sen. Faki, in fact explained that "Harambee" is not a Kiswahili word. He explained to us the origin of the word Harambee in the Coat of Arms. Similarly, the person who is trying to remove this, is using the same formula. I would think that in future, we should have a Standing Order that dismisses some of these Petitions.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): On preliminary basis.

**Sen. Poghio:** Thank you very much, Mr. Deputy Speaker, Sir. I think short of calling them frivolous, regarding some of these petitions that come, any person can petition Parliament and they have tried to. However, this particular one, you may not even know where to send it after it has been approved.

At Independence, when our Flag and National Anthem were approved; each item on the flag, every color and every symbol was explained enough at that time and reasons were given why it was found necessary to have them. Therefore, I think that we should go slow on trying to change even an iota of anything on our Flag or National Anthem.

While the petitioner has a right to petition, I think that at some point we should be able to say that within our jurisdiction, this is beyond us or it is frivolous.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. (Eng.) Mahamud:** Thank you, Mr. Deputy Speaker, Sir. Whereas Kenyans can petition this House on anything that they deem fit, at times we must be very careful. This country has a history which must be respected. We must respect those Kenyans who came up with our National Coat of Arms and Flag.

Since KANU was the lead party at Independence time, I have no problem with the cockerel being present on the Flag. An attempt was made in 2003 when NARC came to power, to remove all these things from the Flag and the Coat of Arms. As we consider this Petition, let us tell Kenyans that some things cannot be played around with, especially the history of this country.

**Sen. Faki:** Mr. Deputy Speaker, Sir, I just want to echo Sen. Mutula Kilonzo's position that we need to have an amendment to the Standing Order so that the Speaker or the Clerk can consider these petitions even before they are brought to the House.

Even in a court of law you must have a justifiable reason for a claim to be admitted. So, somebody should not just bring papers to the Senate and expect that we shall spend a lot of time and effort to consider them but when we look at it, it is entirely frivolous. We should make an amendment to the Standing Orders so that at least, there is a bare minimum that can be allowed in the House.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. Thank you for those observations. I have noted the direction in which all the Senators who have made observations are taking.

Nevertheless, I direct that this matter proceeds to the next level as I am going to direct. However, in discharging this Petition, the relevant Committee must address the observations which have been made by the hon. Senators in this Petition. For that reason, no other Committee could help us to do that other than the Committee on Justice, Legal Affairs and Human Rights.

Having said so, pursuant to Standing Order 232(1), the Petition should be committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. In terms of Standing Order 232(2), the Committee is required to consider this Petition and respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of this House within 60 days from today.  
So ordered.

I hope that the Committee on Justice, Legal Affairs and Human Rights is represented here? Please address the issue on whether any Petition under Article 119 can just come before us.

Thank you.

Next Order.

## STATEMENTS

### INCREASED CASES OF MURDER AND INSECURITY IN VIHIGA COUNTY

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, thank you for the opportunity.

I rise pursuant to the provisions of Standing Order No.47 Paragraph 1, to make a Statement on an issue of countywide concern, that is the growing cases of insecurity and murders in Vihiga County, the county that I represent here.

First and foremost, I would like to pass my heartfelt condolences on my own behalf, on behalf of my family and the people of Vihiga, to the families that lost their loved ones last week. Mr. Charles Ombima lost his son, Nelson Kehenji and the son's wife, Sheila Makhungu on the night of Monday, 17<sup>th</sup> February, 2020 in Itenji Village, Central Maragoli Ward in Vihiga County. The two were brutally butchered in their house at night.

Two days later, on the night of Thursday, 20<sup>th</sup> February, 2020, Mr. Kennedy Ambani, his wife Elizabeth Achieng' and son, Gifton Ambani from Busamu Village, Lugaga Wamuluma Ward were attacked and killed in their home. Their daughter, Anne Ambani, who was critically injured in the incident and was admitted at the Kakamega Referral Intensive Care Unit (ICU) lost the battle and passed on, on the morning of 24<sup>th</sup> February, 2020. More surprising is that in both incidences, the criminals only stole chicken.

Over the weekend, I visited the family of the late Kennedy Ambani at their village in Busamu, Lugaga, Wamuluma Ward to condole with them. The sight and the account of the events as told by the mother of the deceased broke my heart. According to the deceased mother's account, it was by sheer luck that two of the children in the family survived by hiding under the bed. Four children between the ages of one to 18 years have been left orphaned suddenly.

The burden of bringing up these children has now been left on the grandmother and other relatives. I condemn this heinous act of brutality and criminality in the strongest terms possible. It defeats logic when one attacks a family in the dead of the night to execute them in cold blood including defenseless and harmless children.

It should be noted that this is the second time that I am rising to complain on the issue of insecurity in Vihiga County in less than one year. The first time was on Wednesday 13<sup>th</sup> March, 2019, when I made a Statement on the execution of five watchmen in Kilingili Market in Vihiga County that had happened on Saturday, 2<sup>nd</sup> March, 2019.

Mr. Deputy Speaker, Sir, the Government exists to provide common goods and services that are necessary for the functioning of society. One such service is national security. Article 238 of the Constitution explains national security as:-

“(1) the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests.”

Clearly, the national Government is failing in providing security to the residents of Vihiga County. It is as if the people of Vihiga are living in the state of nature, as explained by Thomas Hobbs; where life is nasty, brutal, and short with no government, no common laws and institution to offer restrain and establish public security. This is unacceptable as the National Police Service (NPS) is, in totality, established and fully funded by taxes to maintain law and order, which includes ensuring Kenyans enjoy personal security, peace and protection.

Mr. Deputy Speaker, Sir, there are four main expectations that the people of Vihiga have from the national Government. Number one, concrete answers as to why the police in the county take so long to respond to alarm raised by distressed residents. In this particular incident, we are informed that the attackers raided this home at around 1.00 a.m. in the night, and police showed up three hours after that, at 4.00 a.m. in the morning

going to 5.00 a.m. Two, is the status of investigation on these two main recent incidents. Three, an assurance that the perpetrators of these heinous acts are brought to book. Finally, we pray that their security is restored.

To date, Mr. Deputy Speaker, Sir, the families of the people who were murdered in Kilingili Market in March, 2019, have not received justice in terms of compensation; only that the case is ongoing in court. The reason given for the Government not offering financial support to the families is that there are no provisions in law for such circumstances. Similarly, the young children left in the latest incident have no hope for any structured assistance from the Government. Most likely after the burial, all this will be forgotten. It is sad that the police have arrested the elder brother of the late Kennedy Ambani on the allegation that he was the last to contact the deceased, further throwing the family into anxiety and confusion.

Mr. Deputy Speaker, Sir, the issue of police failure to ensure the existence of law and order in Kenya as their main mandate has been with us for far too long. The Kenyan Police is identical with police brutality, corruption and perpetration of crime. In Vihiga County, the police are very efficient in pursuing *chang'aa* brewers, harassing *boda boda* and *matatu* operators, while allowing criminals to operate with impunity.

Mr. Deputy Speaker, Sir, there is need for the Inspector General of Police, in conjunction with the Independent Police Oversight Authority (IPOA) to take decisive and firm action against the above vices in the service. Allegations of police working with criminals should be investigated; and the concerned officers dismissed and charged with their crimes. However, it should not be assumed that I am condemning the entire police service. There are so many police officers who are doing a superb job.

Mr. Deputy Speaker, Sir, I was able to establish that Wunandi Sub Location – this is where the latest incident happened – has not had a substantive assistant chief for two years. This is wrong, and it should be corrected immediately. There are also allegations that the police officers at Magada Police Post – which is a rented structure – operate between 8.00 a.m. and 5.00 p.m. and close for the night. The police post has no vehicle and hence, to a great extent, are ill-equipped to respond to any emergency. If the Government fails to take firm action to restore order and build public confidence, there will be chaos. As we speak, incidents of civilians, in an effort to protect themselves, resorting to mob justice are on the rise. This is dangerous for the society. The residents of Vihiga cannot have peaceful sleep at night.

The Cabinet Secretary (CS) for Interior and Coordination of National Government is known to be thorough and no nonsense. Ironically, these two incidents occurred three weeks after he visited the county and held meetings with the security teams, following outcries by the residents on rampant insecurity. It is my greatest hope that this will be the last time that the attention of this Senate is being drawn on matters of insecurity in Vihiga County; and that the people of Vihiga will immediately enjoy peace and security as Kenyans from any other part of the country.

Thank you, Mr. Deputy Speaker, Sir, for the opportunity.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We shall have to balance the time we have for Statements between that Statement and the others. Therefore, I will exercise the discretion in Standing Order 47 and direct the Committee on National Security and Foreign Relations to liaise with Sen. Khaniri with a view to responding to the issues

raised. The Chairperson will be required to inform the House of the progress made in one week.

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

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

#### LOCUST INVASION IN VARIOUS PARTS OF THE COUNTRY

**Sen. Ndwiga:** Thank you, Mr. Deputy Speaker, Sir. I rise on a matter of great importance to this House. Last week, you ordered that my Committee meet the Cabinet Secretary (CS) for Agriculture on the issue of locusts. We summoned the CS, and he has snubbed the invitation of the Committee twice. The Speaker ordered that the CS appears before the Committee yesterday at 9.00 a.m., but he wrote back to the Clerk and excused himself, saying that the visiting German President was in the country and that his presence was required.

Mr. Deputy Speaker, Sir, instead of asking for another convenient date, I could not believe my eyes when the CS suggested that he will meet this House at three o'clock today, when we are in session.

Mr. Deputy Speaker, Sir, I do not know how to place that kind of a Statement, because I think that is total disregard of this House. Given the fact that this menace is still with us, as locusts are all over the country now, and Kenyans do not know what they are waiting for or what the Government is doing, my Committee is poised to start field visits throughout the country this Thursday to assess the destruction and the damage instigated by the locusts, and talk to Kenyans to see what can be done.

Therefore, Mr. Deputy Speaker, Sir, we think that we need to meet the CS before we undertake the field trips; so, we are now appealing to the Chair again. Last week, somebody asked that the Chair should start 'biting;' so, I am now requesting the Chair to sharpen the teeth and bite.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I will dispose of that matter right away.

Last week, I gave directions that the Cabinet Secretary (CS) for Agriculture, Livestock and Fisheries should appear before the Senate Committee on Agriculture, Livestock and Fisheries. I went ahead to require all Senators who had an interest in the issue of the locusts catastrophe to be invited for that exercise. It is sad that up to now, nothing has happened.

I direct the Clerk and the Committee to cause to communication to hon. Peter Munya, the CS for Agriculture, Livestock and Fisheries, to appear tomorrow at 9.00 a.m. without fail. There should be no excuse, no explanation, and no further delay. Failure of appearance, this House will take drastic, decisive and final measures against the CS. It is so ordered.

*(Applause)*

I will not invite further comments on this issue. Tomorrow at 9.00 a.m., the CS for Agriculture, Livestock and Fisheries should appear before the Senate Committee on Agriculture, Livestock and Fisheries. All Senators who come from counties that are already affected or are likely to be affected by locusts are invited. I am told that as I

speaking, the locusts are all over. In fact, I am told they have reached China and some are in Pakistan and Iran.

We are not going to have unending correspondences between the Committee and the CS while our farmers are staring at a crisis. Therefore, the CS is advised to stop every other business he is doing. Even if he is entertaining visitors, those visitors can be entertained by another CS. The CSs for Foreign Affairs and International Trade or Sports, Culture and Heritage can take over. The CS for Agriculture, Livestock and Fisheries needs to attend to the issue of locusts with immediate effect.

I thank you.

What is it Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, first, on the Statement by Sen. Khaniri, I want to bring to your attention that the Chairman of that Committee is building bridges. Therefore, he might not be available in the next seven days.

The Vice Chairperson, who was Sen. Sakaja, honourably resigned. Therefore---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Honourably or dishonourably?

**Sen. Mutula Kilonzo Jnr.:** Honourably because he was not removed from office.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Although, the consequence is almost the same.

**Sen. Mutula Kilonzo Jnr.:** He honourably left office. Therefore, there must be a direction about how that Committee---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But the Committee is in existence, is it not?

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Committee knows what to do because it still has a Chairperson. Whether that Chairperson is building bridges, roads or other things, the Committee must communicate to this House on the progress or do you have a specific suggestion?

**Sen. Mutula Kilonzo Jnr.:** I thought you would say the Chairperson or any other Member of that Committee to bring a report within seven days.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is the Chairperson to appoint his representative because he is the spokesperson of the Committee. So, wherever Sen. Yusuf Haji is, as he builds bridges, he will be informed. I am sure he will cause a Member or Members of that Committee will communicate with the Chairperson, in which case, they will identify someone to speak to this issue next week.

**Sen. Mutula Kilonzo Jnr.:** I thought so.

On the second issue, I thought I should mention to you, Mr. Deputy Speaker, Sir, that while we are contemplating amending our Standing Orders, we should adopt the model used by the Australian Senate concerning something called "Contempt of the Senate." because we have powers similar to those of a High Court. When you defy a court order, you are in contempt. We should have that, so that CSs do not have the liberty to go and entertain guests while a matter of this nature is pending.

Mr. Deputy Speaker, Sir, we saw you doing manual labour of chasing the locusts all over the place.



**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., are you still on that matter?

Hon. Senators, we have some visitors whom we need to acknowledge.

*(Interruption of Debate on the Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM YOUTH FORUM  
RUARAKA, NAIROBI CITY COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of 15 members of the Youth Forum from Ruaraka, Nairobi City County. On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well in the remainder of their stay.

I thank you.

*(Applause)*

Sen. Sakaja, is it about the visitors?

*(Sen. Sakaja spoke off record)*

Just finish with the visitors first on behalf of all of us.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, on behalf of the entire Senate of the Republic of Kenya, allow me to welcome the members of the Youth Forum from Ruaraka Constituency. These are young ladies and gentlemen who are well known to me. They have a huge impact in the community. They have been doing a lot for the people of Ruaraka and the wider Nairobi. I welcome them to the Senate.

They are part of a mentorship programme established under the Office of the Senator for Nairobi City County, where young people from different constituencies get an opportunity not just to come to Nairobi but also to be mentored by leaders in different sectors and fields.

Mr. Deputy Speaker, Sir, with your indulgence, allow me to quickly comment on those two Statements.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Kindly, proceed.

*(Resumption of Debate on the Statement)*

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, on the first one, I join Sen. Khaniri in offering condolences. Security issues in Vihiga County are not new to us.

I led the team to Kilingili when he brought this Statement to the House. A new police team was appointed there and they made certain commitments. It is disheartening that those issues are still happening in that county.

