

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 4th December, 2018

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

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

PRAYER

PETITIONS

ENVIRONMENTAL DEGRADATION AND IRREGULAR DUMPING AT LANDFILL IN KAJULU, KISUMU EAST CONSTITUENCY

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, pursuant to Standing Orders No.226(1)(a) and 230(2)(b), I hereby report to the Senate that a Petition has been submitted through the Clerk, by Hon. Shakeel Shabbir Ahmed, the Member of Parliament (MP) for Kisumu East Constituency. The Petition relates to environmental degradation and irregular dumping at a landfill in Kajulu in Kisumu East Constituency.

As you are aware, under Article 119(1) of the Constitution states as follows-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

The salient issues raised in the said petition are as follows-

(a) That; in early 2018, an environmental impact assessment licence was issued for the rehabilitation of the Kisumu Concrete Products Limited (KCPL) quarry at Kajulu in Kisumu East Constituency, Kisumu County by filling the quarry pit with semi-inert waste from the Kachok dumpsite.

(b) That; no meaningful public participation was undertaken before issuance of the said licence as required under the law.

(c) That; the dumping of this waste in quarry pits in Kajulu has breached the underground aquifers in the area, thus, compromising the safety and quality of underground water.

(d) That; the establishment of a landfill for waste in a private site has drastically dropped the value of property in the area.

(e) That; the landfill site is directly in the flight path leading to Kisumu Airport.

(f) That; the County Government of Kisumu irregularly awarded the tender for transportation of the semi-inert waste from Kachok dumpsite to the Kajulu landfill and at an excessive price above market rates.

The Petitioner, therefore, prays that the Senate investigates this matter with a view to ensuring that the pollution and environmental degradation arising from the Kajulu landfill is halted.

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

Thank you.

Proceed, Sen. Wetangula. Please be as brief as possible because we have only this week up to Thursday to do what we must. Welcome Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, this Petition is very important. I had mentioned that my distinguished colleague from Kisumu, the MP, brought this Petition to the Senate on 28th August, 2018. He has been waiting for this Petition to be brought to the Floor until he started lamentations, protestations and visiting offices, which is not right. He asked me to bring this to the attention of the Chair.

Secondly, Mr. Deputy Speaker, Sir, the Committee that will look at this Petition must address a very important point that you have read out from that Petition: That a dumpsite in Kajulu has been put on the flight path where aircraft landing at Kisumu International Airport pass. There are myriads of examples the world over where such dangerously located dumpsites attract birds that eventually cause accidents by flying into the engines of the aircrafts.

So, if there was no other reason to deal with this dumpsite, that is enough reason for the National Environment Management Authority (NEMA), the national Government and the Kenya Airports Authority (KAA) to move and engage the County Government of Kisumu to remove this dumpsite from this particular location.

We, who use the Kisumu International Airport regularly, fly over this dumpsite every other day when planes are about to land. Sooner or later we will easily have difficulties with birds that come to scavenge. These scavenging birds are very huge. They can bring down an aircraft.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Please let us follow Sen. Wetangula's example. Although, Sen. Wetangula, the birds do not fly into the engines of the aircraft; they are sucked into the engines.

(Laughter)

Sen. Wetangula: You are right, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Proceed, Sen. Susan Kihika, Senator for Nakuru County.

Sen. Kihika: Thank you, Mr. Deputy Speaker, Sir. I also rise to support the Petition. This Petition will, probably, help us solve what we have been seeing around the country. A lot of times we find these landfills or dumpsites all over the place without any regard to the location and the environmental degradation that occurs due to what is dumped there. It then becomes a health hazard and an eyesore.

Mr. Deputy Speaker, Sir, this Petition is timely. I agree with what my colleague Sen. Wetangula has noted here. The location of the dumpsite being so close to the Kisumu International Airport would lead to environmental degradation and attract birds that could lead to plane accidents. That would be a terrible thing to happen because we have been warned against having dumpsites around our airports.

It also begs the question of what the National Environment Management Authority (NEMA) and the county government are doing to stop this dumping. What are these two agencies waiting for before they can act? It is just the lacklustre way that we have seen a lot of these agencies or county governments act when it comes to issues that are within their jurisdiction.

Mr. Deputy Speaker, Sir, I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Keep them brief. Let us have the Senator for Kisumu County, Hon. Outa.

Sen. Outa: Thank you, Mr. Deputy Speaker, Sir. I begin by thanking the Senator for Bungoma County for tabling this Petition on behalf of my country men. The Petition is overdue because the concerns of the people of Kajulu regarding the manner in which the County Government of Kisumu is trying to relocate the dumpsite within the trading centre has a lot of challenges. I met with the people there and agreed that all the procedures be followed before removing the dumpsite which was causing a menace within the city. As far as I am concerned, the procedures were not followed.

One thing I want us to focus on is the recommendation by NEMA to the County Government of Kisumu. They recommended that the dumpsite of Kachok be relocated. However, this is not happening because it has become a cash cow for some people. As I speak, a sum of Kshs100 million has been spent, but nothing has been done on the ground by the county government. We need to move with speed to stop the corruption that is emerging in the name of removing the dumpsite of Kachok.

I thank the Hon. Shabbir for bringing this Petition. I urge this House to help the people of Kisumu County, especially with the environmental challenges caused by this dumpsite.

Secondly, I plead with the County Government of Kisumu not to use this dumpsite as a cash cow. Imagine Kshs100 million spent, but there is nothing to show on the ground. As I speak now, in the supplementary budget of the county government, they have lined up another Kshs200 million for the relocation of this dumpsite. At the end of the day, they would have spent Kshs300 million. If we cannot save Kisumu City, I do not know who else will do so. I truly believe the Committee of this House will help our people.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Outa, just a slight clarification that we save every county. You have asked who else if we cannot save Kisumu. However, Kisumu is a very important county just like other 46 counties in the country.

I am afraid I will allow just one or two more and then we move on. Proceed Sen. Mutula Kilonzo Jnr. It is Senator Sen. Mutula Jnr. not junior Senator.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir, for that clarification. I went to China and they called me a junior Senator.

I am afraid that although Sen. Wetangula has raised a concern about this Petition having stayed for too long without being handled, we have another challenge that this Senate is going on recess in another two days. However, this Petition as important as it is, might lapse. I will seek that you give some directions as to its fate after Thursday. This is because even if we commit it today, I believe under the Standing Orders, it will have lapsed after Thursday.

Secondly, I hope this Petition goes to the Senate Committee on Land, Environment and Natural Resources. This is because the question of planning of our counties has been sitting in this Senate under the Physical Planning Bill that has now been transformed to the Land Use Planning Bill for the whole of this term.

This Senate should pronounce itself on land use planning, not just in Kisumu, but in all counties. I have dumping of medical waste in Makueni in a place called Kikumini. There is also the dumping of sewage in Two Rivers in Nairobi. All these things are about waste management. Nairobi and other cities, including Kisumu are going to choke in dumpsites unless we address the question of Land Use Planning Bill, which is before this Senate.

Can we not pass this Bill so that we can guide this country? Otherwise, we will continue lamenting while that issue is here. Can we plan where Nyeri County will build homes, dumpsites, do Early Childhood Development Education (ECDE) centres *et cetera*? It is in the land use plainly that the waste management will be handled properly.

Mr. Deputy Speaker, Sir, under the Urban Areas and Cities Act, Kisumu County just like any other - I have said here that Kisumu County is, probably, the only county that has a city board - should have consulted the citizens about the dumpsite and conducted public participation.

Mr. Deputy Speaker, Sir, I hope the Committee will not spend too much time here, but go there and find out that this is not only a dumpsite for purposes of what Sen. Wetangula has said because it is a nuisance to everybody. The foul smell and the birds that we are talking about is something that should concern everybody. It is an eyesore. I wonder where the Kenya Civil Aviation Authority were when somebody put a dumpsite like we would do either at Wilson Airport or Jomo Kenyatta International Airport. Where were these people?

Mr. Deputy Speaker, Sir, to me, the question of the lapse of this Petition is of utmost concern. The fact that this Petition has delayed in the Senate, we as a House should not punish *Mheshimiwa* Shabbir who sits in the other House, but thinks this is a House of wisdom to have brought the Petition to the “upper” House or the Senate. Let us not let this gentleman down.

I thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Senator Junior. Proceed Sen. Kirinyaga.

Sen. (Eng.) Maina: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Petition. This kind of behaviour where people in authority in this country feel that they can wake up and do as they wish irrespective of what their people think about their actions, is wrong. First of all, they have spent Kshs100 million. They are planning to spend another Kshs200 million. That in itself is “condemnable” because the people for Kisumu have more urgent things that could be done with that money.

Mr. Deputy Speaker, Sir, Secondly, this kind of behaviour of degrading our environment without recourse to any law of conscience must never be tolerated. This matter should be expedited so as to stop this environmental degradation.

Kajulu is in Kisumu Town where we have the biggest fresh water lake. We expect it to be kept clean and not to see the kind of things that we are witnessing. One might ask a question; who are the people who dug this quarry for it is said in the Petition that it looks like a quarry ground. One of the requirements that one has to meet when digging a quarry or anything is that they are to leave the area the way it was before they started digging. It is a requirement in law.

Nowadays, our management bodies such as Water Resources Management Authority (WRMA) and National Environment Management Authority (NEMA) just wake up one day and say that; ‘your house is next to a river and it should be demolished,’ when we all know what has happened. They do this yet they are the ones who looked the other way when such things were happening and we know that they did so because they were “treated nicely”.

This Petition should be expedited and be taken to the Committee and as our learned friend, Sen. Mutula Kilonzo Jnr. has said; let it not be left to expire. Use your powers to see that this is expedited. This is not just happening in Kisumu or Kajulu. It is happening all over the country. The Committee should actually make an overriding recommendation for the whole country.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. Cherargei?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I did not want to interrupt my good friend and senior.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is what you have done. Nevertheless, your point of order is allowed.

Sen. (Eng.) Maina: On a point of order, Mr. Deputy Speaker, Sir. If his intention is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Maina! He is on a point of order.

Sen. Cherargei: Mr. Deputy Speaker, Sir, from what I heard; is it in order for Sen. (Eng.) Maina, who is my good friend and our mentor, to infer that it is Sen. Mutula Kilonzo Jnr. who will sort out this issue? Is it in order?

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that what you said Sen. (Eng.) Maina? Did you say that it is the job of Sen. Mutula Kilonzo Jnr. to sort out the issue?

Sen. (Eng.) Maina: No, Mr. Deputy Speaker, Sir. My younger friend misunderstood me.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you referring to the Senator of Nandi County?

Sen. (Eng.) Maina: Yes, Mr. Deputy Speaker, Sir, the Senator of Nandi County.

The Deputy Speaker (Sen. (Prof.) Kindiki): You could have very many younger friends and some of them could even be in town.

(Laughter)

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I was referring to the point where Sen. Mutula Kilonzo Jnr. pointed out that the Physical Bill has been pending here. This Petition could be overcome by time; therefore, I was requesting that you use your powers to ensure that it does not expire.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you. However, I expected the lawyers to protest when you referred to the Senator of Makueni County as your learned friend. The last time I checked, you were an engineer.

(Laughter)

Sen. Seneta: Thank you, Mr. Deputy Speaker, Sir. I also support this Petition. I request the Committee that is going to look into this Petition to look at the issues of dumping and management of waste in all counties. It has become a business where county governments enter into partnership, they are paid some money for recycling but recycling is done in few places. These people are no longer collecting the waste and neither are they managing the dumpsites.

This is an important Petition that will help us to look at the regulations and policies that govern disposal and waste management in our counties. It is a serious Petition and I want to congratulate my friend, Hon. Shabbir, for having thought of this important Petition and having faith in this House. I do concur that we should look at it before its time lapses.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula seems to have left but he received a lot of support from the Senator for Kisumu County for following up on this Petition on behalf of the House.

Pursuant to Standing Order No. 232(1) the Petition stands committed to the Standing Committee on Lands, Environment and Natural Resources. In terms of Standing Order No. 232(2) the Committee is required in not more than 60 days from the time of reading the prayer, to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

*(The Petition was referred to the Standing
Committee on Land, Environment and
Natural Resources)*

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. Cherargei?

AGREEMENT BETWEEN ISIOLO COUNTY
GOVERNMENT AND LIVING GOODS LIMITED

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. I stand to seek clarification. There is a Petition that is already in this House on behalf of the people of Isiolo County. Can I proceed?

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

Sen. Cherargei: Mr. Deputy Speaker, Sir, this is a Petition by residents of Isiolo County regarding the agreement between the County Government of Isiolo and Living Goods Limited for provision of community health services in Isiolo County.

I wish to rise on a point of order on behalf of Sen. Dullo---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Are you on a point of order?

Sen. Cherargei: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is there something that is out of order?

Sen. Cherargei: Yes, Mr. Deputy Speaker, Sir. The time for this Petition is lapsing---

The Deputy Speaker (Sen. (Prof.) Kindiki): So?

Sen. Cherargei: Mr. Deputy Speaker, Sir, on behalf of Senator for Isiolo County I was requesting---

The Deputy Speaker (Sen. (Prof.) Kindiki): The Petition that you are referring to is not in today's Order Paper. If it is---

Sen. Cherargei: Mr. Deputy Speaker, Sir, I was requesting for your indulgence.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order? There is a Petition before this House. What is the position?

Sen. Cherargei: Mr. Deputy Speaker, Sir, the position is that time might lapse because we are going for recess. I am suspecting that we might be going for recess in the next few days and justice will not have been done to this Petition. As Sen. Mutula Kilonzo Jnr. has requested on the Petition of the Kisumu Member of Parliament, Hon. Shabbir, I request that you allow the extension for that Petition so that its lifespan does not lapse before we come back from recess.

The Deputy Speaker (Sen. (Prof.) Kindiki): Has the time for that Petition lapsed?

Sen. Cherargei: It is almost, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): When is it to lapse?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I think that it will lapse in January.

The Deputy Speaker (Sen. (Prof.) Kindiki): I saw a letter from the Senator of Isiolo County addressed to the Speaker on that issue. What are you trying to ask? Are you asking for directions?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I am asking for your indulgence and direction for the lifespan of that Petition not to lapse without justice being---

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is that Petition? It is under which Committee?

Sen. Cherargei: Mr. Deputy Speaker, Sir, it has already been committed to the Chairperson of the Committee on Health, Sen. (Dr.) Mbito.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Mbito, are you aware of that issue?

Sen. (Dr.) Mbito: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): I know that the Senator of Isiolo County is out of the country on official duty. I saw a letter that she had written touching on the same issue.

Sen. (Dr.) Mbito, what is the position of that Petition?

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, that Petition has been dealt with by my Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is the report?

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, the report is not ready because ever since we started dealing with this Petition, the Senator of Isiolo County has always insisted on being present in all sessions of my Committee. Unfortunately, she has been travelling a lot of late. I can cite two examples, between 20th ----

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! So, what is the status?

Sen. (Dr.) Mbiti: Mr. Speaker, Sir, the current status is that we had already had a word with the governor and the petitioners. In fact, there is a matter that came up the other day. It has been brought to our attention that this matter is before the court. I have the court documents which I would wish to table. I want to find out from the Speaker because the issues canvassed in court are exactly the same as what---

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, the rules on the Standing Orders on *sub judice* are very clear. The Committee cannot, on its own notion, decide a matter is *sub judice* simply because somebody has mentioned it and the Speaker has not issued a ruling. Therefore, the Chairperson should tell us what came first between the Petition that was read here and the court cases. However, to suggest that there is a suit in court and therefore they cannot proceed yet they are seeking for direction and nobody has sought an objection that the matter cannot proceed, in my view, is out of order. You should give direction.

The Committee cannot purport to cut its own hands. It does not happen like that. It should read the Constitution and act like a Committee of Parliament.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I am concerned about the way the matter has come before the House. We are dealing with a matter which is not properly before the House. One, we are now entering into a situation where we are discussing the Senator for Isiolo County, in her absence, to suggest that she has not been attending some of the meetings. This is totally unfair to her. However, I thought that the Senator for Nandi should have brought this matter to the notice of the Speaker so that we---

The Deputy Speaker (Sen. (Prof.) Kindiki): On that, I have a letter copied to me.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, he should have notified your office so that the matter is then properly placed. Otherwise, all of us will just listen to claims from him, the Chair and now the Senate Minority Whip has also brought another angle. There is no record for us to interrogate. It is not properly handled.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Cherargei, there is nothing that prevents the Committee after the 60 days, from handling the matter. In fact, we have Petitions which have been in this Senate for a very long time. What the Standing Orders do is to obligate Committees to conclude in 60 days. Of course, that is discouraged. Committees should not take forever with Petitions. Therefore, I see no prejudice in pending the issue.

I do not think your point of order requires any further direction other than that. The Committee should expedite and report. If they cannot report within the 60 days, we will accept the report after the 60 days like we have done in the past. On the issue of the courts, you will seek procedural assistance later on how to canvass that. If that issue has been brought to your attention and you need legal advice on how to deal with it, you will approach the Office of the Clerk for assistance in due course of time.

We move to the next Order.

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 need a clarification on the same concerns that Sen. Cherargei has raised as to whether when we go on recess, Petitions like this one and the one concerning Kisumu County will lapse. If they are not lapsing, I will require your direction on the question of tabulation of time and whether or not they will continue.

Sen. Wetangula: On a point of order, Mr. Deputy Speaker, Sir. As you give direction on this matter, I recall that in the last Parliament where we were together with you, some Petitions lasted for more than six months and some a year.

I request the Chair to give direction that the 60 days rule is not abstract. On the 60th day of the committal of a Petition, if the Chair of Committee where the Petition has been committed is not ready, he or she must seek extension from the House and bring a progress report so that the Chair can give them a discretionary extra time. This is because *wananchi* come to this House.