Sen. Mutula Kilonzo Jnr. has informed the House that last year, I honourably resigned as the Vice Chairperson of the Committee on National Security, Defence and Foreign Relations. There is still a vacancy for Members who might be interested.

Mr. Deputy Speaker, Sir, I would like the Committee to know that last week, there is a Statement I brought on extrajudicial killings in Nairobi City County that have gone up. The House advised that the best way to go is to form an *ad hoc* committee to look at police issues including extrajudicial killings. This week, I will bring a Motion on that to this House. I believe the Committee will supplement the Committee on National Security, Defence and Foreign Relations in looking at the matters affecting the people of Vihiga County.

Lastly, on the issue of locusts, the House is being embarrassed because we have invited the CS many times. I just want clarity. Is this another invitation or these are summonses because the summonses cannot be ignored? With the invitation, they are talking of seven days but they can give all manner of excuses. The CS needs to be summoned to appear tomorrow.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us go to the next Statement.

**Sen. Halake:** Mr. Deputy Speaker, Sir, before I request my Statement, one of the interventions was for you to allow us to say *pole* to the families in Vihiga.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have already said so. Kindly proceed with the Statement.

#### OUTBREAK OF FOOT AND MOUTH DISEASE IN VARIOUS COUNTIES

**Sen. Halake:** Mr. Deputy Speaker, Sir, I rise, pursuant to Standing Order No.48(1), to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries concerning an outbreak of Foot and Mouth Disease (FMD) in various counties in the country.

In the Statement, the Committee should-

(1) Address the steps taken by the national and county governments to contain the outbreak of foot and mouth disease in, *inter alia*, Isiolo, Baringo, Marsabit, Laikipia, Samburu, Meru, Nakuru and Kisii counties.

(2) Explain measures that the Government has put in place to curb the spread of the disease to other counties in the country.

(3) Explain the efficacy of the foot and mouth disease vaccines currently in stock in the country, considering that some of the infected livestock have been previously vaccinated against the diseases. Therefore, there are questions around the potency of the vaccines being used.

(4) State why the vaccine against the foot and mouth disease is not readily available in some counties. In fact, cases of non-availability have been reported by most farmers and pastoralists and yet the disease poses a threat to livestock across all counties.

(5) State what measures are in place to mitigate against the imminent economic loss to livestock keepers in the face of the outbreak.

Mr. Deputy Speaker, Sir, we have parastatals like the Kenya Veterinary Vaccine Production Institute (KEVEVAPI) that are supposed to be doing this, but we do not know

why this is happening. The problems in agriculture are not just locusts. We need to urgently deal with the issues of the foot and mouth disease that is ravaging our counties.

I am aware that the Committee on Agriculture, Livestock and Fisheries is going to Isiolo, Samburu and Marsabit counties. I hope this can be added on to their list of things to do so that we can be efficient in the use of resources as we deal with the locust issue. I also request to be added during the visit so that I can also deal with this matter. I sit on a board for rangelands managements in northern Kenya. This is going to be the next frontier of good security in these counties.

Thank you.

**The Deputy Speaker** (Sen. (Prof. Kindiki): Very well. I direct that the Committee on Agriculture, Livestock and Fisheries as they visit Isiolo, Samburu Marsabit and other counties affected by locusts, to include in their itinerary, the issues that have been raised by Sen. Halake in this statment regarding the food and mouth disease in Isiolo County.

I further direct that Sen. Halake be facilitated as a friend of the Committee so othat we maximise on the use of resources.

So, ordered.

**Sen. M. Kajwang’**: On a point of order, Mr. Deputy Speaker, Sir.

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

**Sen. M. Kajwang’**: Mr. Deputy Speaker, Sir, just to follolow up on your directions, Sen. Halake from Isiolo County and Sen. Dullo from Isiolo County to be facilitated to be part of that delegation. This is because if you do not pronounce yourself, you might find that my sisiter, Sen. Halake is the one who is facilitated and not---

**The Deputy Speaker** (Sen. (Prof. Kindiki): Thank you for that input. The reason I directed that way is because Sen. Halake is the owner of the Statement.

However, considering again we have an elected Senator in that county, it is important that the two Senators work together so that this matter is resolved in the best way possible. This will be for the good of the people of Isiolo County.

For avoidance of doubt, Sen. Dullo as well, be part of that process.

**Sen. (Dr.) Mbito**: On a point of order, Mr. Deputy Speaker, Sir.

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

**Sen. (Dr.) Mbito**: Mr. Deputy Speaker, Sir, I am a Member of that Committee. Kindly clarify to the Committee because we have a very limited budget. I do not know whether you would want them to come on our budget or---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Those are administrative issues. Do not canvas that in the Senate Plenary. Once the Deputy Speaker has said, it will happen. Do not worry. It can happen from anywhere. How she is facilitated is not our work as Plenary. It shall be done.

Very well. Sen. Mutula Kilonzo Jnr., Senator for Makueni County, proceed.

SCALING UP OF UHC TO THE 47  
COUNTY GOVERNMENTS

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. It has come to my attention – and it should concern Senators – that the Universal Health Care (UHC) has been scaled up to 47 from four counties. Therefore, I am requesting for a Statement on that upscaling.

In the Statement, the Committee should-

(1) Provide the details of the Inter-Governmental Participation Agreements that have been entered into between the national Government and the 47 counties, including the priority areas identified in the agreement for joint cooperation as well as the specific roles and responsibilities assigned thereby to the two levels of government respectively.

(2) Outline the budgetary, financing and long term sustainability plans that have been put in place to upscale of UHC.

(3) Outline the role of the National Health Insurance Fund (NHIF) in the scale up of UHC and provide details of how this role will complement existing county health insurance initiatives.

(4) Outline measures put in place to ensure adequate health human resource to facilitate and sustain the scale up of UHC.

(5) Elucidate measures put in place to ensure counties have adequate essential medicines and supplies.

(6) Explain the role that the Kenya Medical Supplies Agency (KEMSA) will have in the scaling up of UHC, as well as measures put in place to address the various challenges that have been identified with the proposed scale up, including low average fill rates and delays in supplies.

(7) Outline the policy direction for the facilitation of inter-county health referrals and emergency referral services to Level 6 hospitals.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is a very important matter raised there by the Senator for Makueni County. Committee on Health, you need to brief Senators and not just Sen. Mutula Kilonzo Jnr. on this UHC. It is one of the Big Four Agenda. There are so many issues in the health sector left, right and centre.

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

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

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, if you can allow me, I would like to ride on that Statement and ask a few more questions to go with that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Why are you riding?

*(Laughter)*

Before I even allow you, what is this riding business? Anyway, Sen. Kasanga, since you are---

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I should have used a different word. If you can allow me to add on to the Statement?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Just make a few observations. This riding business is neither here nor there.

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. In addition to Sen. Mutula Kilonzo Jnr.'s Statement, I would like the Ministry to also give clarity on where is the place for mental health in the upscale for UHC. It was missed out in the first four counties. I have cross-checked to see and I know counties are struggling with funding for mental health.

Secondly, could the Ministry also clarify or give their position and statement as to the funding for Mathari National Teaching and Referral Hospital? Some time back, the Cabinet Secretary (CS) had pronounced herself that they would make it autonomous and fund it separately. Up to this day, that has not been done. That was pronounced about a year-and-a-half ago. If they are going to upscale UHC, we want to see how our national teaching and referral hospital is doing.

Could the Ministry also confirm on mental health staffing when it comes to workers of mental health and the incentives that they shall be given considering their work is very unique and that they need care?

Lastly, on the issue of medication, we know that NHIF is only funding first generation drugs for mental health patients and we know they do not work. In fact, they come into the place for healing because the side effects are so bad that most patients will run away from these drugs. This affects their long-term healing. I would like the Ministry to tell us, as they are upscaling UHC; where is the place for second generation mental health drugs? Lastly, if the upscale is going to happen, we want to know where the budgets for the counties to raise awareness and fund programs to fight against stigma are. This is because it is clearly pronounced in the policy, and we want to see it beginning to happen.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Kasanga. Chairperson, you have heard those comments; they are very valid. In fact, on the issue of the Mathari National Teaching and Referral Hospital, even the watchmen there went on strike just last week because they have not been paid for three months. They are now threatening to release the mentally ill patients to the streets of Nairobi. Chairperson, you will handle that.

Sen. Mutula Kilonzo Jnr., would you like a formal Statement, or would you like to consult with the Committee and deal with it at that level?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker Sir, this involves everybody. In view of the magnitude, a Statement would be adequate. This is because I would like every Senator to have a Statement in respect to their counties so that if somebody has an issue with their respective county, they can raise it the same way Sen. Dullo was able to raise an issue when Universal Healthcare (UHC) was enrolled in Isiolo. The parameters are very important, because what happens in Mandera and Kiambu counties is not the same thing that is going to happen in Makueni County. Therefore, a formal Statement would be much more useful. Knowing the way the Ministry of Health has been operating, I do not want to sit with them informally. I want them to come here so that they can put everything on the Table. I hope that Sen. Mutahi Kagwe will be the Cabinet Secretary (CS), then.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, would you like to say something before I give further directions?

**Sen. (Dr.) Mbiti:** Mr. Deputy Speaker Sir, a Statement would be good for us to brief each and every Senator here. However, my request is that we be given 30 days,

because we have a new CS coming in and we do not want to ambush him so fast. We will write a letter to him immediately and maybe give him 15 days to respond. I am asking for 30 days.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I thought he would request for less days and ask the CS to ask for an extension. Ideally, that is what is supposed to happen. If you heard what he said, he was prepared to work if he was approved the following day. Mutahi Kagwe is not a gentleman to give 30 days. Give him 14 days, and then he will ask for an extension.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct that the Statement be presented in two weeks time. Chairperson, if the CS has difficulties, he will explain himself.

It is so ordered.

We are doing very well. We have one last Statement by the Chairperson of the Committee on Devolution and Intergovernmental Relations, Sen. Kinyua.

#### CONFERMENT OF CITY STATUS TO NAKURU MUNICIPALITY

**Sen. Kinyua:** Thank you, Mr. Deputy Speaker Sir. I rise to make a Statement pursuant to Standing Order 51(1)(a), concerning a matter that my Committee is responsible for.

Mr. Deputy Speaker Sir, the Senate Standing Committee on Devolution and Intergovernmental Relations is established under Standing Order 218(3) of the Standing Orders of the Senate, and is mandated to consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.

Mr. Deputy Speaker, Sir, by a letter dated 7<sup>th</sup> November, 2019, and received in the Senate on 11<sup>th</sup> November, 2019, the Clerk of the County Assembly of Nakuru conveyed to the Clerk of the Senate the Resolution of the County Assembly to adopt the Report of the *ad hoc* Committee recommending the conferment of city status to Nakuru Municipality.

At the Sitting of the Senate held on 21<sup>st</sup> November, 2019, the Speaker of the Senate issued a Communication on the same and referred the matter to the Standing Committee on Devolution and Intergovernmental Relations for consideration. The Committee was required to consider the matter and report back to the House by 25<sup>th</sup> February, 2020.

Mr. Deputy Speaker, Sir, Section 4 of the Urban Areas and Cities Act, 2011, provides for the general classification of urban areas and cities and states as follows-

“An area may be classified as an urban area or city if it satisfies the criteria set out under this Act or any other written law.”

Section 5 of the Act provides for the criteria for classifying an area as a city. An urban area may be classified as a city if the urban area satisfies the following criteria –

- a) Has a population of at least 250,000 residents according to the final gazette results of the last population census carried out by an institution authorized under any written law, preceding the application for grant of city status;

- b) has an integrated urban area or city development plan in accordance with this Act and other existing laws;
- c) has demonstrable capacity to generate sufficient revenue to sustain its operation;
- d) has demonstrable good system and records of prudent management;
- e) has the capacity to effectively and efficiently deliver its services to its residents and has in existence the services provided in the First Schedule;
- f) has institutionalized active participation by its residents in the management of its affairs;
- g) has infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management; and
- h) has a capacity for functional and effective waste disposal.

Mr. Deputy Speaker Sir, the Committee met on 4<sup>th</sup> December, 2019, before the long recess, and on 18<sup>th</sup> February, 2020, to consider the report of the *ad hoc* Committee appointed by the Governor of Nakuru County recommending the conferment of city status to Nakuru Municipality. The Committee today met the Governor of Nakuru County on the same matter and raised pertinent issues that arose from the report.

Mr. Deputy Speaker Sir, the Committee intends to meet with officials from the State Department of Planning at the National Treasury, and get a report from the Parliamentary Budget Office (PBO) on the capacity of Nakuru Municipality to generate sufficient revenue to sustain its operations. The Committee also intends to meet the citizens of Nakuru County by conducting a public participation event in Nakuru County.

Mr. Deputy Speaker Sir, the Committee is required to consider the matter and report back to the House by 25<sup>th</sup> February, 2020. However, due to the planned activities and with your indulgence, we would like to request an extension of 45 days to enable us complete the assignment effectively.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Sen. Kinyua, I will give a communication regarding the Statement you have just presented shortly. Before I do that, we still have a few more minutes. We have saved some time. I will allow a few more Senators to make comments on this or any other Statement, and then we will close. We have done very well today, congratulations.

Proceed, Sen. (Dr.) Lelegwe.

**Sen. (Dr.) Lelegwe:** Thank you, Mr. Deputy Speaker Sir. Mine is on the issue of locusts. I appreciate your direction for the CS to appear before the Committee tomorrow. However, last time the Chairperson directed that the CS appears before the Committee on Monday, and failure to that, a summon will be issued. That is my concern.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! The Chairperson is fully in charge of that agenda. The CS will appear tomorrow; if he does not appear, the consequences that the Chairperson has directed will follow. Do not try and present the House in a different way.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to the Statement on insecurity in our country, and the Statement by Sen. Khaniri.

First of all, I would like to start by giving my condolences to the people of Kenya, the people of Vihiga County, and the family of Charles Ombima – who was brutally murdered – for losing their beloved ones.

Mr. Deputy Speaker Sir, every morning, we wake up to the sad news of brutal killings. It has been occurring many times, and we have seen it not only on television, but also on social media. The issue of brutal killings and murder is all over in our country, and we think that the security forces are reluctant to deal with it.

These latest killings are in the long-standing pattern of execution for the unlawful killings in Kenya. This should be a matter of concern, and I thank Sen. Khaniri for bringing this Statement.

The Ministry of Interior and Coordination of National Government is one of the Ministries that is highly funded by our Government, especially when it comes to the Annual Budget. However, the services that Kenyans are getting are below par.