Just like Sen. Mutula Kilonzo Jnr. has said, a Member of the National Assembly, with capacity and ability to prosecute his Petition in his House has brought it here because he has more faith in this House than probably the House in which he sits. If we will sit on that Petition beyond 60 days, three or six months, then we are also frustrating and embarrassing both the public and ourselves.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, first and foremost, as I have ruled, the Standing Orders provide that Chairpersons of Committees should respond to the petitioners with a report within 60 days and the same report tabled to the Senate. However, the Standing Orders do not say what happens after that. That is the end of the Petition business. Also, the Standing Orders are silent on what happens if the Committee is, for whatever reason, unable to discharge the business of that Petition within 60 days.

As you are aware, genuine circumstances may sometimes prevent a Committee from prosecuting a Petition in 60 days. Therefore, my opinion is that when a Committee is faced with such circumstances, it should respect the procedures of this House by approaching the Speaker to seek for extension, as suggested by Sen. Wetangula, which would not be from the letter of the Standing Orders. May be, Standing Order No. 1 would apply and the Speaker would weigh the circumstances and perhaps exercise discretion of extension.

Therefore, Sen. (Dr.) Mbiti, if there are issues that have affected your Petition and you have not finished in the 60 days, you can still seek that extension from the Speaker and not just about this Petition but any other Petition. This applies to all the Chairpersons of Committees.

The issue of *sub-judice* has been raised by Sen. (Dr.) Mbiti; that if, for example, a Committee while processing a Petition, encounters existence of court cases and requires guidance, the approach is, again, we have the Clerk's office and the Legal Department which would really support it even before the matter comes to the Floor of the House. If, for instance, you still feel the Speaker should give guidance and ruling, there is a way of doing it and that way is not what you have done today.

Finally, we are doing very badly as a House on Petitions. The business of prosecuting and completing the matter of Petitions is not the business of the Speaker but

that of the Committees. Therefore, I want to urge Committee Chairs to stop making us look bad. That should cease and in this particular matter now that we are on it by default; it has been raised by Sen. Cherargei on the basis of Standing Order No. 1, I direct that the report on this Petition be tabled on the first day of the next session without fail. I will follow through to ensure that, that work is done on the first day of resumption of the session, the report must be in.

(Applause)

Similarly, because of the delay that was highlighted by Sen. Wetangula in the Petition we have just dealt with, I want to urge the Committee for Lands, Environment and Natural Resources to whom I have committed the Petition to strictly adhere to the 60 days deadline. In the same breath, in the event that there could be other cases similar to Kisumu, they could have a consolidated report, so that we also ease the burden of dealing with the same thing in installments.

However, the 60 days should be complied with by the Lands, Environment and Natural Resources Committee on the Petition on the land-fill in Kajulu, Kisumu County. It is so ordered. Thank you.

(Applause)

Next order.

PAPER LAID

REPORT ON FINANCIAL STATEMENTS OF LAMU WATER AND SEWERAGE COMPANY

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader.

Sen. Kihika: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the table of the Senate:-

Report of the Auditor-General on the Financial Statements of Lamu Water and Sewerage Company Ltd, for the year ended 30th June 2017.

Thank you.

(Sen. Kihika laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Next order.

STATEMENTS

(Sen. (Eng.) Hargura and Sen. Cherargei took to the Floor)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. (Eng.) Hargura and Sen. Cherargei. You do not give yourselves the Floor.

Very well, Senator for Turkana County is not here.

THE INVASION AND TAKE-OVER OF CDF-NG PROJECT

(Statement deferred)

Next Statement. These are Statements under Standing Order No. 48(1). Sen. Seneta, I am advised you would want to defer the Statement.

THE STATUS OF KAJIADO-MASHUURU-ISARA
ROAD IN KAJIADO COUNTY

(Statement Deferred)

Statements pursuant to Standing Order No.51 (1) (b). Chairperson Standing Committee on Roads and Transportation to issue statement relating to the activities of the Committee.

Sen. Wamatangi or the Vice Chairperson.

ACTIVITIES OF THE COMMITTEE ON ROADS
AND TRANSPORTATION

Sen. (Eng.) Hargura: Thank you, Mr. Deputy Speaker, Sir. I would like to issue a Statement relating to the activities of the Standing Committee on Roads and Transportation, pursuant to Standing Order No.51 (1)(b) for the period commencing 9th August to 9th November 2018.

Mr. Deputy Speaker, Sir, Standing Order No. 51 (1)(b) provides that at least every three months, a Committee Chairperson is expected to make a Statement relating to the activities of the Committee. In fulfillment of that provision, I wish to make a Statement with regard to the Standing Committee for Roads and Transportation for the period commencing 9th August 2018 to 9th November 2018.

As outlined in the Standing Order, the activities of the Committee shall entail the following-

- a) The Bills considered by the Committee.
- b) Statements considered by the Committee.
- c) Petitions considered by the Committee.
- d) Enquiries undertaken by the Committee and progress of any such enquiries.
- e) County visits undertaken by the Committee and outcome of such visits.
- f) The manner and extent to which the Committee met its public participation obligations in respect to the business of the Committee.

Mr. Deputy Speaker, Sir, for the period between August and November 2018, the Committee had 45 sittings. I wish to make a detailed report of each activity.

On the Bills considered, the Committee considered the Kenya Roads Bill, National Assembly Bill No. 47 of 2017, which was referred to the Committee on 16th May 2018. The Committee considered and tabled the report. Currently, the Bill is at the Committee of the Whole stage.

The Committee also looked at the County Planning (Roads, Pavements and Parking Bays) Bill, 2018, which was referred to the Committee on 11th September 2018. The report of the Committee is ready for tabling and the Bill is awaiting the Third Reading.

The Legislative proposal processed by the Committee is the County Planning (Roads, Pavements and Parking Bays) Bill, which was considered and published and is now at the Third Reading.

On the Statements considered by the Committee, the Committee has processed all the Statements except the one listed below; that is, the Statement on Implementation of the Lamu Port South Sudan, Ethiopia Transport Corridor (LAPSET) in Isiolo County and its residents, which was referred to the Committee on 26th September 2018. The Committee has liaised with the relevant institutions including the LAPSET Board for a comprehensive response and the response is being awaited.

On the Petitions considered by the Committee; the Committee considered a Petition for a project that affected persons in Utheri wa Lari for the construction of Phase Two of the Standard Gauge Railway (SGR) which was referred to the Committee on 30th May 2018.

The Committee held joint sittings with the Lands, Environment and Natural Resources Committee, where the National Lands Commission (NLC), the Kenya National Highway Authority (KeNHA) and the Kenya Railways were invited. The Committee has written to the NLC and the KeNHA, to provide information on the status of the compensation for the residents of Utheri wa Lari and that is still awaited from the two institutions.

The second Petition is delayed compensation for affected persons along the Eldoret Town bypass which was referred to the Committee on 27th September 2018. The Committee held meetings with the petitioners, the KeNHA and the NLC. The Committee is set to visit the site, to verify the undertakings by the KeNHA and the NLC, and is awaiting reports from the NLC to provide the details of those who had to be compensated.

Mr. Deputy Speaker Sir, the other part of the report is about inquiries undertaken by the Committee. The Committee undertook self-initiated project assessment visits and further followed up on projects that were of public interest as follows.

First, the Committee initiated inquiry into the construction of the Kenya Maritime Authority (KMA) Headquarters in Mbaraki, Mombasa, to establish the value for money on the awards of the tender. It met the stakeholders; that is the KMA and the contractors. We checked the documents and the report is yet to be finalized.

Second, the Committee initiated inquiries into the award of tender for the Cable Car Express Project by Kenya Ferry Services (KFS). This inquiry was to establish value for money in the award of the tender and look into the procurement processes with specific follow up on the privately initiated investment proposal award of tender. The Committee met the stakeholders; that is the KFS, the proposer of the project, and the intended implementer. The Committee is yet to finalize the report.

Third, the Committee initiated inquiry into the status of the stalled Hazina Towers by the National Social Security Fund (NSSF) to identify the reason for the stalling of the project. The Committee met the stakeholders; that is the NSSF Board of Trustees and Management; the State Department of Public Works and the contractor. The Committee

also undertook a project visit, but is yet to have a follow up meeting with the Board of Trustees to sort out some issues before finalizing on the report.

Mr. Deputy Speaker Sir, next are the county visits undertaken by the Committee. The Committee visited the County of Mombasa, where it visited the Kenya Ports Authority (KPA), the KMA, the KFS and Moi International Airport between 16th and 19th May, 2018. The key findings of the Committee visits are that there is need to oversight value for money in the projects undertaken by these institutions.

Mr. Deputy Speaker Sir, the second visit was to Kitui County, where we visited the Kibwezi-Athi-Mutomo-Kibati-Migwani Road and Mutomo Airstrip. The Committee met the project-affected persons who have not been properly compensated. Since then, we have had had meetings with the NLC, the Kenya National Highways Authority (KeNHA) and also the contractors on the need to compensate the affected persons promptly. I think they have made some progress on that front, but we are still to sort out a few more on the same issue.

Mr. Deputy Speaker Sir, the other visit was the assessment of the Outering Road Project, which was done in July, 2018. The State Department of Infrastructure and Public Works, the Kenya Urban Roads Authority (KURA) and Sino Hydro – who are the contractors – accompanied the Committee in this visit. One of the observations by the Committee was that there was this building, Taj Mall, which is at the junction between the Eastern Bypass and Outering Road. The Building was identified as a bottleneck; and it is in public knowledge that after our visit, that building was brought down and the road can now be properly completed.

Mr. Deputy Speaker Sir, the fourth visit was to assess the status and performance of Eldoret International Airport during the Senate siting in Uasin Gishu County. Among the issues identified by the Committee is that there is need to expand the runway and the need for the integration of the airport into the local economy. This is because as it is now, the airport only receives goods from the Middle East, but the goods produced within the environs of the airport have to be brought to the Jomo Kenyatta International Airport (JKIA) to be exported because there is no export of goods from the Eldoret International Airport. Therefore, the Committee recommends that there is need for the County Government of Uasin Ngishu to partner with the Eldoret International Airport to maximize on the available opportunities; which is the airport itself.

Mr. Deputy Speaker Sir, we also realized that there was an issue of the sale of jet fuel at the airport to the airline operators, which needs to be addressed. We have taken this up with the Kenya Airports Authority (KAA) to see how that can be sorted out.

Mr. Deputy Speaker Sir, public participation and stake holder engagements were conducted by the Committee as follows. The Committee met with the Ministry of Transport and Infrastructure; KeNHA, KURA, Kenya Rural Roads Authority (KERRA) and the Kenya Railways Corporation (KRC), the Kenya Roads Board (KRB) and the public concerning the Kenya Roads Bill (National Assembly Bill No 47 of 2017). As a result of these meetings, amendments to the Bill were proposed.

The Committee also met Ministry of Transport and Infrastructure, Ministry of Land, Housing and Urban Development; the State Department of Infrastructure, KeNHA, KURA, National Transport and Safety Authority (NTSA), the Council of Governors (CoG), *Bunge la Wazalendo*, the Institute of Social Accountability (TISA), Kilimani Project Foundation and members of the public concerning the County Planning (Roads,

Pavements and Parking Bays) Bill, 2018. Based on those meetings, various amendments to the Bill were proposed.

The Committee also carried out stakeholder engagements on the status of the stalled Hazina Towers. Concerns were raised on the actual cost of the project and the justification for the project; cost variations and the eviction of Nakumatt Supermarket from the building; the exact number of floors which are supposed to be constructed and the overall cost of the project.

The Committee also met the KFS to examine the proposed Likoni Cable Car Express, particularly on the tendering process, value for money; the project budget and viability. The Committee checked on the agreements between Trapos Limited – which is the implementer of the project – and the KFS; the cost of the project, mode of financing, identification of the partners and compliance with the timelines.

Lastly, the Committee met the KMA where the issue of the KMA headquarters was discussed. Along the way, there was some discussion on scaling down of the number of storage---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Hargura; there is a time limit on your Statement.

Sen. (Eng.) Hargura: I am concluding, Mr. Deputy Speaker, Sir.

The following are the challenges and recommendations of the Committee. One of the challenges is the budgetary allocation to the committee. This is in view of the massive and extensive nature of the Committee's budgets, mandates and being the main enabler of the Big Four Agenda, the criteria for allocation of funds to the committees, which is based on equity, is inadequate to facilitate the committee efficiently.

Secondly, there is the issue of the Committee rooms in terms of sittings of the committees. There is a lack or shortage of facilities for meetings and, further, lack of facilities in some of these committee rooms. This issue needs to be urgently addressed.

Thank you Mr. Deputy Speaker Sir. I beg to table the Report.

(Sen. (Eng.) Hargura laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well; thank you, Vice Chair. What is it, Sen. Halake?

Sen. Halake: Mr. Deputy Speaker Sir, I would like your guidance on these statements by---

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you on a point of Order; or are you making an observation about---

Sen. Halake: I am making an observation.

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

Sen. Halake: Mr. Deputy Speaker Sir, I note that with the new Standing Orders, the execution of statements is supposed to – unless I am mistaken – be done through these reports. However, so far I have been listening to these reports and I have not seen anything that was giving us any answers with regard to the statements that have been committed to some of these committees. I am, therefore, wondering at what point statements will ever get executed and reported back to the House.

The Deputy Speaker (Sen. (Prof.) Kindiki): Chair, why have you not included what you have done with the many statements that could be under your consideration?

This is because under the new Standing Orders, that is part of the reason why Chairpersons are given this opportunity to report every three months, because we have truncated the way we handle statements.

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: Similarly, Mr. Deputy Speaker Sir, the Committee on Roads and Transportation; the Committee on Energy and the Committee on Lands, Environment and Natural Resources have Bills that have been pending before them for a long time and we are not being told when these Bills will be tabled. We were called for a meeting at the Intercontinental Hotel and some of us presented our amendments to these Bills. However, we are not being told what decisions have been made and whether this journey has been abandoned.

The Deputy Speaker (Sen. (Prof.) Kindiki): Which Bills in particular?

Sen. Mutula Kilonzo Jnr: The Kenya Roads Bill, 2017, which is of great concern to us who sit on the Senate Committee on Finance and Budget. This is because it forms the percentages that are going to counties. We are not being told what is going to happen, yet we know that once we go on recess, the Commission on Revenue Allocation (CRA) will table the recommendations leading to the Budget. By February, we are going to be doing the Budget Policy Statement and whether counties are going to receive 15 or 20 per cent of the Road Maintenance Levy depends on whether we pass the Kenya Roads Bill, 2017. This is of great concern and I think it should be addressed.

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

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

Sen. Seneta: Mr. Deputy Speaker, Sir, could the Chairpersons of these Committees also give a timeline on the petitions and the Statements that have been submitted to them? Some Petitions have been referred to Committees and we have not been told when the reports will be tabled or whether they will lapse after we go on the recess.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Eng.) Hargura, why are you not saying anything about Statements? Secondly, where is the Roads Bill? Thirdly, why are you not telling us when you will dispose of the many petitions that are under your consideration?

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, I have indicated very clearly that the Statement that is pending is the one on LAPSSET. We have dispensed with the other Statements that came to our Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): What about the pending one?

Sen. (Eng.) Hargura: We are awaiting response from the LAPSSET board.

The Deputy Speaker (Sen. (Prof.) Kindiki): Up to when? This is not the place where you come and say: "We are waiting." Senate time is finite; it is limited. In one way or the other, you have the capacity under the law to cause things to happen in favour of the House and the people of Kenya.

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, we have engaged the board and they are to give us a comprehensive Statement, because it was about Isiolo County.

The Deputy Speaker (Sen. (Prof.) Kindiki): When will we have that Statement disposed?

Sen. (Eng.) Hargura: Practically, it has to be in the next Session, because this Session ends this week.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Let us be orderly. Secondly, where is the Roads Bill?

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, the Roads Bill is under consideration by the House, and we have stated very clearly that we have given our report and recommendations---

The Deputy Speaker (Sen. (Prof.) Kindiki): Has your report already been tabled?

Sen. (Eng.) Hargura: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay, that is the response. Sen. Mutula Kilonzo Jnr., you may need to countercheck on that.

Finally, what about Petitions?

Sen. (Eng.) Hargura: I have given a report on the Petitions that we have. We have progressed in all of them and engaged the stakeholders---

The Deputy Speaker (Sen. (Prof.) Kindiki): How many have expired?

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, there is one Petition which was submitted on 30th of May---

The Deputy Speaker (Sen. (Prof.) Kindiki): It was submitted on 30th May 30th and this is December.

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, it is the one which has expired because the other one was on 27th September.

The Deputy Speaker (Sen. (Prof.) Kindiki): When will you table the report on that one?

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, with regard to the one on the Standard Gauge Railway (SGR), we have an issue with the information. We have not gotten the information on the compensation---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You have the powers of the High Court to get information, and if you are unable, you seek the help of the House. That was in May and this is December - seven months. That is not justice to the people of Kenya and the Petitioner.

(Sen. (Eng.) Hargura consulted with Sen. Wamatangi)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Order, Sen. Wamatangi! You cannot transact your Committee business here.

Take your seat, Sen. (Eng.) Hargura.

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

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Deputy Speaker, Sir. I am raising this point on account of what Sen. Mutula Kilonzo Jnr. has said in regards to the Roads Bill. Whether a Bill is being moved by the Senate Majority Leader, if it is a Government Bill, so to speak, it should be the responsibility of the Committee to pursue it to conclusion. That is a matter within their docket. They should not leave it to the Senate Majority Leader because he is just a vehicle through which a Bill is moved.

It is not for nothing that Bills are delegated to the Committees to come up with a report. Specifically because of the issue that Sen. Mutula Kilonzo Jnr. has raised on

account of the budget making process and the fact that there is a lot of controversy between national highways and county roads, could the Chairman of the Committee be more specific because it is required of him by the Standing Orders? You are supposed to speak to the status of Bills; you do not leave it to the Senate Majority Leader. You come here and tell us why it has not been concluded. You give the status whether it is in Committee, Second Reading or Committee of the Whole stage. You should be concerned about the status of Bills falling under the Committee.