The national Government has failed us because security lies squarely in the National Government. The structures and systems in the Ministry of Interior and Coordination of National Government need to change, considering the number of lives that have been lost.

**The Deputy speaker** (Sen. (Prof.) Kindiki): Kindly summarize so that other Senators can speak.

**Sen. Shiyonga:** In summary, Mr. Deputy Speaker, Sir, security is paramount. I support Sen. Khaniri's statement that we need to be protected. Our security machinery needs to make sure that our people are protected throughout the country.

**Sen. (Dr.) Mwaura:** Mr. Deputy Speaker, Sir, I pass condolences to the family that is affected in Vihiga County. The Committee should expedite the investigations, as we have ordered.

On the issue of the Universal Health Coverage (UHC), I would like the statement to be enhanced further by the CS responding to the following. If you look at the NHIF allocation, you will realize a very interesting scenario in the number of hospitals that we have in this country. It shows that 48 per cent of hospitals are owned by the Government; about 38 per cent are owned privately, while the remaining 14 per cent are owned by faith-based organizations.

From the indicated figure of Kshs38 billion that is dispensed by the NHIF to the hospitals, about Kshs22 billion goes to the private hospitals, about Kshs8 billion goes to the privately owned hospitals, while the remaining Kshs7 billion goes to Government. What is happening there? Is there an element of corruption in terms of inflated bills? We need to know more about that, especially since we have a proposal on the Floor to have a private hospital in the national referral hospital, Kenyatta National Hospital (KNH).

Mr. Deputy Speaker, Sir, the Maputo Declaration requires that 15 per cent of the budget should go to the health sector. What mechanism has the CS put in to achieve this? We are looking at it as a mere declaration, yet it would go a long way in ensuring that UHC becomes a reality.

Finally, Mr. Deputy Speaker, Sir, there seems to be a very interesting scenario where the national Government has gotten in contract with 40 counties, which have ceded power to even procure medicine so that it is done centrally yet the Kenya Medical Supplies Agency (KEMSA) has not done that very well. What is happening? Are we rolling back on the gains in the fact that health is devolved? What is happening with regards to the sovereignty of counties, particularly the execution of the role of health as a devolved function?

**The Deputy speaker** (Sen. (Prof.) Kindiki): Kindly proceed, Sen. (Prof.) Ongeru.



**Sen. (Prof.) Ongeri:** Thank you, Mr. Deputy Speaker, for giving me this opportunity to pass my condolences, on behalf of Kisii County, to the people of Vihiga County for the loss of life that we have witnessed. The senseless loss of lives brings to our notice some form of trend which is worrisome for the security of this country.

Mr. Deputy Speaker, Sir, I have witnessed some insecurity in Kisii County, as well. There is a pattern which is developing on how to terrorize people from area to area, homestead to homestead and from county to county. Is there something beyond that which we do not know? My intervention on this matter is that there are too many senseless killings. People are losing their loved ones out of nothing.

Mr. Deputy Speaker, Sir, I plead with you that one of the things that we need to do, is to ask the Ministry of Interior and Coordination of National Government to give us further information on what is going on in the country. Are we witnessing some form of rebellion? We are entitled to know this, as the people who want to run for office, because this is a worrying moment.

Secondly on the issue of the UHC, it is a pity that this country has not achieved the UHC system, as was proposed by the Maputo Declaration. I was serving as the Minister for Health during the Maputo Declaration. During the Abuja Declaration, I was serving as the Minister for Education. The percentages stated in the declaration were carefully thought about so that by 2020, this country should have attained a minimum universal healthcare delivery system. Some of the bottlenecks have been a clarity in the policy framework that would be put online on how the universal healthcare system should be achieved.

Mr. Deputy Speaker, Sir, I have seen some policy statements initiated by the Ministry of Health when I was the Minister in charge of Health, which conceptualized that the UHC would run through a course of 13 levels before we could achieve a UHC system. However, after going through three levels, it became impossible. I suggest that the Ministry of Health relooks at what we did in the late 90s, and work it forward to date with the experiences that have been achieved in the three or four pilot schemes for the UHC. That would give us a composite approach on how to handle the UHC system.

Mr. Deputy Speaker, Sir, looking at the Budget Policy Statement (BPS), we are witnessing the decline of services in the places the pilot projects have been carried out. As a House, we need to be abreast of how we are going to turn the tables for a positive response and a possible resurrection of the UHC system.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy speaker** (Sen. (Prof.) Kindiki): Kindly proceed, Sen. Kajwang’.

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, I rise to join the Senator for Vihiga County on the Statement that he raised earlier, on the increased insecurity and murders in Vihiga County. This matter goes beyond Vihiga County. On 23<sup>rd</sup> February, 2020, one young man called Mr. Victor Otieno Awili, also known as Abayo, was found murdered in Kasungu Ward, Suba North Constituency.

What makes many Kenyans to sometimes lose faith in the Government is the fact that the provincial administration still remains in the form that it was in before the promulgation of the Constitution. The provincial administration has become even stronger. Whereas in the past, chiefs and their assistants would walk on foot, they all have motorcycles today. Whereas they would rely on telegrams and postal letters, they have mobile phones today.

It then becomes difficult to convince the common *mwananchi* why it takes longer to solve some of these murders, and why it takes long for the provincial administration to rise to the occasion whenever they are required to do so. I urge the relevant committee that will be seized of this matter to look beyond the Vihiga killings. I would also like to get a statement from the CS, Ministry of Interior and Coordination of National Government, on the murder of Mr. Victor Otieno Awili, because the people of Kasungu are mourning. They believe that they have a Government whose primary duty is to protect them, and the people of Kasungu demand answers from that Government.

**The Deputy speaker** (Sen. (Prof.) Kindiki): Kindly proceed, Sen. Kinyua.

**Sen. Kinyua:** Asante sana, Bw. Naibu Spika. Naunga wenzangu mkono kwa kutuma risala zetu za rambirambi kwa familia ya watu wa Vihiga waliothiriwa na jambo hili. Ukosefu wa usalama limekuwa donda sugu katika nchi yetu ya Kenya. Kuamkia usikuwa wa leo, Kaunti ya Laikipia katika eneo la Kimanjo, watu walishambuliwa na watu wanne kuuwawa. Wazee wafuatao waliuwawa; Bw. Lekietei, Bw. Lekishulai na Bw. Lesamaita, na hakuna chochote kilichoibiwa. Inaonekana kwamba watu hao waliwashambulia kusudi ili kuwaondowa katika makao uyo.

Katika sehemu inayofahamika kama Mwenje, Bw. Richard aliuwawa na ng'ombe wake wakaibiwa. Ukosefu wa usalama ni jambo lakutatanisha sana. Kamati husika inafaa kuzingatia ukosefu wa usalama katika Kaunti ya Laikipia, hasa tangu kuondolewa kwa askari wa National Police Reservist (NPR), kwani kumekuwa na ukosefu wa usalama sana. Watu wanashambuliwa na kuuwawa. Kamati husika inafaa kuzingatia jambo hili kwa undani.

Tungeomba Kamati inayohusika iangalie kwa undani haya maneno, na tushughulikie jambo la KPRs. Wakati KPRs walikuwa katika sehemu ya Laikipia, mambo ya usalama yalikuwa mazuri; lakini tangu watolewe, tumekua tukifedheheka na kuwa na shida kila wakati.

Asante, Bw. Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope that the Committees are taking notes. Sen. Kinyua has raised the issue of NPRs.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to start by congratulating Sen. Khaniri for coming up with the Statement on the issue of insecurity in Vihiga.

On behalf of my family and Persons with Disabilities (PwDs) in Kenya, I condole with the families of Ambani for the loss of their loved ones. My thoughts are that there is need to ensure that research is done to find out the lacuna in the area of law and policing, which is encouraging petty but dangerous thugs to do the heinous activities that they do. There is a gap that needs to be filled, because the police officers have a call and role to ensure that they protect people and their properties. Therefore, the relevant Committee needs to work with speed and ensure that they are filling that gap.

Mr. Deputy Speaker, Sir, kindly allow me to comment on Sen. Kinyua's Statement on the issue of Nakuru becoming a city. This is a well-thought out Statement, because when you look at Nakuru itself, it has all the characteristics of being a city. It is densely populated, it has all the transport, colleges, and it is diverse. When it comes to population, it is a cosmopolitan city. Apart from that, it has all the factors of production; that is, land, labour and capital. So, there is need for it to be elevated to city status.

Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir. I would also like to join my colleagues in contributing to Statements by various Members. I would like to make a contribution to the Statement by Sen. Halake, on the epidemic of foot and mouth disease that is affecting livestock farmers. I had a similar Statement and I will, therefore, raise issues that were not in her Statement that the Ministry should look into as they answer these questions.

First, the Ministry should table a list of counties that are suffering loss due to the outbreak of Foot and Mouth disease, and what it is doing to prevent further loss in the said counties. The Ministry should also tell us the Government's plan with regard to compensating farmers and those who have lost immensely due to the outbreak. The Ministry should also indicate the cumulative period in which this disease has been a menace to farmers in different counties for the last five years. The outbreak is not just happening now; it has been going on, but people have been ignoring it.

The Ministry should also tell us if it is aware that 70 per cent of the entire veterinary workforce at national and county level will retire by the end of this year. Therefore, that is also a contribution to some of the animal diseases that we are seeing. There is a shortage of veterinary doctors. If 70 per cent are set to retire at the end of this year, how is the Government prepared when this eventually happens? The Ministry should also tell us what succession management plan it has within the veterinary sector.

Lastly, meat inspectors have complained of harassment from county officials. Is the Government aware of this; and how is this a threat to food safety in this country?

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. I hope that the relevant Committee is listening. How on earth can 70 per cent of personnel from one department retire in one year? Were they all born on the same day?

Senator, did you say that 70 per cent of all the veterinary doctors and technicians in the national Government and county governments are retiring this year? It sounds strange, but we will wait for the Committee to tell us if that is the case, because it sounds out of this world.

We want to bring this to a close. I will allow Sen. Nyamunga to say something, and then the Senate Majority Leader.

Senate Majority Leader, are you on this one or on other things?

**Sen. Nyamunga:** Thank you Mr. Deputy Speaker, Sir, for giving me this opportunity to support the Statements that have been put forward by my colleagues.

First of all, I would like to support the Statement on the request for additional time to look into the upgrading or elevation of Nakuru Town to city status. It is important that more time is given, because being a Member of the Committee, before we come up with any tangible decision on whether it should be upgraded or to make recommendations, it is important that we find time to do due diligence. That way, everything that is required for any town to be elevated to a city will be taken into account.

There are several towns that have been elevated to city status, for example, Kisumu and Mombasa. I believe that there is some work that must be done by the county governments. However, I also believe that there must be some input by the national Government.

Therefore, as much as Nakuru Town is ripe to be upgraded to city status, it is important that we look into all parameters and make sure that when a report is given, it

will not be rejected. This is because we will have taken into account all the parameters required for upgrading it to city status.

Secondly, insecurity is not only about thuggery. I think that insecurity touches even on the way we have seen our people die in the hands of the security personnel. Not very long ago, around December, we lost three youth, who were shot by the policemen due to mistaken identity. In fact, there are two serious cases where a young person who was going to save somebody who had an accident, was shot by the police, and the reasons were not genuine.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Summarise; we are out of time.

**Sen. Nyamunga:** It is important that we look at the issue of insecurity as much as possible so that people live in harmony and without fear in any part of this nation.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, you have three or so minutes.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I would like to congratulate Sen. Khaniri for coming up with this important Statement.

I read the story in a newspaper and also saw it on Television. It is a horrendous story about a family – a father, mother and two children – being killed. It is very sad and I cannot imagine what that family is going through. If those of us who are not related go there, we feel so bad; how much more is it for the family that is directly affected? This is very sad.

There was a time when a similar thing happened in Bungoma County, Kakamega County and a few more counties. It looks like there is a vigilante that forms and goes attacking people, and you do not know the motive. At times, they do not steal anything. Therefore, they are not robbers, and they were not interested in any property in that family. That is very sad.

First of all, the police need to stop saying that, ‘no stone will be left unturned,’ and come back with answers. There are too many stones that they have left unturned; we are tired with that phrase. What we want is that the truth comes out, the perpetrators are apprehended and brought to justice. This is so that the people of that community will not live in eternal fear, wondering whether the next family will be attacked.

Secondly, such a family needs support. The children who have been left behind need direct support from the Ministry that deals with social welfare. I know that there are registered elders, orphans and widows who receive money from the State. However, this should be extended to orphans like those ones, immediately information of that nature comes to the notice of the Government.

I would encourage Sen. Khaniri to get in touch with the Ministry responsible on matters social welfare, so that such children are registered and put on Government scholarship, and maybe a stipend for the people who will take care of those children given.

The least we can do, as a Republic, is to just encourage them to continue pursuing their life, because it will be extremely difficult for that family to progress.

Congratulations, Sen. Khaniri, for always being at the forefront of bringing issues that affect the people of Vihiga. It is no wonder that Sen. Khaniri is here for his sixth term; so we have a lot of things to learn from him.

*(Interruption of debate on statement)*

**The Deputy Speaker (Sen. (Prof.) Kindiki):** Order, Senators. I would like to make the following communication relating to the Statement made by the Chairperson of the Senate Committee on Devolution and Intergovernmental Relations, concerning the application for conferment of city status to Nakuru municipality.

### COMMUNICATION FROM THE CHAIR

#### APPLICATION FOR CONFERMENT OF CITY STATUS TO NAKURU MUNICIPALITY

Hon. Senators, on 21<sup>st</sup> November, 2019, I conveyed to the Senate, a resolution of the Nakuru County Assembly on an application by the Nakuru County Executive, for conferment of city status to Nakuru Municipality. The resolution of the County Assembly was referred to the Senate for consideration pursuant to Section 8(5) of the Urban Areas and Cities Act.

To enable the Senate process this matter efficiently and effectively, I directed that the resolution of the Nakuru County Assembly be committed to the Standing Committee on Devolution and Intergovernmental Relations to undertake an inquiry into the matter, and present a report to the Senate on or before 25<sup>th</sup> February, 2020, which is today.

Hon. Senators, following the Statement by the Chairperson of the Standing Committee on Devolution and Intergovernmental Relations, it is clear now that the Standing Committee requires more time to complete the exercise.

While the Urban Areas and Cities Act does not prescribe a specific timeframe within which the Senate is required to make a determination on the application, we must, however, be alive to the values and principles of Public Service, where State organs are required to be responsive, prompt, impartial and effective in service delivery to the public.