Mr. Deputy Speaker, Sir, can you give direction on account of this particular Bill? I know there are so many other Bills, but on this one because of the budget making process, we may get caught up.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., you may proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, in fact, the correct position is that when we had our own *Kamkunji* at The Intercontinental Hotel, Members had several amendments. There were contentious about the 16 or 20 per cent road levy, *et cetera*. Members submitted their recommendations and proposed amendments to the Committee to consider, either as a Committee and forward to us, so that we know whether they have considered our amendments before we move separate amendments as Members of the Senate.

However, to say that they have tabled a report and it has gone quiet, is not correct. This is because if the Committee does not agree that the road levy should be 20 per cent, we will move an amendment here to say that it must 20 per cent, as opposed to the 16 per cent in the Bill. Those issues have not been addressed.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Eng.) Mahamud, you may proceed.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, this is a very important Bill because, currently, we are operating under The Roads Act, 2007. In fact, the Constitution requires that we disaggregate the county and national roads. That is contained in the Bill. As alluded to by my colleague, Sen. Mutula Kilonzo Jnr., the issue before us is how much of the fuel maintenance levy should go to the counties and other authorities.

Whenever we are confronted we say: "We have no law, let the law be in place." We will reach that point and there will be no law, because we are about to go on recess and come back in February. This Bill is very important because it seeks to unbundle the roads sector, so that we can have county and national roads separated, and given their due importance. Therefore, we are getting late on this one.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wamatangi, you may proceed.

Sen. Wamatangi: My apologies, Mr. Deputy Speaker, Sir. I was in another Committee, but I am the substantive Chairperson of the Committee on Roads and Transportation.

The Deputy Speaker (Sen. (Prof.) Kindiki): Why do you think I gave you the Floor?

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I am saying that in acknowledgement and appreciation; that you have given me the Floor so that I can make clarifications that are important and a concern to the Members.

I will start with the last issue on The Roads Bill. From the time when we had the *Kamkunji* at The Intercontinental Hotel, our Committee sat and considered all the

amendments and issues as proposed by Members. We also wrote a report that was tabled here. After that, we have been in consultation with the leadership of the House, and specifically, the Senate Majority Leader, who came to our Committee and also invited me for a discussion.

Mr. Deputy Speaker, Sir, there were issues which were grey and not agreed upon, but which could threaten the Bill not to see the light of the day. Therefore, it was proposed by the Senate Majority Leader that we, first of all, find consensus on them. The Bill will be rescheduled by SBC to be brought back to the House. This is because none of us is a member of SBC. After we had done our bit and tabled the report, we leave the onus as per the words of the Senate Majority Leader to the SBC to prioritize and put the Bill on the Order Paper so that it can be reintroduced to the House.

Lastly, the Petition that was brought by Utheri Wa Lari was prosecuted by my Committee. We invited all the parties, including the main culprit, the National Land Commission (NLC), to the meeting. We instructed them to get back to work in compliance with the timelines specified in the execution for petitions.

Secondly, the NLC was under instruction to expeditiously ensure they revise all the awards they had given. Along that petition, there was a Presidential Directive that all the awards which had been given from the start of Phase 2; that is along the boundary of Ngong' be revised. We instructed them to revise all the awards and redo the exercise and table a report before the Committee.

There is a letter we wrote seeking extension for that time. So, we are in full compliance. We are waiting for the NLC to complete the exercise and confirm to us once they finish the exercise for the Phase I. We are also waiting for the report so that we can table it here and ensure we give a copy to the members of Utheri Wa Lari.

Finally, I have a personal interest on the issue of Utheri Wa Lari because they are people from my County of Kiambu. As the Senator for Kiambu County, there is no way I would sit still, wait and let that matter be swept under the carpet. So, my Committee---

The Deputy Speaker (Sen. (Prof.) Kindiki): Would you be more lax if the petition concerned any other county?

Sen. Wamatangi: Mr. Deputy Speaker, Sir, what I said was to add a rider why I have more interest in this matter. At the close of it, my Committee has acted fully in compliance to ensure that---

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

Sen. Wamatangi, when you exercise the powers of the office of Chairperson of a Committee of the Senate of the Republic of Kenya, you should be dispassionate. Therefore, your interest in petitions, statements *et cetera* that come before you should be equal, regardless of where they come from.

While you sit as the Senator for Kiambu County and perform that duty, you are expected to push your county issues. However, you cannot use this prime time to tell the people of Kenya that if a petition comes before the Committee you chair and it is from Kiambu County, you will have a greater interest in it.

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I added that rider after completing my submission that my Committee and I, have acted fully in compliance with the requirements of this House in as far as expedition of petitions is concerned. I said it would be a shame for me, as a Senator, not to act on that. I added the last nail to the cross that we have crucified those people who were trying to disenfranchise the people of

Kenya, not only the people of Utheri Wa Lari, but all the people along the second phase of the SGR project.

There was a lot of connivance between the NLC and some corrupt individuals. What has come out is those awards were given with favoritism. You would find somebody was given an award of Kshs40 million per acre and the next door neighbour was given an award of Kshs7 million for an acre. This is why it was ordered that the exercise be redone. It has been redone and they have filed a report with us. That report will be tabled before this House in due course. We will ensure that members of that group get their justice and what they are supposed to get. We have acted as we should.

The Deputy Speaker (Sen. (Prof.) Kindiki): Before we go to the last statement for today, I want to give some advice to the Chairperson, Committee on Roads and Transportation and your team.

As you have realized the approach we have for statements is slightly different. During a time as this, periodically every three months, what Senators would have experienced in prosecuting each and every statement is canvassed in summary. Therefore, we take this very seriously. Chairpersons, be warned that this is not a ritual to come and read ritualistic statements and get away with it.

Hon. Senators, when you know that the Chairperson of a Committee will be issuing a statement or a petition that you have an interest in, please, come prepared so that we engage fully and dispose of this very important matter without much ado.

On the issue of the performance of your Committees in the last three months, I want to note that the concern on the speed at which Bills are processed in this House is not misplaced. In fact, we are running a risk of ruining the reputation of the Senate. The Kenya Roads Bill, the Petroleum Bill, The Energy Bill and a few other businesses have been lying here for more than last two years. Hon. Chairpersons and Members, every time we delay in discharging or processing Bills and other businesses, we are giving fodder to the enemies of devolution to rejoice, celebrate because we are giving credence to the view that this House is not up to the task.

Hon. Senators, I want to give the following directions as requested by the Senate Minority Leader. I will not sit here and entertain any more excuses on why The Kenya Roads Bill cannot be passed. This is not a Bill for the Chairperson, the Committee on Roads and Transport or the Senate Majority Leader. It is a Bill for all Kenyans. Technically, it is called a Government Bill. However, the roads of this country are not Government property. They are the property of the people of Kenya. The Government is a conduit for processing this interest.

Hon. Senators, we have only two days before the end of this session. I know we have serious quorum issues in voting this week, that is the threshold for voting, because of the colleagues who are on official duty in different events. I want this to go on record, when we come back in February, all the Bills that have been pending here for years on end, must be disposed of within 30 days, including The Kenya Roads Bill.

I will personally follow up to ensure that happens because we cannot sit here. We all have different responsibilities. So, we cannot just sit here and assume that it is none of our business. Our business, wherever we sit, is to ensure that we protect the dignity of this House.

So, the Committee on Roads and Transportation, on that issue of the Roads Bill, as well as the other Bills that have been here for a long time---. I have cited the Energy

Bill, the Petroleum Bill, there is also the physical planning and land use Bill. Those Bills somehow---. The responsibility of causing the Business to move is first and foremost on the Senate Leader of Majority.

I hope that the office of the Senate Leader of Majority is represented here. That is a directive but that responsibility is shared jointly with the sectorial Chairpersons because the Senate Majority Leader is handling all the Bills. I want to agree with Sen. Mutula Jr., who said that if you are the Chairperson of Committee X, any Bill being processed--
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It is the Senate Minority Leader who said that any Bill that concerns your dockets; between you and the Senate Majority Leader, it is your collective duty to ensure that there is follow-up and the Bill is completed. You do not throw it and say: "It is in the hands of the Senate Majority Leader". In other words, Hon. Senators, the Senate Majority Leader and all the concerned chairpersons of the committees are jointly and severally bound by this directive.

It is so, ordered.

(Applause)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATIONS FROM MAKUENI AND NYANDARUA COUNTY ASSEMBLIES

Very well. Hon. Senators. I have a communication to make. I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting delegates from the county assemblies of Makueni and Nyandarua. I think some of them would have left. I request each member of the delegation, those who are present, to stand when called out so that they may be acknowledged in the Senate tradition.

- | | | |
|--------------------------|---|--|
| (1) Hon Jonathan Kimongo | - | Majority Whip, Makueni County Assembly |
| (2) Hon. Joseph Kivinda | - | Minority Whip, Makueni County Assembly |
| (3) Ms. Judy Kinyua | - | Hansard Reporter, Nyandarua County Assembly. |

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

(Applause)

(Sen. Wamatangi stood up in his place)

What is it Sen. Wamatangi?

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I just wanted to first acknowledge that the direction you have given is absolutely the right direction for the Committee and the Chairpersons will comply.

Mr. Deputy Speaker, Sir, I was seeking your indulgence so that the directive can also extend to the House Business Committee, so that once we are done with a Bill, for example, the Roads Bill, then we ensure that Bill is prioritized and put in the Order Paper because once a Chairperson and the Committee, like me, have done our work, it is for the House Business Committee to put the Bill in the Order Paper. We are helpless.

Mr. Deputy Speaker, Sir, lastly, we need to consider how we sometimes address the issue. Also that directive will be taken when we have a Government Bill on the table, because, for example, in the Roads Bill, it is understood by us and we appreciate what the Senate Majority Leader said; we need to make sure that we harmonize the position so that you do not rush this Bill because we have finalized and you lose it on the Floor.

As a Committee, we also have to juxtapose the two positions and ask how we should even move. So, my request is, let that order extend to the House Business Committee and to the Office of the Senate Majority Leader such that then he would know how to balance the interests when the Committee has already done its work.

The Deputy Speaker (Sen. (Prof). Kindiki): Very well. I have already given a directive. Anybody who has difficulties in complying can seek clarification from me but not necessarily here and now.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Translation of the order

The Deputy Speaker (Sen. Prof. Kindiki): Very well. I think we have one more Statement. Chairperson, you are already on your way---

Sen. Mutula Kilonzo Jnr.: The Ruaraka way.

(Laughter)

The Deputy Speaker (Sen. Prof. Kindiki): Sen. M. Kajwang', you have the Floor.

STATEMENTS

ACTIVITIES OF THE COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. Standing Order 51(b) provides that-

“At least every three months, a Committee Chairperson is expected to make a Statement relating to activities of the Committee.”

In fulfillment of that provision, I wish to make a Statement with regard to the Senate Sessional Committee on County Public Accounts and Investments for the period commencing 20th February, 2018 to 5th December, 2018.

Mr. Deputy Speaker, Sir, the Senate Sessional Committee on County Public Accounts and Investments is established pursuant to Standing Order 220 of the Senate Standing Orders and is mandated pursuant to Article 96(3) of the Constitution, to exercise oversight over national revenue allocated to county governments; and, pursuant to Article 229(7) and (8) of the Constitution, to examine the reports of the Auditor-General on the

annual accounts of the county governments, to examine special reports if any of the Auditor-General on county government funds, to examine the reports if any of the Auditor-General on the County Public Investments and to exercise oversight over county public accounts and investments.

Mr. Deputy Speaker, Sir, during the period under review, the Committee has held a total of 92 sittings and held four retreats, and engaged with several stakeholders. I will be reporting on the activities of the Committee.

I wish to provide the details of each activity as follows-

- 1) The County Public Accounts and Investments Committee has adopted and tabled before this House, reports on financial statements for 26 counties.

Mr. Deputy Speaker, Sir, the reports on the 26 counties are currently before this House and we are waiting for scheduling of the debate. The 26 counties include; Taita Taveta, Kitui, wajir, Mombasa, Uasin Gishu, Garrissa, Marsabit, Bomet, Meru, Bungoma, Lamu, Vihiga, Makueni, Isiolo, Mandera, Nyamira, Kiambu, Busia, Tana River, Trans Nzoia, Nyandarua, Migori, Kwale, Kisumu, Samburu and Kericho.

Mr. Deputy Speaker, Sir, I also wish to report that this Committee has previously tabled and brought for adoption by the House of seven county reports and those seven have been adopted by the House. With regard to the remaining counties for 2013/2014; the Clerk of this House has put in place a special team that is currently working on the remaining ten reports so that we can bring closure to the Financial Year, 2013/2014.

With regard to 2014/2015, the Committee has invited Governors and has held sittings with Governors of 28 counties. For the 28 counties, the reports are being written and the Committee is yet to adopt and bring them to the House. Being the end of the Session, it will then appear that the adoption and tabling of the 28 reports shall be done in the next Session. For 2014/2015, there are 12 counties that the Committee has considered but it is yet to complete.

Mr. Deputy Speaker, Sir, worrying about the time and the requirement on Statement time not going beyond four, you will guide me but I will try to go through this report very quickly. I also wish to report that the Committee has tabled before this House a Fiduciary Risk Report, which you will note is included in today's Order Paper. A Fiduciary Risk Report is an innovation of the Public Accounts and Investments Committee that provides a dashboard, a single unified view of all the audit issues that have been raised by the Auditor-General.

I also wish to report on inquires undertaken by the Committee. Within this session, the Committee carried out an inquiry into the possible loss of funds through the acquisition of land LR No.78794 by the National Land Commission (NLC) for use by two public schools; Ruaraka High School and Drive Inn Primary School in Nairobi. The Committee did its inquiry, adopted the Report and tabled it in the House. The Report was debated by the House, a vote was taken and the Report was negated.

On county visits undertaken by the Committee, the Committee had scheduled two county visits but did not undertake them due to a loaded Committee work schedule. However, the Committee plans to undertake several county visits in the Third Session, where it will consider audit reports in the counties. Borrowing from the Senate *Mashinani* concept, where the Committee sat in Uasin Gishu County and considered Reports from the neighbouring counties, that would be the model that the Committee would wish to adopt in the next Session.

In terms of public participation, this has been limited to the inquiry into the possible loss of funds through the acquisition of LR No.78794 by the NLC. The Committee does not process Bills and, as such, public participation has been confined to inquiries or when we have county governments appearing before the Committee.

Mr. Speaker, Sir, in terms of stakeholder engagement, I wish to report that the Committee has held a very fruitful workshop with Chairpersons of Public Account Committees (PAC) of county assemblies. This brought together PAC Chairs, Vice Chairs and the county assembly clerks sometime in May, 2018. This was a very important meeting because we sat down and came up with several resolutions. For example, we resolved that the Senate and county assemblies need to consider establishing county oversight support units to strengthen legislative oversight.

Mr. Speaker, Sir, we also resolved that the Auditor-General needs to come up with a reporting model that will allow the Senate to fast track audit reporting and avoid overlaps with county assemblies. We also said that we are going to establish an annual accountability forum of the Senate Public Accounts and Investments Committee (CPAIC) and county assemblies PACs. We said that we needed to have a tripartite engagement between the Senate, county assemblies and the national Treasury to look into the issue of delays in disbursement of funds.

We also recommended, at that forum, that the Senate needs to come up with legislation that will define the scope of work for county Assemblies PACs and the scope of the Senate CPAIC. It could either be combined or an appellate kind of arrangement. We also resolved to review or come up with amendments to the Public Finance Management Act to allow county assemblies to control their own revenue.

Mr. Speaker, Sir, I will give a brief highlight on some of the challenges faced by the Committee. One, the Committee, once again, faced court injunctions that hampered its operations, especially when undertaking inquiries. I am, however, glad to report that where our power to summon witnesses was challenged, the courts of law affirmed our Constitutional duty and right to summon any person to appear before Parliament.

Two, we have had a serious backlog of audit reports that made the process of consideration of these reports redundant since most issues raised would have since changed significantly. Just this morning, we met the Governor of Kirinyaga County, Hon. Waiguru, who found it quite difficult to take ownership of the issues that were raised during the time of her predecessor.

Three, we have had numerous requests for postponement of meetings to consider audit reports from county governments. This has prompted us, in several cases, to use summons to compel Governors to appear before us. We still suffer from the lack of clear distinction of what county assemblies can consider in the Auditor-General's Report *vis-a-vis* what the Committee can consider. I believe that this is an area where this Senate can come up with clarity.

Finally, Mr. Speaker, Sir, on the challenges faced, the Majority Whip tabled the Auditor-General's Report on one of the county corporations just today. The sheer number of Reports that the Committee receives every session is daunting, and we need to come up with a strategy for their consideration.

Mr. Speaker, Sir, county governments have also put before us certain challenges that are worth consideration by this House. One, county governments have complained that delayed exchequer releases heavily impair their performance.

Two, county governments have complained about the Integrated Financial Management Information System (IFMIS). Today we had a very interesting discussion with the Governor of Kirinyaga who, at some point, was the Director of IFMIS and was responsible for the roll out of the system. It was interesting to listen to her perceptions, now that she is a user and is not at the other side of the national Treasury. We will be bringing the resolutions of some of those discussions to this House.

Mr. Speaker, Sir, county governments have also talked about default by national Government institutions in payment of rent and rates to them. Yesterday, we were discussing a Kshs5 billion loan that Nairobi City County Government owes Equity Bank. This is a loan that moved from Equity Bank to Kenya Commercial Bank (KCB); and they are now going to move it to United Bank of Africa (UBA). We undertook to write a letter of objection to the national Treasury so that they do not give approval to Nairobi City County Government to transfer that loan to UBA, because it was going to occasion further losses.