It is for this reason, therefore, that I now direct the Standing Committee on Devolution and Intergovernmental Relations to expeditiously conclude its inquiry into this important matter and present a report to the Senate on or before Thursday, 26<sup>th</sup> March, 2020, without fail, explanation and without extension.

I thank you.

*(Applause)*

Very well. That is the end of this matter.

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

**The Deputy Speaker (Sen. (Prof.) Kindiki):** What is it, Sen. Faki, because we want to close this business now and move on?

## STATEMENT

MAANDALIZI YA UCHAGUZI WA  
SHIRIKISHO LA KANDANDA NCHINI

**Sen. Faki:** Yes. Thank you, Mr. Deputy Speaker, Sir. In November, 2019, I requested a Statement, on the FKF elections, which were due to start in that month. The Statement was referred to the Senate Committee on Labour and Social Welfare. Last week, I received a response from the said Committee, which included a report from the Ministry together with the annexures, including the Constitution of FKF. The Statement never addressed the core issues that I had laid in that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Be brief, Senator. What is the problem, since you are on a point of order?

**Sen. Faki:** The problem is that the response that was brought was not adequate---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It was inadequate.

**Sen. Faki:** It was inadequate as it never addressed the issues we had complained about.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which Committee is that?

**Sen. Faki:** Labour and Social Welfare.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have the Vice- Chairperson of the Senate Committee on Labour and Social Welfare, Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Mr. Deputy Speaker, Sir, I think we tried our best---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): He is saying your best was not good enough.

**Sen. (Dr.) Milgo:** If there are still contentious issues, we are ready. That is one of the best Committees, by the way.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Your reports should be the ones speaking for you. You should not come here and glorify the Committee. What are you doing about Sen. Faki's concern? Sen. Faki, what would you like the Committee to do?

**Sen. (Dr.) Milgo:** I think that is better.

**Sen. Faki:** Mr. Deputy Speaker, Sir, the Committee never addressed the issues we had raised---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, what should they do?

**Sen. Faki:** They should have summoned the CS, together with the President of FKF.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is it about the soccer and the elections?

**Sen. Faki:** Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is important. Look for the CS, Amb. Amina. Committee, I give you one week. Thursday, next week you must be ready without fail.

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): After that, you can now praise your Committee; after you deliver.

What is it, Sen. Cheruiyot?

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I wish to just make a very small reaction – perhaps in under a minute – to the Communication you have just given.

Mr. Deputy Speaker, Sir, it is very encouraging to hear the words you gave, especially on the matter, despite the fact that there are no legal timelines on us, as a House, to handle this matter. In the spirit of public good and being seen as an institution that wants the prosperity of our nation, you want us to expedite this issue.

This is a very exciting journey. I am a neighbor of Nakuru County and, therefore, by extension, I would be glad if they are befitted with that status. This is because it means that next on the line is Kericho. After Nakuru is Kericho, before you get to Kisumu; so I know that we should be next on line.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thought you would say that since they say Kiambu is the bedroom of Nairobi, therefore the bedroom of Nakuru would be Kericho. That is more realistic, other than the other ambitious statement you have made, although I wish the people of Kericho County all the best.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, you have to be careful with some of the remarks, because you know Kericho is the town of your in-laws. If I give them the report that you do not think that much of them, I am not sure they will be very happy.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which Standing Order talks about the county of the Speaker's in-laws? It is okay, Sen. Cheruiyot.

Sen. M. Kajwang', are you on a point of order?

**Sen. M. Kajwang':** On a point of order, Mr. Deputy Speaker, Sir. I will not talk about your in-laws, because I thought you had some in Homa Bay and not just Kericho. I think I am revealing too much.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, too many. These in-laws!

**Sen. M. Kajwang':** I am following on the comments raised by Sen. Cheruiyot, that the Urban Areas and Cities Act, which you have rightly indicated does not have timelines. I was just wondering; you have guided this House very well in the past where there are such lacunas, because there is no timeline for the Senate's consideration and its transmission of the decision to the President. This is such that the Committee can report to the Senate, yet we are not bound in how fast we should take that to the President. Perhaps this could be one of those other areas where you could give a ruling that can guide us, pending an amendment of the Urban Areas and Cities Act.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. M. Kajwang'. As you have realised, the law does not say the time which the Senate should take in considering such an application. But as you have said, the values of public service demand that you act promptly, efficiently and in the public good; in other words, without unreasonable delay.

Likewise, it is my view that once the Committee has submitted the report to the Senate, notwithstanding that there are no timelines by which the decision of the Senate will be conveyed to the President, the decision must be conveyed within a reasonable

time. In my view, that reasonable time should be such a time period as is normally the case when the Senate is communicating its legislative decisions to the Head of State. Normally it is within 14 days.

It is so, ordered.

In the mean time, the relevant Committee can look at the Urban Areas and Cities Act and see whether they could tighten that aspect and other aspects of the law. That is why we are here. We keep on improving the law all the time.

Thank you, Senators.

### COMMUNICION FROM THE CHAIR

VISITING DELEGATION FROM LORETO  
HIGH SCHOOL, KIAMBU COUNTY

Hon. Senators, I would like to acknowledge visiting students and teachers from Loreto Girls High School, Limuru, from Kiambu County. I would like to welcome them in our usual tradition of receiving and welcoming visitors to Parliament; *karibuni*. On behalf of the Senate and on my own behalf, I wish you a fruitful visit.

Thank you.

Next Order.

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. (Dr.) Lelegwe)  
in the Chair]*

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

*(Consideration of National Assembly Amendments)*

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Hon. Senators, we are now at the Committee of the Whole. We are considering the National Assembly Amendments to the Office of the County Attorney Bill (Senate Bills No.3 of 2018).

*Clause 2*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move-



THAT Clause 2 of the Bill be amended by deleting the definition of the term “Cabinet Secretary” and substituting thereof the following new definition-

“Attorney-General” means the Attorney-General appointed under Article 156 of the Constitution.”

We have no problem with the amendment, as proposed by the National Assembly. Instead of using “Cabinet Secretary,” we are using the Attorney General’s office in so far as administrative management of the Office of County Attorneys across the country is concerned. Therefore, I propose that it be approved.

Thank you, Mr. Temporary Chairperson, Sir.

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Chairperson, Sir. I propose that the Office of County Attorney Bill (Senate Bills No. 3 of 2018) be amended as proposed in Clause 2. The Committee of the Senate has considered the amendment and approved a recommendation of the National Assembly, as it does not fundamentally alter the Bill as proposed.

**Temporary Chairperson** (Sen. (Dr.) Lelegwe): The division will be at the end.

*Clause 5*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move-

THAT Clause 5 of the Bill be amended in sub-clause (2) by deleting paragraph (b).

For the same reasons as I gave earlier, the amendments related to the adoption of the Office of the Attorney General as an administrative organ, an institution at the national level instead of a Cabinet Secretary.

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Chairperson, Sir. The Committee of Justice, Legal Affairs and Human Rights agrees with the proposed amendments to Clause 5(2)(b) on the reasons that the Clause 5(2)(a) provides for the qualification of the County Attorney and Clause 5(2)(b) in the proposed amendment only inserts yet another qualification, which is legal practitioner. We are satisfied, as a Committee, that it is sufficient for that person to be appointed as a County Attorney and we approve the amendments.

**Temporary Chairperson** (Sen. (Dr.) Lelegwe): The division will be at the end.

*Clause 6*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, I beg to move:

THAT Clause 6 of the Bill be amended-

(a) by renumbering the existing provision as sub-clause (1);

(b) by inserting the following new sub-clause immediately after the renumbered sub-clause (1)-

(2) The County Attorney shall have the status and rank of a member of the county executive committee.

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairperson, Sir, the Committee agrees with the proposed amendment to Clause 6 by the National Assembly on the grounds that the Senate had approved that the County Attorney will serve for a renewable term of six years.

The National Assembly has amended that which means that the term of that county attorney will be renewable. Further, the amendment to Clause 6 has provided by the National Assembly will put the county attorney in the status and ranks of a County Executive Committee (CEC) Member which the Committee on Justice, Legal Affairs and Human Rights of the Senate agrees, concurs and approves.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 20*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT Clause 20 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) The Attorney-General may, from time to time by notice in the *Gazette*, amend the Second Schedule.

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Chairperson, Sir. The Committee on Justice, Legal Affairs and Human Rights has no objection to the amendments on the grounds that the National Assembly has amended the definition of Cabinet Secretary (CS) in Clause 22 and deleted it to read ‘Attorney-General’ which is in tandem with the Constitution of Kenya. Therefore, the Committee has no objection and approves that amendment.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 29*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT Clause 29 of the Bill be amended by deleting the expression “Cabinet Secretary” and substituting therefor the expression “Attorney-General”

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Chairperson. The Committee on Justice, Legal Affairs and Human Rights has no objection to the amendment which proposes to give power to the Attorney-General to amend the second schedule which is the code of conduct and to give him or her mandate to make regulations. That amendment is in tandem with the Constitution and the Committee recommends and concurs with the same.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

That brings us to the end of our consideration of the National Assembly Amendments to the Office of the County Attorney Bill (Senate Bills No.3 of 2018). We do not have the necessary numbers for Division and, therefore, we will proceed to report progress.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, pursuant to Standing Order No.148, I beg to move that the Committee do report progress on its consideration of the National Assembly amendments to the Office of County Attorney Bill (Senate Bill No. 3 of 2018) and seek leave to sit again tomorrow.

**Sen. Nyamunga** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE)  
BILL (SENATE BILLS NO. 22 OF 2018)

*(Consideration of National Assembly amendments)*

*Clause 5*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 5 of the Bill be amended-

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

(3) The relevant county assembly committee may, when considering the petition-

(a) invite the petitioner to clarify or submit such further information as the committee may consider necessary, and;

(b) make a site visit if it is deemed necessary to do so.

(b) by deleting sub-clause (4) and substituting therefore the following new sub-clause-

(4) The relevant county assembly committee shall respond to the petitioner by way of a report addressed to the petitioner and tabled in the county assembly and no debate on or in relation to the report shall be allowed except on the recommendation of the chairperson of the committee and with the approval of the speaker.

(c) in sub-clause (5) by inserting the words “relevant committee or the” immediately after the words “decision of the” when they first appear.

*(Question of the amendment proposed)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Chairperson, Sir. The Committee on Justice, Legal Affairs and Human Rights agrees with the amendments to Clause 5(3) (b), (4) and (5) as shown in the Order Paper.

The amendment by the National Assembly in Clause 5(3) seeks to remove the word 'shall' and put 'may' which means that the provisions of paragraph (a) and (b) of sub-clause 3 are now optional as opposed to mandatory.

The second amendment in b(3) seeks to introduce a new paragraph where committees of the county assemblies can conduct site visits if they find it necessary.

The Committee noted that the principle on public participation is enshrined in the Constitution.

Further, the Petitions to Parliament under the Procedure Act 2012, which provides for procedure of making consideration for Petitions, does not stipulate the procedure to be taken when considering a Petition.

Mr. Temporary Chairperson, Sir, the amendment provides for consideration of Petitions in accordance to the Standing Orders of every relevant House. This is because even our Standing Orders are silent on the steps to be taken when considering such a Petition. Therefore, the step by step procedure amendments by the National Assembly are agreeable to the Committee. We conquer and approve the same.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

Hon. Senators, since there is only one amendment to this Bill, we are now reporting progress.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move that the Committee do report to the Senate its consideration of the National Assembly Amendment to the Petition to County Assemblies Bill (Senate Bills No. 22 of 2018), and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Hon. Senators, are still in the Committee of the Whole. We will now proceed to consider the National Assembly Amendments to the Early Childhood Education Bill (Senate Bills No. 26 of 2018).

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

*(Consideration of National Assembly amendments)*

*Clause 2*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 2 of the Bill be amended by—

- (a) in the definition of the term “Education Appeals Tribunal” by deleting the expression “section 92 and substituting therefor the expression “section 93”;
- (b) deleting the definition of the term “pupil”; and
- (c) inserting the following new definition in their proper alphabetical sequence—  
“children with special needs” means children in need of special needs education;  
“learner” has the meaning assigned to it in the Teachers Service Commission Act;  
“special needs education” has the meaning assigned to it in the Basic Education Act;

“village administrator” means the office of a village administrator established in section 52 of the County Governments Act.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeru:** Thank you, Mr. Temporary Chairperson, Sir. I move that Clause 2 be approved because of the following reasons-

- (a) In the definition of the term “education appeals tribunal” by deleting the expression Section 92 and substituting thereof the expression 93.
- (b) deleting the definition of the term “pupil”; and,
- (c) inserting the following new definition in their proper alphabetical sequence-
  - i. Children with special needs means children in need of special needs education;
  - ii. learner has the meaning assigned to it in the Teachers Service Commission;
  - iii. special needs education has the meaning assigned to it in the Basic Education Act;
  - iv. village administrator means the office of the office administrator established under Section 52 of the County Governments Act.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*(Sen. Murkomen and Sen. Ongeru consulted at the Table)*

**The Temporary Chairperson** (Sen. Lelegwe): Hon. Senators, kindly approach the Chair.

*(Sen. Murkomen and Sen. Ongeru approached the Chair)*

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Chairperson, Sir, for allowing us to consult. I am sorry that the consultations took a little bit longer.

*Clause 8*

Mr. Temporary Chairperson, Sir, I beg to move:

THAT, clause 8 of the Bill be deleted and substituted with the following new clause—

*Duty of head teacher.* 8.(1) Where a learner admitted in an education centre fails to attend the education centre, the head teacher shall, in collaboration with the village administrator, cause an investigation of the circumstances of the learner's absence from school.

(2) Where the head teacher finds that there are no reasonable grounds for the learner's failure to attend school, the head teacher shall—

(a) issue a written notice to the parent of the learner requiring that parent to comply with the provisions of this Act; and

(b) submit a report on the learner to the County Education Board.

(3) A parent who without reasonable cause and after a written notice from the head teacher, fails to comply with a notice under subsection

(2) commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or to both.

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the proposed amendments by the National Assembly.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 9*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, I beg to move:

THAT, Clause 9 of the Bill be deleted and substituted with the following new clause—

Children with special needs.

9. (1) The county executive committee member shall put in place such infrastructure as may be necessary to ensure that children with special needs have access to, and are provided with early childhood education.

(2) In performing the functions under subsection (1), the county executive committee member shall—

(a) Ensure that screening tools for early identification of children with special needs and disabilities are developed and distributed for use;

(b) Ensure early identification, assessment and interventions of children with special needs and disabilities;

(c) Ensure training of personnel working with children with special needs and disabilities on use of screening tools for early interventions;

- (d) Facilitate development of programmes for training and professional development for all pre-primary education providers and personnel in special needs education;
- (e) Ensure that children with special needs and disabilities have equal access to recreational sporting facilities within and outside pre-primary school programmes to nurture talents;
- (f) ensure that teachers and other staff in integrated pre-primary schools plan and implement an integrated individualized education programme for the purpose of monitoring the progress of an individual child with special needs and disabilities;
- (g) liaise with other professionals and stakeholders to provide psychosocial support to children with special needs and disabilities;
- (h) facilitate provision of teacher aids to pre-primary schools to support teachers handling children with special needs and disabilities; and
- (i) ensure that children with special needs and disabilities are provided with any other necessary support.

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the amendments from the National Assembly as contained in the Order Paper.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 15*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, I beg to move:

THAT, Clause 15 of the Bill be amended—

- (a) In sub-clause (1), by deleting the expression “or is likely to meet”; and
- (b) In sub-clause (3), by deleting paragraph (b).

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we concur with the National Assembly amendments on Clause 15 as contained in the Order Paper.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 16*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

Board      THAT, Clause 16 of the Bill be deleted and substituted with the following new clause—  
Review of      16. (1) As soon as practicable after provisionally registering an  
registration.      education center under section 15, the County Education

shall inform the County Executive Committee member of the provisional registration.

(2) The County Executive Committee member shall cause the county early childhood quality assurance committee to review any education center that is provisionally registered under section 15 either—

(a) Between six and twelve months after the provisional registration of the education center or proposed education center; or

(b) A period earlier than that specified in paragraph (a) if in the opinion of the County Executive Committee member, a shorter time is necessary.

(3) The County Executive Committee member shall cause a further review of an education center to be conducted upon the request of the County Education Board.

(4) The County Executive Committee member shall submit the findings of a review under this section to the County Education Board and to the head teacher of the education center for implementation.

(5) The findings submitted under subsection (4) shall include—

(a) information on whether the education center meets the criteria for registration as an education centre; and

(b) information on the areas where improvement is required, if it does not meet the criteria

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, we agree with the National Assembly amendments to Clause 16 as contained in the Order Paper.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 20*



**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 20 of the Bill be amended—

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

“(1) The board of management shall not change the location of the center nor acquire additional premises for the purpose of running the education center unless it has applied to, and obtained the approval, of the County Education Board.”

(b) in sub-clause (3) by deleting the words “head teacher” and substituting therefor the expression “board of management”

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeru:** Mr. Temporary Chairperson, Sir, we do not agree with the National Assembly amendments on Clause 20 as contained for the in the Order Paper.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 23*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 23 of the Bill be amended—

(a) in sub-clause (1) by deleting paragraph (c) and substituting therefor the following new paragraph

“(c) The head teacher of the education center has breached or is breaching his or her statutory duties in relation to the education center under this Act or any other written law;”

(b) In sub-clause (2) by deleting the word “pupil” appearing in paragraph (b) and substituting therefor the word “learner”.

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeru:** Mr. Temporary Chairperson, Sir, we do not agree with the National Assembly amendments on Clause 23 of the Bill.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 24*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move-

THAT, Clause 24 of the Bill be amended—

(a) In sub-clause (1) by deleting the word “pupils” appearing in the opening sentence and substituting therefor the word “learners”; and

- (b) In sub-clause (3) by deleting the word “pupils” appearing in paragraph (a) and substituting therefor the word “learners”.

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, we do not agree with the National Assembly amendments on Clause 24 of the Bill.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 25*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move—

THAT, Clause 25 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “are” appearing in paragraph (b) after the word “centre” and substituting therefor the word “is”;
- (b) in sub-clause (2)
- (i) by deleting the words “head teacher” appearing in paragraph (b) and substituting therefor the expression “board of management”;
  - and
  - (ii) by deleting the words “head teacher” appearing in paragraph (c) and substituting therefor the expression “board of management”;

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, we do not agree with the National Assembly amendments on Clause 25 of the Bill as contained in the Order Paper.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 27*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 27 of the Bill be amended by deleting sub-clause (2) and substituting thereof the following new sub-clause—

“(2) A public education centre shall not be converted to a private education centre or to any other private status without consultation with the County Education Board and approval by the County Executive Committee member.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, we deliberated on this issue and rejected this amendment because it has mischief of converting public property

into private property. Therefore, in our deliberations, we felt that it is necessary to avoid the issue of public institutions being converted into private institutions because they are built by public funds.

The amendment seeks to align the Bill with the provisions of Section 43 (2) of the Basic Education Act No.14 of 2013, which provides that public basic education institution should not be converted to private basic education institution or any other private status without consultation with the National Assembly.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 28*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 28 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) notwithstanding the generality of subsection (2), the role of the sponsor under subsection (1) shall be to—

- (a) participate and make proposals for the review of syllabus, curriculum, books and other teaching aids; and
- (b) offer financial, infrastructural and spiritual support to the education centre.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, we rejected this amendment. The reason given is that it empowers a sponsor to make proposals and not recommendations for the review of the curriculum books and other teaching materials. We believe that the role of a sponsor should not be spiritual support.

This is because Kenya is a liberal country that enjoys freedom of conscious, religion, believe and opinion under Article 32 of the Constitution. So, we are proposing to delete the word ‘spiritual’.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clauses 29*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 29 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)

“(3) In the performance of its functions under subsection (2)(b) and (c), the board of management shall first seek the approval of the County Education Board.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the amendment by the National assembly as contained in the Order Paper on Clause 29.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clauses 30*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 30 of the Bill be amended in sub-clause (1) by deleting paragraph (a) and substituting therefor the following new paragraph

“(a) one person elected by the parents from each level within the education centre to represent parents of learners in the education centre;”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the amendment by the National Assembly Amendment Bill as contained in the Order Paper on Clause 30.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clauses 33*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 33 of the Bill be deleted.

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we are rejecting deletion of this clause because it involves that the Early Childhood Development Education (ECDE) should not have the Parents/Teachers Association (PTA) as provided for under Part VIII of the Basic Education Act, 2013.

The PTA is a critical association in the management of a learning institution. There is no harm of including it in this Bill even if it is included in another Act of Parliament. We feel that the PTA should form part and parcel of that amendment. Therefore, we do not agree with the National Assembly Amendment Bill that this particular clause be deleted.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Hon. Senators, let me inform you that on the clauses the Committee is proposing to reject, the House can only approve or reject them.

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we are rejecting the amendment by the National Assembly as contained in the Order Paper.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Hon. Senators, I make a further clarification that the House will not make further amendments at this stage. We are only required to approve or reject.

The Division will be at the end.

*Clauses 35*

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 35 of the Bill be amended by deleting the word “pupil” wherever it appears and substituting therefore the word “learner”.

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, we agree with the National Assembly Amendment Bill a proposed in Clause 35.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clauses 36*

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 36 of the Bill be amended in sub-clause (1) by  
(a) deleting paragraph (a); and  
(b) deleting paragraph (c).

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, this is one of the clauses we are rejecting. The basis for the rejection is that there is need to provide a detailed qualification framework on the requirements for early childhood education for teachers.

The amendment places responsibility on the Teachers Service Commission (TSC) on the requirements for a person to qualify for employment as an early childhood education teacher. This is in line with the provision of Article 237(3) of the Constitution.

Additionally, the county governments have the power to recruit early childhood education teachers. However, they must do so only from the register of trained registered teachers held by the TSC within its mandate as held by the court in Kenya National Union of Teachers (KNUT) *Vis-à-vis* Attorney-General and for others.

On the basis of that, we reject this amendment.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clauses 37*

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 37 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2) –

“(3) In the performance of the functions under this section, the County Education Board shall establish a County Early Childhood Education Committee, as a committee of the County Education Board, to oversee the implementation of early childhood education in each county.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, once again, we are rejecting this clause because the amendment seeks to establish the early childhood education committee within the County Education Board (CEB) to guard against the establishment of too many governance structures whose mandate may overlap.

We are rejecting this. This is the role of CEB. The CEB may create committees to deal with the implementation of early childhood education in each county as the basis arises.

On the basis of that, there is no need to impose through the law other additional governance structures to be supervised under the Education Board which is already in existence. On the basis of that, we reject that amendment.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clauses 41*

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 41 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

“(4) A child shall not be denied admission in an early childhood education centre for lack of proof of age.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with amendments by the National Assembly on Clause 41.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 43*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:

THAT, Clause 43 of the Bill be deleted and substituted with the following new Clause–

Prohibition from holding back and expulsion.	43. A learner admitted in an education centre shall not be held back in any class or expelled from the centre without the approval of the County Education Board.
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*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with amendments on Clause 43 from the National Assembly.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 44*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 44 of the Bill be deleted and substituted with the following new Clause—

Standards of education in a private education centre.

44. A private education centre shall comply with and follow the curriculum approved by the Kenya Institute of Curriculum Development.

*(Question of the amendment proposed)*

**Sen. (Prof.) Ongeri:** Mr. Temporary Chairperson, Sir, we reject this amendment on the basis that even the amendment seeks to ensure standards of education are adhered to in private education centres. The amendments align the provisions and standards of basic education institutions as contained in the Basic Education Act No.14 of 2013 which provides that private institutions shall comply and follow the curriculum as approved by the Kenya Institute of Curriculum Development (KICD).

One of the reasons why we are saying this, is that, KICD is not the only curriculum developer. There is need to have other bodies develop curriculum. The KICD can then approve the curriculum from different curriculum development bodies for use in ECD).

The reason for rejecting this is that there are many other institutions that are offering education at the ECD level, primary and basic education level and at the tertiary and secondary education level. This then leads to other qualifications on a framework which is not within this country and they are being allowed to operate as private institutions.

Mr. Temporary Chairperson, Sir, to compel them to be able to stick to the KICD curriculum, will be compelling them to operate a curriculum that they may not want to offer in this area. Therefore, we should give them latitude. We should ensure that this curriculum is being okayed by KICD.

On the basis of that, we do not feel that we should subject other institutions that running educational programmes in this country to a single KICD curriculum which is being operated in public schools.

On the basis of that, we reject this amendment.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 46*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:

THAT, Clause 46 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “pupil” and substituting therefor the word “learner”; and
- (b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—  
“(3) A head teacher or a member of the board of management of a public education centre who imposes a charge or causes any parent or guardian to pay tuition fees commits an offence and shall be liable on conviction to a fine not exceeding one

hundred thousand shillings or imprisonment for a term not exceeding six months, or to both.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger**: Mr. Temporary Chairperson, Sir, we agree with the National Assembly amendments to Clause 46.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 47*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 47 of the Bill be amended in paragraph (c) by deleting the expression “need for the”.

**Sen. (Prof.) Onger**: Mr. Temporary Chairperson, Sir, we agree with the National Assembly amendments to Clause 47.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 56*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:

THAT, Clause 56 of the Bill be amended in sub-clause (1) by deleting paragraph (b) and substituting therefor the following new paragraph—  
“(b) reject the application and give written reasons for the rejection.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger**: Mr. Temporary Chairperson, Sir, we agree with the National Assembly amendments to Clause 56.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 63*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

THAT, Clause 63 of the Bill be amended—  
(a) in sub-clause (1) by—  
(i) deleting the word “fifteen” appearing in paragraph (a) and substituting therefor the word “ten”; and



- (ii) deleting the expression “Education Standards and Quality Assurance Council” appearing in paragraph (d) and substituting therefor the words “quality assurance body established under the Basic Education Act”;
  - (iii) inserting the following new paragraph immediately after paragraph (e)–  
“(f) one person representing persons with disabilities nominated by the National Council for Persons with Disabilities.”
- (b) in sub-clause (5) by–
- (i) inserting the expression “make proposals for” immediately after the expression “and where appropriate” appearing in paragraph (c); and
  - (ii) deleting paragraph (d).

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the National Assembly amendments to Clause 63.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 64*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:

THAT, Clause 64 of the Bill be amended–

- (a) in sub-clause (1) by deleting the word “pupils” appearing in paragraph and substituting therefor the word “learners”; and
- (b) in sub-clause (4) by deleting the word “pupils” and substituting therefor the word “learners”.

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the National Assembly amendments to Clause 64.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 66*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:

THAT, Clause 66 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph–

“(b) if the service provider makes an application within the required period, the centre continues to be registered under subsection (1) until that application is determined.”

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger:** Mr. Temporary Chairperson, Sir, we agree with the National Assembly amendments to Clause 66.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): Division will be at the end.

*Clause 68*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairperson, Sir, I beg to move:

- THAT, Clause 68 of the Bill be amended in sub-clause (3)–
- (a) in paragraph (c) by inserting the word “one” immediately after the expression “registration certificates of”; and
  - (b) by deleting paragraph (h).

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger**: Mr. Temporary Chairperson, Sir, this is one of the contentious Clauses that we rejected because it seeks to delete paragraph (h) on regulation of teachers in an ECD centre by the Cabinet Secretary (CS) for Education when we know that the divisions in (h) may not necessarily ensure that there is no conflict of mandate between the CS and the Teachers Service Commission (TSC) since the regulation of the teaching profession is a constitutional mandate of TSC.

We need to seek clarity during the mediation on the roles of both the CSs and TSC *vis-à-vis* on the operation of the regulation. Therefore, we feel that it is in conflict of the Constitution and they cannot therefore, deleted this. On the basis of that, we reject this amendment.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Clause 69*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:

- THAT, Clause 69 of the Bill be deleted and substituted therefore the following new clause–
- |         |          |   |
|---------|----------|---|
| General | penalty. | 69. A person who contravenes any provision of this Act for which no penalty is specifically provided commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year or both. |
|---------|----------|---|

*(Question of the amendment proposed)*

**Sen. (Prof. Onger)**: Mr. Temporary Chairman, Sir, we do agree with the National Assembly Amendment on Clause 69.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

*Second Schedule*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, I beg to move:-

THAT, the Second Schedule to the Bill be amended in paragraph 1 by-

(a) deleting the word “two” appearing in sub-paragraph (1) and substituting therefore the word “three”; and

(b) deleting the word “vice-chairman” appearing in sub-paragraph (4) and substituting therefore the word “vice-chairperson”,

*(Question of the amendment proposed)*

**Sen. (Prof.) Onger**: Mr. Temporary Chairman, Sir, we do agree with the National Assembly on the amendment to the Second Schedule.