Mr. Speaker, Sir, the process of approval of budgets from the Controller of Budget (COB), where officers from county governments have to physically travel to Nairobi with brown envelopes, is a cause of inefficiency.

Finally, Mr. Speaker, Sir, is the interference in the county assembly autonomy by the county executive in submission of requests for budget approval from the COB. The striking example is the case of Machakos, where the Governor decided that the request by the county assembly to the COB for a budgetary support would not be honoured until the Members of the County Assembly (MCAs) approved certain things that he wanted approved. We addressed that matter and I am glad that there seems to be some resolution of the matter.

In terms of recommendations, we have shared some of these views with the Senate Business Committee (SBC). One, we feel that the Committee membership ought to be expanded from the current number of nine to 13, and that will require amendments to the Standing Orders.

Two, in order to address the reports of county assemblies, county executives and county corporations, it will be possible to have at least two sub-committees running throughout when we expand the numbers. This is so that when we are considering the reports of a county assembly, another sub-Committee will be considering the reports of the executive on the same day. Alternatively, the House may consider establishing another Sessional Committee to consider the Reports of the Auditor-General on county assemblies.

Three, we have proposed that we need to come up with county audit procedures and regulations that would be in the form of a Bill or regulations; or an amendment to the Public Audit Act. Four, we have proposed the establishment of a Parliamentary Audit Office that will provide technical support, not just to the Committee, but to the entire House, modelled along the same lines as the Parliamentary Budget Office (PBO).

Five, we have also said we need to incorporate audit opinions in the Fiscal Responsibility Index, as we discuss the County Allocation of Revenue Bill. I know that the Chair of the Committee on Finance and Budget is seized of the matter, and we hope that as we negotiate the next revenue sharing formula, that can be built in.

Six, Senators and Committees must be empowered to carry out proactive monitoring and evaluation. Every Senator in this House has a duty to carry out oversight,

and we must facilitate them. We must look into the welfare of Senators and ensure that they are able to discharge their mandates.

Seven, the Committee has resolved that it shall consolidate its reports to the House. The report that is currently before the House is one report in two volumes, but it has put together 26 counties. This is because the House, at a *Kamukunji*, resolved that it was not going to be useful to consider the reports separately.

Mr. Speaker, Sir, I believe that if we are to report on a timely basis, it will then be more useful and relevant to consider individual county reports. However, because of the backlog, we will consolidate these reports. We will, therefore, bring three Reports to this House every session; one consolidated report for county executives; one consolidated report for county assemblies and the fiduciary risk analysis report that is already before this House.

Besides physical appearance and oral testimony, the Committee has resolved to rely on written responses from governors to speed up its work, particularly, with respect to backlog.

We shall also establish sub-committees to fast-track report writing and adoption. If we can expand the size of the Committee, it will allow us to have two or three sub-Committees.

We will conduct quarterly county visits with a thematic approach. Finally, on the basis of recurrent audit findings, the Committee has resolved to engage the following stakeholders further-

- (1) The Auditor-General to develop a special reporting template for senate that focuses on performance rather than book keeping.
- (2) The Auditor- General is to conduct a special performance audit of county health sector investments ahead of universal health care. Obviously, because you have given a ruling on that matter, it will depend on the output of the Committee on Health on the matter that it is seized of.
- (3) We have agreed to talk to Treasury to establish how Integrated Financial Management Information System (IFMIS) can be optimised to support counties.
- (4) The Controller of Budget to streamline the budget approval and requisition process at the counties.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. M. Kajwang'. Please, make the comments brief because we have another Statement from Sen. Farhiya, on behalf of the Chairperson of the Committee on Delegated Legislation.

Are you the Chair?

Sen. Farhiya: Mr. Deputy Speaker, Sir, I am the Vice-Chairperson.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Before I allow comments, I want to interrupt business and allow Sen. Kihika to move a quick Procedural Motion that does not require debate on an adding to the Speakers Panel by--- Let me not pre-empt the Motion that I have just approved.

Proceed, Sen. Kihika.

PROCEDURAL MOTION**ELECTION OF SENATOR TO PRESIDE OVER SITTINGS
OF THE HOUSE PURSUANT TO STANDING ORDER NO.15
AND ARTICLE 107 (1) OF THE CONSTITUTION**

Sen. Kihika: Mr. Deputy Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to Article 107 (1) (c) of the Constitution and Senate Standing Order No.15, the Senate elects Sen. Abshiro Halake to preside at the Sittings of the Senate on Tuesday 4th December, 2018, which is today, to Thursday 6th December, 2018, in the absence of the Speaker, the Deputy Speaker and Members of the Speaker's Panel.

It has become necessary because many Members who are in the Speaker's Panel are currently away on official business. Therefore, we might find ourselves in a position where we do not have a Chair to preside over the House. I am moving this Motion so that the Senate can vote for Sen. Halake, who is consistently always in the House. She is capable and able---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Are there Senators who are not in the House consistently?

(Laughter)

Sen. Kihika: Mr. Deputy Speaker, Sir, she is one among others.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. You are providing her Curriculum Vitae (CV).

Sen. Kihika: Mr. Deputy Speaker, Sir, it is because I want them to know that the House will be in good hands even when Sen. Halake presides during those sittings. Again, just to be clear, it is only for this week, which is today, Tuesday, tomorrow Wednesday and Thursday. We all know that a number of the Members of the Speaker's Panel will not be available for the remainder of the week, as they are away on official business.

Mr. Deputy Speaker, Sir, I beg to move and request Sen. Wambua to second.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. I stand to second the Procedural Motion by Sen. Kihika; that Sen. Abshiro Halake joins temporarily the Speaker's Panel from today, Tuesday, to Thursday.

I beg to second.

(Question proposed)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Orenge, do you want to speak to it?

The Senate Minority Leader (Sen. Orenge): Yes, Mr. Deputy Speaker, Sir.

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

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I beg to support the Motion. If the Motion suggested that she should be there on a permanent basis, I would support it because she is truly capable.

I want to point out that it would not be right to have the public have an impression that the Speaker and the Speaker's Panel is completely absent. The Speaker is there and a Member of the Speaker's Panel, Sen. Nyamunga, is also there. We are just reinforcing the Speaker's Panel, so that in case we need to take a 'commercial break', so to speak, there will be somebody to sit on the Chair.

Otherwise, I do not want to take too much time. She deserves to be in that position. My only regret is that it is only for this week.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Nothing prevents you from bringing a Motion after the end of the week.

Proceed Sen. (Eng.) Mahamud and, kindly be brief.

Sen. (Eng.) Mahamud: Thank you very much Mr. Deputy Speaker, Sir. I also support the Motion. The only question that comes to my mind is: How can everybody be away?

(An hon. Senator spoke off record)

The Motion says that the Deputy Speaker will be away, yet he is here.

The Deputy Speaker (Sen. (Prof.) Kindiki): I could be away. Who said I cannot be?

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, the Senator is capable. However, I think in terms of managing this House's business, in future we should avoid a situation where all Members of the Speaker's Panel are away.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud! You know---

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I support the Motion.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir. I also support. Sen. Halake is diligent in terms of keeping the House alive. She has also been following up on Petitions, Motions on her County of Isiolo. If there is anybody that deserves to be in that Panel, it is Sen. Halake.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. You say that she keeps the House alive. Is it dead sometimes?

(Laughter)

Order, Senators! Thank you for the remarks that have been made. First and foremost, I determine under Standing Order 79 that this is not a matter concerning counties

Sen. Mutula Kilonzo Jnr.: That is important.

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

(Laughter)

Sen. Mutula Kilonzo Jnr. I suspect that you do not want the Chair to give you a chance to elaborate your comment. Would you?

Sen. Mutula Kilonzo Jnr.: Not at all, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): The vote will, therefore, be a voice vote. There will be no bell ringing for any amount of time.

(Question put and agreed to)

The Deputy Speaker (Sen. (Prof.) Kindiki): Congratulations Sen. Halake. I am sure that you will not let down those who have spoken so well about you when the time comes.

(Resumption of Debate on Statements)

STATEMENTS

ACTIVITIES OF THE COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Do we have any observations on the Report by the Chairperson of the Committee on County Public Accounts and Investments?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I have one concern. The Chairperson has recommended that Senators should be given facilities to do oversight.

I am concerned about a statement that I read on our platform about Senators whose funds are being denied because of non-payment of statutory deductions by the previous Senators. Those affected are Sen. Sakaja and Sen. (Dr.) Kabaka. I am not certain whether this will fall under the purview of that Committee. A direction from the Chairperson would help because I do not see the reason as to why a Senator who is currently sitting should be affected by the default of their predecessors.

(A Senator spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. You are there transacting business with your leader without involving the Chair. If that is the route that you want to take, you will proceed *ex parte*.

Sen. Orenge, you can inform your Whip.