**The Temporary Chairperson** (Sen. (Dr.) Lelegwe): The Division will be at the end.

Hon. Senators, we have the concluded consideration of the National Assembly amendments on the Early Childhood Education Bill (Senate Bills No. 26 of 2018). We will now proceed to report progress.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Temporary Chairman, Sir, pursuant to Standing Order No.148, I beg to move that the Committee do report progress on its consideration of the National Assembly amendments to the Early Childhood Education Bill (Senate Bills No. 26 of 2018) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## PROGRESS REPORTED

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

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, hon. Members. We are now going to report progress. The first one will be on the consideration of the National Assembly amendments to the Office of the County Attorney Bill (Senate Bills No. 3 of 2018).

Chairperson.

**Sen. (Dr.) Lelegwe**: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the National Assembly amendments to the Office of the County Attorney Bill (Senate Bills No. 3 of 2018) and seeks leave to sit again tomorrow.

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report. I ask Sen. Pareno to second.

**Sen. Pareno:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

THE PETITION TO COUNTY ASSEMBLIES  
(PROCEDURE) BILL (SENATE BILLS NO.22 OF 2018)

**Sen. (Dr.) Lelegwe:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the National Assembly amendments to The Petition to County Assemblies (Procedure) Bill (Senate Bills No.22 of 2018), and seeks leave to sit again tomorrow.

**The Senate Majority Leader** (Sen. Murkomen): Madam Temporary Speaker, I beg to move that the House do agree with the Committee in the said report.

I ask Sen. Mwaruma to second.

**Sen. Mwaruma:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

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

**Sen. (Dr.) Lelegwe:** Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered the National Assembly amendments to The Early Childhood Education Bill (Senate Bills No. 26 of 2018), and seeks leave to sit again tomorrow.

**The Senate Majority Leader** (Sen. Murkomen): I beg to move that the House do agree with the Committee in the said report. I ask Sen. (Eng.) Hargura to second.

*(Sen. (Eng.) Hargura spoke off record)*

**The Temporary Speaker Sen. (Prof.) Kamar:** Sen. (Eng.) Hargura, you are not on record.

**Sen. (Eng.) Hargura:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. (Prof.) Kamar: Sen. (Eng.) Hargura, kindly approach the Chair.

*(Sen. (Eng.) Hargura approached the Chair)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, that brings us to the close of the considerations of the National Assembly amendments. Let us move to the next Order

*[The Temporary Chairperson (Sen. (Prof.) Kamar)  
consulted the Clerk-at-the Table]*

Hon. Senators, following consultations, I would like to defer Order No. 11.

## **BILL**

### *Second Reading*

THE SECTIONAL PROPERTIES BILL  
(NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)

*(Bill deferred)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Next Order.  
Kindly proceed, Sen. (Eng.) Hargura.

## **MOTIONS**

ADOPTION OF THE REPORT ON PROJECTS UNDERTAKEN  
BY KENYA MARITIME AUTHORITY, KENYA FERRY  
SERVICES AND NATIONAL SOCIAL SECURITY FUND

**Sen. (Eng.) Hargura:** Madam Temporary Speaker, I beg to move the following Motion -

THAT, the Senate adopts the Report of the Standing Committee on Roads and Transportation on its inquiry into projects undertaken by the Kenya Maritime Authority, Kenya Ferry Services and the National Social Security Fund, laid on the Table of the Senate on Thursday, 21<sup>st</sup> November, 2019.

Madam Temporary Speaker, pursuant to the Senate Standing Order No.218(3), the Committee undertook inquiries into the following issues which are ongoing projects of public concern because they are being implemented by Government institutions to follow up on issues arising.

The Committee raised the following concerns on the Likoni Cable Car Project:

- (a) The justification for awarding the Cable Car Tender to Trapos Limited as a non-complete, Privately Initiated Investment Proposal (PIIP) under Section 61(1) and (2) of the PPP Act, 2013);
- (b) The lack of evidence of the nature of invention or innovation by Trapos Limited to justify the intellectual property rights consideration in the award of Tender; and,
- (c) The identity and capacity of Trapos Limited including the history of undertaking similar cable car projects, shareholding, financial and the value proposition of the project.

In relation to the Likoni Ferry Accident of 29<sup>th</sup> September 2019, the Committee resolved to make a site visit to inspect the Likoni Ferry which is managed by the Kenya Ferry Services and seek statements from the Kenya Ferry Service, the Ministry of Transport, Infrastructure and Housing and relevant stakeholders including the Mombasa County Government.

Madam Temporary Speaker, we visited the Kenya Maritime Authority concerning the construction of the Kenya Maritime Authority Headquarters Project specifically to ascertain the following: The tendering process, the bills of quantities and value for money for the project.

Thirdly, the Committee visited the construction of the Hazina Trade Centre Office Towers Project by National Social Security Fund (NSSF) to establish the status of the stalled construction of the Hazina Towers, including the sequence of events and the circumstances that gave rise to the expenditure and variations where a quarter of the project was undertaken with the same cost over a period of 10 years.

The summary of the Committee's observations following the visit to the three institutions are that:

On the Kenya Ferry Services: The Likoni Cable Car Project

- i. Fees Charges: The Ksh20 fee that had been prescribed to foreigners and tourists were far below international and comparable charges, which would severely compromise the projected income of the project.
- ii. Project Viability & Public Participation: The viability of the project was a concern. There was also the issue of public and stakeholders involvement in the conceptualization of the project which was not demonstrated by the proponents of the project.
- iii. Value for Money: How the project costs were derived and the value for money of the project was questioned by the Committee because the cost was given by the proponents of the project.

Further to these observations, the Committee raised the following concerns:

- (a) The justification for awarding the Cable Car Tender to Trapos Limited as a non-compete, Privately Initiated Investment Proposal (PIIP) under Section 61(1) and (2) of the PPP Act, 2013). We questioned that justification without any competitive bidding
- (b) The Committee questioned the nature of invention or innovation by Trapos Limited to justify the intellectual property rights. This is because this was a normal cable car project which is being implement everywhere else but Trapos Limited claimed to be paid some percentage of the proceeds taking into account

that they think they have some intellectual property rights over a normal transport system.

(c) The identity and capacity of Trapos Limited including the history of undertaking similar cable car projects, shareholding, financial foothold and value of value proposition in the project; and

(d) Whether the Cable Car project was well value- propositioned

In relation to the Likoni Ferry Accident of 29<sup>th</sup> September, 2019, the Committee made the following observations;

a. The Likoni Ferry Route has a high volume of vehicle and pedestrian traffic which requires constant marshalling.

To elaborate on this, the approaches when the Committee visited the Ferry, the way the human traffic and vehicle traffic is controlled requires to be improved.

The victim of the ill-fated vehicle had not followed the proper lines when boarding the ferry. This is something to do with the management of the traffic on where do the vehicles approach from and where do the public approach from. In this case, it was discovered that vehicles did not approach from the right point for the vehicle.

b. The ramp of the ferry on which the ill-fated vehicle was, was not properly drawn, which left the vehicle at a sloping angle.

c. The video replays of the incident indicate that the driver and the passenger of the vehicle; the late Ms. Mariam Kigenda and Amanda Mutheu, had not, in fact, exited their vehicle nor lowered their windows which meant that they could not escape in the event that the vehicle slipped into the sea.

d. That there were no emergency rescue vehicles at the time of the accident; which meant that the victims could not be saved from drowning.

e. That some of the ferries in operation, particularly the older vessels did not have functional ramps which left users at risk of slipping overboard into the sea.

f. That a rudimentary rescue service was in place following the accident, and that more needed to be done to avoid similar incidents in the future.

Madam Temporary Speaker, on the Kenya Maritime Authority Headquarters Project:

a. Value for money: The Committee questioned the necessity of the building with consideration to the capacity of the intended building and whether the KMA was capable of adequately utilizing the intended facility. The whole issue was about KMA being told to scale down the building.

b. Variation of cost: The Committee observed that there was a question on the variation of the initial cost of the project as a result of continuous adjustments and alterations.

c. Accountability of the project: The Committee noted that the KMA generates its own revenue and that this revenue could be used for various priority projects as opposed to the constructing a new ultra-modern headquarters.

Madam Temporary Speaker, on the National Social Security Fund project, Hazina Trade Centre Office Tower, the Committee observed that:

i. The original project design of Hazina Towers has been changed three times from 24 floors to 21 and currently, it is done up to 15.

ii. The project has not changed despite the multiple alterations made to the proposed design of the building.

- iii. The Committee noted with concern that despite construction of the project changing over time, the consultants to the project remain the same; even, at the end of the day, the project which was supposed to be 24 floors was done to 15 at the cost of the initial 24 floors despite the fact it took time, over 10 years.
- iv. The Committee noted with concern that despite the construction of the project changing over time, the consultant of the project remained the same; which mean with the same consultant, then there would not have been this kind of a variation because it was the same consultant who was supervising even the design and all that.
- v. There is pending litigation between the anchor tenant (Nakumatt) and NSSF that has yet to be resolved. This is the building that houses Nakumatt Lifestyle. There was that problem because when NSSF wanted to proceed with the second phase of the construction which is now almost complete, they had agreements with Nakumatt. Therefore, there was that issue of tenancy agreement in which Nakumatt did not want to move out, so a lot of litigation took place. That is one of the causes of delay that NSSF is claiming.
- vi. The consultants in the project were paid in advance despite the construction works not being completed. This is one of the observations we saw from the documentation.

Madam Temporary Speaker, on the projects which the Committee visited, the summary of the recommendations by the Committee from the above observations are that:

- A. In the case of the Kenya Ferry Services: The Likoni Cable Car Project.
  - a. There should be value for money for effective implementation and utilization of the project.
  - b. The award process of the project should be open, transparent and fair within the provisions of law.
  - c. Demands provision of information on the background of project proponents including their global undertakings, financial capacity, competency and integrity.
- B. Likoni Ferry Operations
  - a. The Committee recommended the halting of the defective ferries such as MV Harambee, MV Nyayo and MV Kilindini until funds are available to procure new ferries. The Ministry of Transport should ensure that all future ferry vessels have available spare parts within the market for ease of maintenance.

To date, one ferry has been delivered and from the Cabinet Secretary's report which the Committee received this week, the second one has some litigation issues which is delaying the delivery of the second one. One has been delivered.
  - b. The Cabinet Secretary, Ministry of transport and the Managing Director of Kenya Ferry Services to be invited to a meeting of the Committee to provide evidence of action on all the issues that had been raised by the Committee failure of which all ferries would be declared as a disaster and ordered for grounding.
  - c. All operating ferries should have functional ramps in order to prevent a repeat of the incident on 29<sup>th</sup> September 2019;
  - d. That the KFS should outfit its vehicles for persons with disabilities in accordance with section 23 of the Persons with Disabilities Act,2003.



- e. That the KFS should ensure that it is protected from potentially adverse litigation arising from breach of occupier's liability.
  - f. The Kenya Coast Guard Service Act, 2018 should be implemented immediately and in particular section 8(i) regarding the provision of search and rescue services.
- C. On the Kenya Maritime Authority Headquarters, the Committee recommends that:
- a. The management or responsible entities to account for the adjustment of the initial cost of the project as budgeted
  - b. The project implementation process and award of tender to various subcontractors be further be investigated by the investigative authorities to ascertain prudence and value for money.
  - c. To incorporate risk management and feasibilities when undertaking future projects.
- D. On the National Social Security Fund, the Committee recommends that:
- i. The adjudication issues surrounding the project should be speedily resolved in order to avoid onerous costs of litigation.
  - ii. The Office of the Auditor-General should undertake investigations into the Hazina Towers Project in order to ascertain the viability of the project and whether there have been any irregularities in payments to consultants in the project.
  - iii. The NSSF should indicate a final deadline for the completion of the Hazina Towers Project.

Madam Temporary Speaker, those are basically the recommendations of the Committee on the public projects, which it undertook on its volition to check whether there is value for money for the public. The Committee has to follow up with the relevant authority to make sure that the recommendations are implemented and there is value for money and prudence.

In addition, in the case of the cable car, a project which is being introduced, should not take advantage of the problems we are having of ferries.

It should be something which is better and viable, taking into account the kind of human traffic which uses that channel. It must be something which can do better than what the ferries are doing.

Thank you.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Who is seconding?

**Sen. (Eng.) Hargura:** Madam Temporary Speaker, I ask Sen. Pareno to second.

**Sen. Pareno:** Madam Temporary Speaker, I rise to second this Motion and to thank the Committee for a job well done. I was just looking at the observations of the Committee when they said that they did site visits. They also did stakeholder consultations and a lot of deliberations probably to understand how these ferry services and this project is being run.

I have seen that the Committee has gone to an extent of checking whether the disaster management operations are being done. I was able to understand that there are a lot of drills and training being carried out. Probably this has come up after what we have suffered.

We do not want to go through what we went through, to see the lovely face of that little girl Amanda and that mother smiling all full of life, losing their lives in the

manner that it happened. Of course, we were shocked as a nation and I am happy that this Committee has been able to cross-check to see whether our ferry services are doing what they are supposed to do.

They went to the extent of checking to find out how prepared we are for disasters; how we manage when they occur and how we manage after the occurrence. Whether we are doing some sort of training and drills to be able to know how to handle a disaster when it occurs.

Madam Temporary Speaker, I am also happy to learn that this Committee went further to check on the status of these ferries that are operating, the contracts that are running, how they are serviced and everything that has to do with the running of these ferry services.

We were told that the Committee observed foreigners are charged a fee of Kshs20 when they use these ferries. When this Committee compared the kind of charges that are done worldwide when one is using ferry services, they found that it is way below what is required. You wonder why we undercharge and then at the end of the day, we say that we do not have money to run these services well. You fall short of what is expected of you when at the end of the day you have not even been able to realize what you were supposed to have realized in terms of the returns.

For any project to be successful, there has to be a lot of investment in it and resources to run these programs. When I saw this observation by the Committee that the ferry charges Kshs20 for foreigners to use these services, then of course we now understand why they are unable to service our ferries in the right manner.

Madam Temporary Speaker, the Committee was able to check on the feasibility and public participation in as far as these projects are concerned and whether the public is aware of how to run these services and whether they are aware of how to handle a situation when it occurs. The Committee went further to see how feasible this project is and whether there is value for money. That is how they were able to note that this Kshs20 is not value for that service that is being provided.

Further concerns that were raised by this Committee is the justifications for the awarding of the cable car tender to a group called Trapos Limited which was not competitive. It is privately initiated. They looked at the provisions of section 6(1) (1) and (2) of the Public Private Partnerships (PPP) Act of 2013. Some of these things are done contrary to what is provided for. When you do tendering you might then show some compromise. Why would you not do a non-competitive tender unless there is something fishy about it?

I am happy that this Committee has been able to point out that this needs to be looked at. The Committee also questioned the nature of intervention or innovation by Trapos Limited to justify the Intellectual Property Act. It also looked at the identity and capacity of Trapos Limited including the history of undertaking similar cable car projects, shareholding, financial foothold and value proposition in the project and whether the cable car project was well valued and prepositioned.

Going by all these observations by this Committee, we need to relook at how we want to run projects in this country. Whether it is those quick tenders so that we make that quick money and at the end of the day we lose lives and end up paying dearly for some of these shortcuts.

I think the recommendations by this Committee should strictly be implemented so that we have better services. Otherwise, we will be losing lives day in, day out. You remember several times we kept hearing of ferries that had stalled in the middle of the sea as they crossed. We do not want to hear more of that. We have lost a lot of lives because of not being able to run this ferry system in the right manner.

Madam Temporary Speaker, these recommendations are good. We thank the Committee for going out to come up with something that can help us improve on the services that are provided because we cannot do without these ferries. It is a means of transport and also a means to uplift the standards of the people. It is a source of employment since we employ a lot of our people to run these ferries. Let us not do these shortcuts with these tenders and end up losing lives in the process.

I support.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator.

*(Question proposed)*

Hon. Senators, I do not see a request. So, I will go ahead to put the question. Since it is matter that does not concern counties, I am now going to ask for your response.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Next Order.  
Thank you, Senators. Having consulted, we defer Order No.13.

ADOPTION OF REPORTS ON VISITS TO THE MALABA  
BORDER POINT/KITUI ROAD PROJECT

THAT, the Senate adopts the Report of the Standing Committee on Roads and Transportation on the visit to the Malaba International Border Point (OSBP) and the inspection visit and familiarization of the Kibwezi-Athi-Mutomo-Kitui Road Project in Kitui County laid on the Table of the Senate on Wednesday, 4<sup>th</sup> December, 2019.

*(Motion deferred)*

Next Order.

NOTING OF THE REPORT ON 7<sup>TH</sup> SYMPOSIUM OF  
THE INDEPENDENT COMMISSION AGAINST CORRUPTION

**The Temporary Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. (Dr.) Mwaura.  
**Sen. (Dr.) Mwaura:** Thank you, Mr. Speaker, Sir. I rise to move the Motion as it is on the Order Paper.

Mr. Speaker, the 7<sup>th</sup> Symposium of the Independent---

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senator, you need to move the Motion; and there is no "Mr. Speaker" here.

**Sen. (Dr.) Mwaure:** Madam Temporary Speaker, I stand guided. I do not know how that actually happened.

Madam Temporary Speaker, I beg to move -

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the 7<sup>th</sup> Symposium of the Independent Commission Against Corruption of Hong Kong (ICAC) held in Hong Kong on 22<sup>nd</sup> to 24<sup>th</sup> May, 2019, and laid on the Table on Wednesday, 19<sup>th</sup> February, 2020.

Madam Temporary Speaker, the 7<sup>th</sup> Symposium of the Independent Commission against Corruption (ICAC) of Hong Kong which was co-sponsored by ICAC and the World Justice Project (WJP), was held in Hong Kong from 22<sup>nd</sup> to 24<sup>th</sup> May, 2019.

The theme of the symposium was: "Fighting corruption, a new perspective." It was attended by more than 500 leaders and professionals from more than 50 countries. The delegation of the Parliament of Kenya attended the symposium under the auspices of the African Parliamentarians Network Against Corruption (APNAC) Kenya Chapter, of which I serve as the secretary.

Madam Temporary Speaker, the symposium was officially opened by the Chief Executive Officer (CEO), who is ideally like the Prime Minister of the Hong Kong special administrative region, hon. Mrs. Carrie Lam Cheng Yuet-ngor. That is a long name. She stated that the fight against corruption is an ongoing battle whose success heavily relies on individual country's strategies, and because of its perpetually evolving nature that has made it complex.

An effective and efficient global coalition is, therefore, needed consisting of cooperating countries and anti-corruption agencies in order to synergize and tackle this graft across various jurisdictions. She also pointed out that the coalition against corruption should incorporate the media, civil society and ordinary citizens.

Madam Temporary Speaker, the rule of law, independent investigations and prosecutorial institutions with an equally independent robust judiciary have, over time, proven to be effective combatants of the corruption menace, and eventually ought to be safeguarded for the majoritarian good of society.

Tough laws against money laundering, illicit financial flows, transparency in source of campaigns funds, among other measures, have to be put in place to aid in the combat against corruption, because political corruption is the mother of all corruption. For the war against corruption to attain its set objectives, both old and new strategies have to be deployed to tackle it, not only in the public sphere, but also in the private sector.

Madam Temporary Speaker, technologies such as artificial intelligence and block chain are some of the most effective contemporary means that can be applied to prevent, disrupt and, therefore, minimize corruption besides the traditional methods that have yielded results over time. Funds should, therefore, be set aside for the acquisition of these promising and emerging technologies within the ambit of the Fourth Industrial Revolution (4IR).

Madam Temporary Speaker, grand infrastructural projects offer opportunities to engage in corruption. This is due to the involvement of a relatively large number of people, particularly the professionals involved in the conception, design, feasibility studies, Environmental Impact Assessment (EIA) designs and the eventual implementation of the projects.

Such projects should, therefore, be thoroughly scrutinized at every stage to preempt occurrence of what I call development corruption. In instances where the professionals involved in the conception and implementation of such projects engage in corrupt practices, commensurate sanctions, as prescribed in law including deregistration from professional bodies, should be applied without hesitation.

Madam Temporary Speaker, investigative agencies should encourage whistle blowing and have programs in place to protect them. Further, naming and faming actually – not shaming – should be introduced as a new strategy of encouraging people to report suspected cases of all corruption. Naming and shaming, a strategy that has been deployed for a long time, should also continue to be done.

On behalf of the Kenyan delegation to the symposium, which constituted Hon. Shakeel Shabir, Member of Parliament (MP) for Kisumu East Constituency and the Chairperson of APNAC; hon. Charles Muriuki Njagagua, the Vice Chairperson; Sen. Isaac Mwaura, who is the Secretary; hon. Millie Odhiambo-Mabona, hon. (Dr.) Chris Wamalwa, Sen. Moses Wetangula; accompanied by our staff, Mr. Lawrence Amolo and Mr. Denis Nyasani, it is my pleasure and humble duty to submit this report for noting.

Madam Temporary Speaker, when you look at the issue of corruption, it is important to look at why we went to Hong Kong; because that country was very corrupt in the 1970s. Corruption was so rampant to the extent that ambulance attendants would actually ask for tea money before they would pick up the patients. The police were so corrupt that people were paying protection fees so that they would not be arraigned because of crimes such as gambling, prostitution and what have you.

However today, if you go to Hong Kong, it is actually one of the most developed countries in the world with the highest number of skyscrapers. It is actually a concrete jungle; more developed than even most of the jurisdictions in the West. Corruption is actually at its lowest. Therefore, this proves to us that it is possible to fight corruption. But it was very persistent and the turning point was when one of the police officers who was engaged in corruption – an expatriate from England – ran away, and the people insisted on an anti-corruption inquiry. Through the establishment of ICAC, the person was extradited and jailed for four years.

Madam Temporary Speaker, from the proceedings of the conference, it has become quite clear that even some of the jurisdictions that were hitherto foreseen to be very advanced in the fight against corruption, there is a relapse, especially in the West. There are three tools that have been identified that would be very germane in the fight against corruption. These include but are not limited to law enforcement – the rule of law – prevention and community education on the fight against corruption.

Madam Temporary Speaker, it is also important to speak to the issue of the APNAC. This is a caucus that was established in 1999, and it is a successor to the Parliamentary Select Committee of the 10<sup>th</sup> Parliament with regards to the fight against corruption. The African Parliamentarians Network Against Corruption (APNAC) has been in existence for the last 20 years. One of its key achievements is the list of shame in the late 1990s that highlighted people who had been corrupt and the refusal to pass the Bill that would have otherwise given amnesty to everybody who was involved in corruption prior to 1997.

The APNAC has participated in ensuring that Kenya was the first country to sign the United Nations Convention Against Corruption (UNCAC). It also, among other little

wins, stopped the corrupt Prime Minister of Malaysia from addressing an anti-corruption conference way back in 2015. He was later on deposed by Mahathir Mohamad after public outcry.

Madam Temporary Speaker, recently, we had a meeting with the Ethics and Anti-Corruption Commission (EACC), which is a product of APNAC, through proposed legislation that hon. Musikari Kombo tabled on the list of shame.

Going through the deliberations of this Conference, which was illuminating and encouraging, I will, therefore, dedicate the rest of my time to highlight some of the key observations that were made. First, we cannot win the fight against corruption if there is no political goodwill.

As I said earlier, political corruption is the mother of all corruption. So, if we have a leadership that is attuned to corruption and has found its way to political power as a result of the proceeds of crime and corruption, it becomes extremely difficult for such leadership to have the right political will, because it is trying to cut the supply chain to power that they enjoy.

Madam Temporary Speaker, Hong Kong is an independent territory of China. We were able to learn about the power of the Supervisory Committee of the Communist Party, which oversees all public servants, so that they do not engage in any form of corruption. There are severe sanctions for those who engage in corruption. This is important because there is a nexus between civil servants and corruption. All the Government tenders may be awarded to company associated to civil servants and also the trading of information that would occasion the awarding of lucrative tenders by associates of the very civil servants.

Later on, I participated in an anti-corruption exercise at the Chinese Academy of Governance (CAG) through APNAC. We learnt that the Communist Party of China does not just stop at the rule of law and order, but also self discipline and purification. They say that self discipline is higher than the rule of law. This is true because a person steals from the public not because he or she is not being seen, but because he or she lacks integrity, which has no two ways. It is either you have it or not.

Beyond the rule of law, which is increasingly becoming a safe haven for would be looters, there is self discipline and supervision. In fact, this example speaks to the idea around political formations that also have anchoring political ideologies.

Part of the success of China, which Hong Kong is part of, is because they have a centenary plan, which has enabled them to rise to become the second-largest economy after United States of America (USA). In fact, my take is that they may be ahead of USA in many instances. Therefore, looking at the case of Hong Kong, which is a territory of China and also runs as an independent country because of its British heritage that we share as a country, there is a direct covariance between high income status and low levels of corruption. So, it is an egg and chicken situation.

Africa is the only continent in the world that does not have a country in the first world, yet corruption is endemic. In fact, Francis Fukuyama speaks about the challenge of having political reform on one hand and the previous system.

Due to lack of confluence around this and congruence for that matter, it leads to what we call political decay, which is exemplified by the roles of Members of Parliament (MPs).

Within the Westminster Model, we are supposed to legislate, oversight and represent. However, at the same time, transferring social welfare benefits, which sometimes are processes of illicit financial flows, speak to the core of expectation of Members' tradition or the role of a leader to them. This has actually led to what I call 'state capture.'

We need to interrogate further and unpack because most of the proceeds of crime end up also influencing power play, especially around elections. Therefore, it is important on one hand to have the rule of law, but also, these laws should reflect the pathos, ethos and nuances of the aspirations of our people if we are to fight against corruption.

Why is it that when people are arraigned by the Ethics and Anti-Corruption Commission (EACC) they always get people who stand up to say it is their son or daughter being attacked? It is because of the collegiate ownership of leadership at the contestation around ethnicities. In fact, this is the essence of the Building Bridges Initiative (BBI) conversation. It is actually the essence of resource sharing.

To what extent, therefore, do we say how one pilfers from the state and the perpetuation of the nation-state that is Kenya, as a colonial enterprise for extractive purposes? Again, you will find a lot of correlation in the roles of the state in a book entitled '*Why Nations Fail*' by Daron Acemoglu. So, we need to have a serious unpacking of this because it becomes a clarion call. You will find that a person steals money from the public, wins a political seat, and then they perpetuate the same by capturing the state, because they are part of the state when they become MPs.

Madam Temporary Speaker, another thing that is clear from this issue is the role of the Judiciary in the fight against corruption. The Judiciary plays a critical role, and it came out clearly in the submissions that were made. Therefore, there is need for collaboration to ensure that judicial officers who come out boldly to fight corruption are also protected. This is because sometimes some corruption is state-sanctioned by the very people who occupy power.

The symposium was informed about huge infrastructural projects, which Kenya is currently doing, and that between 40 to 45 per cent in terms of materials of these projects go to waste because of corruption. That is inimical of this country.

If you look at some of the roads being constructed, they do not even last for three years before they have potholes. How do you explain that a kilometre of the Dongo Kundu Bypass cost taxpayers a whopping Kshs1 billion? Is that not development corruption? Look at the Standard Gauge Railway (SGR). It has been estimated that it cost about three times what was supposed to be the case, yet this is loaded to the taxpayers to pay.

Madam Temporary Speaker, currently, the annual rate of payment per every Kenyan, including a child who is born today, is Kshs138,000. The moment you have huge infrastructural projects, they not only stifle economic development because of low return on investment, but also end up increasing our debt stock, which currently stands at more than Kshs7.8 trillion, when our Gross Domestic Product (GDP) stands at Kshs9.8 trillion.

In April this year, we will have another rebasing of the economy which happened in 2014. That means that somebody somewhere will tell us that we are "X" per cent richer than we were and that will increase debt appetite for the Government. The monies that are appropriated from borrowing are huge infrastructural projects, which the

symposium observed that 40 to 45 per cent, and in some cases even 50 per cent, goes to development corruption.

Therefore, we need to audit these projects, so that it is not just at the end but from conception. This is because when people do feasibility studies, projects are said to be viable, while in the actual sense, they are not.

Madam Temporary Speaker, projects are said to be viable, while in actual sense they are not. To the polemical idea about budgeting, where you inflate the cost of budget, and when you get the kickback from the project, being the supervisor or the awarder, then you have no moral authority. You actually dent and dim your supervisory powers, and that leads to projects that do not last, are highly compromised and have no value for money for the public.

There is also the role of professionals, as alluded to earlier, where you have compromised professionals as engineers or architects. These are professionals who receive bribes to certify works already done, even if there is nothing on the ground. There is the idea about the projects being designed for the sake of syphoning money from Government, when there is a legitimate and felt concern on the ground. This raises the question of the role of professional bodies. Recently we had an exchange---

Madam Temporary Speaker, if you can add me about 10 more minutes, if you do not mind. This is a very important discussion, so that I do not lose my trail of thought. I will be done in 10 minutes.

**The Temporary Speaker** (Sen. (Prof.) Kamar): You still have five minutes.

**Sen. (Dr.) Mwaura:** Madam Temporary Speaker, please, give me five more, then I will be done.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Let us see how you fair with the five minutes.

**Sen. (Dr.) Mwaura:** Thank you, Madam Temporary Speaker. I stand guided.

These professional bodies are able to discipline their members and withdraw their practicing licenses. That is not something we have seen in Kenya. If you look at the Land Use and Physical Planning Act, one of the challenges of implementation of it is because the Ministry of Land has proposed regulations to do online conveyancing. But who are the people who went to court? They are the lawyers. A lot of corruption happens during conveyancing around the land registries. We all know that land is a critical factor of production.

Every project has an accountant, but we have not seen the accounting body, The Institute of Certified Public Accountants of Kenya (ICPAK), deregistering members of their association when they are involved in corrupt practices. We have not heard them issue press conferences or calling people to disciplinary action. When people are professionalized and registered, then you remove quacks.

Madam Temporary Speaker, another element that is critical is awarding contracts to people who are quacks. You have somebody who registered a company yesterday, and today, they have won a road tender. Then they subcontract or expend monies as is and are able to cover up, especially when you have professionals who come to audit those projects. On one hand, you have monies that are budgeted and, on the other, you give it to quack people. At the end of the day, you bribe those people who would be professionals and would adhere to a code of ethics that would occasion the value for money to the public.



There is the idea of awarding seasoned companies, even if there are beginners who are youth, women, persons with disabilities, and other marginalized groups of people of which we belong. They are also able to grow so that there is value for experience. The recent census has shown that 75 per cent of Kenyans are below the age of 35. You would want to mentor such individuals. However, when you give them projects they are not able to handle, then it leads to what I have alluded to as development corruption. This will lead to increase debt stock, which is causing a lot of liquidity challenges. The Government is over borrowing domestically and crowding out local investors. This is not spurring growth in the country.

Madam Temporary Speaker, the other point is the issue of technology. We have spoken about it, and it was actually well canvassed on how to use technology to disrupt corruption.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Senator, you are now in your new five minutes.

**Sen. (Dr.) Mwaura:** Thank you, Madam Temporary Speaker. This would really help a lot because money moves very fast across the world. If money is stolen in Kenya today, within no time, it would have moved a lot.

With the Panama safe havens, Cayman Islands and the faceless shell companies, technology is very important because when you transact online, then you actually leave trails because the internet does not forget. So, artificial intelligence, which can use big data, will be very instrumental in the war against corruption.

Madam Temporary Speaker, my other observation is that you need to look at both long-term and short-term strategies in the fight against corruption. It is very popular. It has been proven that it actually works. When you kill people publicly, like you will lynch somebody, it sends a very strong message. In fact, if you go to China, around the Confucius Institute, they will show you how such people were executed and corruption went down.

I had a conversation with the Minister from Rwanda who informed me that when the President exposed some of them, and they were alleged to be corrupt, corruption went down. So, you need those kind of systems, but they must be buttressed through the rule of law and self-discipline.

We need to have both long-term and short-term measures anchored within the law and also drastic measures that would ensure that we send the right kind of signal. I want to laud this Senate because by us impeaching Gov. Ferdinand Ndung'u Waititu, we have not only regained the stature of the Senate, but also sent a strong message to governors; that they should not joke with us to the extent that they were not able to appear before the Senate Committee on Finance and Budget to present about the division of revenue. We still play our role with regard to the monies going to counties, because they do not go to individual governors.

Madam Temporary Speaker, the other point that I also would like to highlight is that there is also a nexus between age and corruption. Indeed, the youth are more vulnerable to corruption. This is because when they see corrupt individuals driving big cars and living in very posh estates, they would want to finish school today and tomorrow they are general managers. There needs to be a targeted approach in terms of prevention and community education, specifically to the youth, so that they are taught how to wait and be patient, rather than just stealing so that they can enrich themselves.

One of the other things that can be used as a strategy is to glorify those who name corruption. Let them be famous and heroes rather than the current situation in our country, where the most corrupt are the ones who even survive politically. This is because they steal huge amounts of money once, then they can survive longer, while you stay with your little amounts of money. You survive one election and are thrown out because you cannot thereby feed a whole village.

Madam Temporary Speaker, as I conclude, we need some kind of social reengineering, so that people are able to see that resources belong to them, and they are the ones who have contributed. Remember the famous statement '*sio ya mama yako.*' That is a very alienating statement because it means that if it does not belong to your mother, then it can be stolen. Yes, it is my mother's because Kenya is my motherland. It is the issue of patriotism and dis-allegiance around ethnic micro-nationalities that compete for patriotism with our motherland. That is something that needs to be done within the inculcation of our youth in terms of social engineering, and also to ensure that the commitment against corruption does not just end as lip service. It should be concerted, sustained and the ranking of people who are least corrupt, even public officials would also encourage them to be re-elected.

Madam Temporary Speaker, you know the *Mzalendo* ranking that we all crave for here in the country. For instance, there is the recently released National Government Constituencies Development Fund (NG-CDF) rankings. If such were to be done, it would ensure that the most successful of this are usually the least corrupt.

These are the deliberations of the Independent Commission Against Corruption (ICAC) meeting; they are very illuminating. The fight against corruption is serious. It is actually threatening to go down with every one of us. People do not have money in their pockets. Part of the problem of liquidity is because if you have Kshs1 million, you have to prove where you have gotten it from. People are failing to transact. In fact, the real estate bubble has burst.

Madam Temporary Speaker, most malls are actually almost empty. People are not buying houses, land is not selling very fast and you can see the number of auctions in our newspapers. I have also noted curiously that the number of foreigners on the streets of Nairobi City has reduced. There were so many *wazungu* around, but I no longer see them as much.

It actually means that we were having an economy that was being fueled by corruption money. If that were not the case, how can we explain this shortfall? Part of it, of course, is because of the huge debt. If you steal a lot of money, then you distribute to the village.

Madam Temporary Speaker, the long and short of it is that the Conference was good. I hope that from these deliberations, we, as parliamentarians, can look at legislative measures that would enhance the fight against corruption. It is very mutating and moves very fast, and people devise new ways.

Sometimes if you look at our laws, you may never catch the real perpetrator of corruption initiator because they may not be the ones who sign documents. They use other proxies who then suffer. You can see the case of the National Youth Service (NYS) and so on. So, we need to be ahead in terms of technology and legislation.

Madam Temporary Speaker, with those many remarks, let me quote the Bible that:

“Righteousness exalts a nation, but sin is a reproach to a people.”

I beg to move and ask Sen. Farhiya to second.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker, for allowing me to second this Motion. I also wish to thank sen. Mwaura for having such a clear Report that you do not need to have attended that symposium for you to understand the deliberations of this Conference.

One of the other issues that I want to bring out is that 500 leaders from 50 countries have attended this Conference. For such a Conference with very clear outcome and strategies in terms of how to move forward from one step to the next in terms of fight against corruption, I think needs to lead to action. This is in terms of the linkages between members who are able to attend this Conference and the agencies that deal with corruption. Once they have those linkages, these people tend to get new ideas in terms of how to fight corruption.

Madam Temporary Speaker, when I was a board member of one of these institutions, I once attended a conference in Mombasa County. One of the people from the Ethics and Anti-Corruption Commission (EACC) said:

“You know, it is very hard to fight corruption because it keeps on mutating.”

My feedback to that person was that if this corruption is mutating, and you have no mutating ideas to tackle, then what is the point of having you there anyway? The vice is mutating and you are not. You do not have new ideas to make a difference.

In terms of the fight against corruption, there are individual country strategies. In my language we say that there is nowhere on somebody’s body that is above the head for you to cuddle. I am just doing a direct translation. Given that, the Head of State in this country has not once or twice spoken to this issue. Sometime back he sacked even Cabinet Secretaries (CSs). That shows that he is committed to the fight against corruption.

Madam Temporary Speaker, where and why are we failing? People who are corrupt do not exchange corruption proceeds under the watch of cameras. It is done so secretly that you need a very clear procedure to capture it. Because of that, the President wanted people to undergo a lifestyle audit.

Madam Temporary Speaker, you will remember that there was a lot of discussion round how there is no legal framework to do a lifestyle audit. There is a Bill in this House that is already published that is tackling that. The lifestyle audit is the game changer, together with an agreement from the prosecutor and the person with the assets discovery that is detailed in that Bill. However, we need political goodwill in this process.

We all think about the moment; ‘that I will gain where I am, and so, I do not care whether or not corruption is fought.’ Some of the discussions I heard people putting forward are that they did not want people to know about their wealth. My advice to people who do not want their wealth to be public is that they should not seek public appointment. They should run with whatever they have grabbed and do whatever business they want, but disappear from public life. If one is not ready to go through a lifestyle audit, there must be something that they are hiding.

At the rate this country is going, sometimes even the looters of the money that they corrupted need protection, because they need business to grow that wealth. The way

this country is going, that wealth will not be there. In my view, it is in the interest of even the corrupt that we fight corruption, now and henceforth.

Madam Temporary Speaker, people talk about legislation. Legislation cannot tackle bad manners. We are in a society with bad manners. We are sick in the head and think that what we stole is the only wealth that we can get. How bad can it get? We need from the churches, mosques, the temples and all religious circles --- I think that this is the right time to overemphasize the need to have some level of honesty in this country.

Madam Temporary Speaker, nowadays, we have technology. I come from a county where they do not even want to use the Integrated Financial Management System (IFMIS) for their transactions. For example, they can take 25 or 30 contractors, who need to be paid, to the Controller of Budget. Those are the submissions that we got from the people in the area. They put a request to pay those people through the system. The moment that money hits the bank account of my county, none of those people gets paid. They promise that they will pay some of them, but the rest of the money just ends up in people's pockets.

Madam Temporary Speaker, we need to control the use of money from the time it is requested to the time of payment. In order to give the counties some leeway to transact, the laws are being misused in a very bad way. Communities know that this is happening, and it is very sad that the Ethics and Anti-Corruption Commission (EACC) is not doing anything.

I disagree with the EACC because they have an officer who is attached to the County Public Accounts and Investments Committee (CPAIC). The EACC has made a few arrests in the past, but that is not enough. A corrupt person is a thief and thieves belong in jail. Assets of the Government need to be recovered.

Madam Temporary Speaker, the EACC needs serious reforms. Normally, when I tell people that, they tell me that the EACC is part of the society. That means that our society is rotten to the core, right from the voter who wants to be bribed. It is high time for Kenyans to be mad about corruption for something to be done.

There is no proper protection for the whistleblowers in this country. It is stated in this document that part of the reason some countries have made it in the fight against corruption is because the whistleblowers are protected. We still do not have whistleblowers protection policy. Last year, corruption at the Masaai Mara University came to light because one accountant felt that corruption is not right. In December last year, I attended a conference where the whistleblower in the Maasai Mara University scandal was awarded for exemplary courage. Whistleblowers can easily disappear if they are not protected because there are huge amounts of money involved in the proceeds of corruption.

Madam Temporary Speaker, I believe that corruption in our country has not gotten to the levels that were there in Hong Kong, where even ambulance attendants had to be bribed before taking a sick patient to hospital. The people of Hong Kong became impatient with corruption for the administration to do something. I, therefore, urge Kenyans to be mad about corruption for something to happen.

For Hong Kong to win the war against corruption, the police officers, the anti-corruption agencies, judges and everybody else collaborated in the fight. In our case, all the institutions that can help in the fight against corruption are corrupt. I do not know what we can do to win the war against corruption, but there is need for serious response

in how we tackle corruption cases. We need to see corrupt Cabinet Secretaries behind bars, otherwise, if we keep arresting the 'small people', we will not make a huge impact.

Madam Temporary Speaker, some Kenyans are international experts in forensic audit. However, our agencies will never give even consultancy jobs to such individuals who can unmask high level corruption cases. I know a Kenyan who was the head of forensics in an international organization that exists in over 98 countries. Real corruption in this country starts with the identification of people during recruitment. If you recruit in a biased manner, the person who is recruited owes allegiance to somebody else. How do you expect them to be independent and report?

Therefore, we need to express some outrage towards corruption. In 1974, that agency used law enforcement, prevention and community education; we have all that in this country. Why is there a problem in fighting corruption?

Madam Temporary Speaker, I beg to second.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you Senator.

*(Question proposed)*

**Sen. Pareno:** Thank you, Madam Temporary Speaker. I rise to support this Report. I think Sen. (Dr.) Mwaura has now become an ambassador against corrupt dealings because he has moved several Motions in this Senate that go to the core of corruption issues.

Most of the times he has been so passionate about how we can fight corruption. It was an eye-opener for him and others to have gone out there to see how other countries have dealt with this issue. Therefore, we are not the first country that should be dealing with corruption. We do not have to reinvent the wheel. It simply means that all we need to do is to have that goodwill to fight corruption. We already have other countries that have done it, and we can copy from them. The reports are here; they have been tabled and we are debating them.

Therefore, it is just about whether we really want Kenya to move forward and be a corruption-free society. If Hong Kong could do what this Report says; that it had gone to the levels where one had to bribe a driver to take them to hospital, even when they were dying. They have been able to deal with it. The factors that were in Hong Kong are the same factors that we have right now.

As my sister, Sen. Farhiya says, we have the expertise, brains, people and the might to fight corruption as a country. However, what happens is that we simply do not want to fight corruption in this country.

The other day I was looking at how we have so many shopping malls coming up everywhere. Sometimes we are told that there is something called money laundering. We wonder why we have mushrooming of very big businesses, yet the society is not able to support all these at ago. We are being told that right now in this country we have done so much construction of residential houses. We are not doing well in terms of residential business and construction because there are very many houses that have been constructed. Rental income is going down because there are very many rental houses.

Do we think beyond some of these things, to look around and see why we are doing that? Is there something that is influencing some of these things that we are doing

or do we need to change tact as a country in terms of looking out for who is doing what and where?

This Report talks about a new perspective, that is, the motto for that Conference. It is time we looked at what the world is doing. What are these new perspectives in terms of fighting corruption?

Sometimes you feel like Kenya is just too much. When you look at the Kshs39 billion arms issue and then there are reports all over the Press about a young man who is dead – and was allegedly supposed to record a statement - then you feel really sad for this country. That brings to the core the issue of witness protection.

What are we doing to protect these whistleblowers and witnesses? If we do not deal with that, which is at the core of corruption in this country, it means that a person will see a wrong being done, but not speak because how do you speak---

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order! Sen. Pareno, you will have a balance of 11 minutes when we resume.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Wednesday, 26<sup>th</sup> February, 2020, at 2.30 p.m.

The Senate rose at 6.30 p.m.