The Senate Minority Leader (Sen. Orenge): Mr. Deputy Speaker, Sir, I want to inform Sen. Mutula Kilonzo Jnr., the Senate Minority Whip, that in the case of the Senator of Nairobi County, the previous occupant of that office has got largesse so it is possible for him to seek a shorter route. Otherwise, the demand is justified.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. Allow me to quickly commend the Chairperson of the Committee on County Public Accounts and Investments. We severally raised issues on the Floor of this House regarding the pace of the audit reports because we were getting reports for many years back but we have seen how his Committee has stepped up and we commend him for that work.

When he gave his Report, he mentioned two things. I will take the first one from where Sen. Mutula Kilonzo Jnr. left. He said that the accounts of some of us are at risk of being frozen. I have received letters from the Kenya Revenue Authority (KRA), the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF). They are asking us to pay up to the tune of Kshs14 million for the unpaid Pay As You Earn (PAYE), unpaid NHIF and unpaid NSSF by the previous occupant of the office of the Senator of Nairobi County. I hope that this is a matter that the Committee on County Public Accounts and Investments can deal with.

Yesterday, I saw them with the previous Senator, who is currently the Governor of Nairobi County, Governor Mike Sonko. Looking at what we are being asked to pay, it means that no single member of staff had their salaries paid officially as from 2013 to 2017 when he left that office. That means that there was no single remittance. It also raises questions internally, because; how is a Senator's office paid or given its allocation after the first quarter without returns? I hope that the Committee on County Public Accounts and Investments can ask those questions. They should not just ask the previous occupants of those offices but the Clerk's Office too. How could they process and keep sending allocations to an office that has not made a single return as from 2013?

Secondly, I do not know how they got away with it. Yesterday, we heard the Governor say that the beautification that is going on in Nairobi is being financed from his pocket. I have been talking to Nairobians, as their Senator, telling them that I have secured Kshs15.8 billion in the Cash Disbursement Schedule. The County has a budget of Kshs32 billion and Nairobians pay taxes. Why is he planting grass using money from his pocket? Nairobians do not want favours, they want services. I do not know how the Committee let him get away with that. It will be good to hear from the Chairperson.

Sen. (Dr.) Kabaka: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I wish to reiterate the same sentiments made by the Senator of Nairobi County, Sen. Sakaja. I am also a victim of the same scenario. We do not want to be seen by Kenyans, especially people from Nairobi or Machakos, as people who are attacking our predecessors. That is not the issue. I am not attacking Sen. Muthama.

When we received the letter from KRA demanding for Kshs2.3 million from the previous office holders, I used diplomacy. I used my good officers, particularly my Personal Assistant (PA), who deals with finance, Mr. Isaac Muendo, who went and saw the former Senator of Machakos County. I understand that the former Senator did summon his PA, a Mr. Mutinda, and it came out clearly that the said Senator was not aware of what had transpired. I do understand that he was told to repay that money to KRA. Other than that, I went and saw a certain lady, I cannot remember her name but she is on 9th Floor of Protection House, and she did well. She wrote a letter to both KRA and the office of the former Senator, Sen. Muthama, requesting them to harmonise the issues and find a way forward.

The only problem with KRA is that they want to stop monies going towards my personnel. When they do that, we may be compelled to go to court to stop them from

effecting that order. When Sen. Sakaja and I bring this matter before the Floor, just know that it is a serious matter. Sen. M. Kajwang', the Senator of Homa Bay County, should seriously, and I know that he is a serious person, look into this issue before we get affected.

The Deputy Speaker (Sen. (Prof.) Kindiki): Chairperson, I hope that you are following the remarks and observations about your Report. Is it the job of your Committee to audit the offices of the former Senators? Does it fall under your mandate?

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, I have been asking myself that question. I would take a route though I do not know if it is the route that we would want to take. It is indeed shameful that Senators would be caught in this. We have been criticising county governments for failure to remit statutory deductions. Therefore, we need to be careful of how we handle it. I might just call the Auditor General and ask him to do a special audit of the---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Is that within your mandate?

Sen. M. Kajwang': Yes, Mr. Deputy Speaker, Sir. It will be within our mandate.

The Deputy Speaker (Sen. (Prof.) Kindiki): If it is within your mandate, you must do your job.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, there is that approach but on the other hand, internally and administratively, we have got some procedures and some processes where one cannot access cash if they have not accounted for the previous money. I would want to encourage that we first exhaust the internal mechanisms because when the Auditor General does a special report, it will be public and it will be huge ridicule if the country will establish that we are committing the same evils that we are criticising others of committing.

(Loud consultations)

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. What is it Sen. Sakaja?

Sen. Sakaja: Mr. Deputy Speaker, Sir, is it in order for the distinguished Chairperson of the Committee on County Public Accounts and Investments, who demands accountability from governors on behalf of this House, to allude to the fact that we might not want ours to be public yet we want the governors to come in public? What is good for the goose must be good for the gander. Is he in order? That insinuation should not be left hanging.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, Sen. M. Kajwang' was very clear. He is suggesting internal administrative approaches. This is something that can be canvassed between yourself and his Committee outside the Chamber when he follows up on your concerns. I see many other requests.

Proceed, Senator for Kitui County.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. I stand to seek clarification on this matter. Usually, when accounts for a quarter are credited with additional funds, a person must satisfy both the Clerks and the Kenya Revenue Authority (KRA) that he or she has cleared accounts for the previous quota. How come we are dealing with situations

where money running into millions of shillings has been credited to accounts which statutory deductions had not been remitted?

The Deputy Speaker (Sen. (Prof.) Kindiki): The report by the Chairperson of the County Public Accounts and Investments Committee (CPAIC) touched on many things. This one item about the predicaments in the office of the Senator for Nairobi and the Senator for Machakos is just one of them. We may not have the time to exhaust any of these items. Therefore, the queries and clarifications that are being sought should be broadly on the various parts of the report so that we do not dwell on this. I am about to ask that we move on to the next item. However, let us hear a few more Senators.

Proceed, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. Mine is a brief point. The Chairperson of CPAIC has said that he has the responsibility to look at the accounts of the offices of the Senators, which is very good. However, could he also check with the administration of Parliament because the remittance is normally not on time? If a person files a return a week late, they have to pay a penalty to the KRA, the National Hospital Insurance Fund (NHIF) and all the other statutory bodies.

Could the Chairperson check with the administration of Parliament so that they are ready to meet these penalties which are imposed routinely because of late remittances?

Sen. Seneta: Mr. Deputy Speaker, Sir, on the same note, this Committee should look at the issues of statutory deductions and remittance of the county personnel not only in the Senators offices but also those who work in our counties. It is an issue that should be taken very seriously. Again, we also need to engage other agencies like the Ethics and Anti-Corruption Commission (EACC). If a person has not remitted deductions for staff working under him or her, it is a criminal offence that should be taken up by the EACC.

The Parliamentary Service Commission (PSC) should also follow up. There is no way their staff can be paid salaries and their deductions are not remitted. This Committee should look into this.

Mr. Deputy Speaker, Sir, I brought a Petition last week on the statutory deductions of staff of the Nol-Turesh Water and Sanitation Company which had not been submitted for nine months. This has brought a lot of suffering to our people. Some have loans in the banks and others are not able to access medical assistance because they have not remitted money to the NHIF. Therefore, this is an issue that must be handled by this Committee immediately.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I want to raise the issue of the Integrated Finance Management System (IFMIS) and the need to demystify it.

In the Eleventh Parliament, there were discussions that took place about IFMIS and how it is the big link through which money is taken to the counties and utilised. At the county level, it could be that counties are not able to tinker or do something about it. However, it is amazing that almost six years later, the same money sent to counties seems to disappear and is not accounted for. They need to have a financial and management system in place to cover this. I recommend that CPAIC should try, in the next session, to do a proper audit even if it means having a special Committee from this House which will go round the counties and do a special audit of IFMIS to detect the missing link and why we still have problems with the System almost six years after devolution.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you, for keeping it short.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. First, I congratulate Sen. M. Kajwang, the Chairperson of CPAIC for bringing quite a comprehensive report. Given the role of CPAIC as the watchdog for the public purse, we needed to interrogate his report a bit further to ensure we have everything under control with regards to public, county and appropriation expenditure. This is the reason this is one of the Committee's report that needs the attention of this House. This is because it establishes fiduciary and other projects based accountability on behalf of the people of Kenya.

Mr. Deputy Speaker, Sir, I have noted one thing with this report. I know that previous reports have not been debated as much as today's report. Just like you mentioned, we do not want this to be an exercise of ticking the boxes.

It is important for us to know some of the unfinished work. I know that the Senator has alluded to some of the county public investments scrutiny that they have done. He has alluded to how they have examined, some of the statements and such things. However, we need to know other outstanding issues so that we can follow them up in the next report.

Mr. Deputy Speaker, Sir, I was hoping that this report will follow the mandate of the Committee as opposed to just saying how many sittings they have had and the statements they have examined so that we look at the outcome *vis-a-vis* the mandate of the Committee. I would have liked to hear, for example, how the Committee scrutinized public accounts and investments, projects, statements or the report of the Auditor-General. That said, this is one of the best reports I have listened to so far. I know there was a previous report where a Committee sat 45 times with no outcome. When a Committee sits 45 times, is it an end in itself? This is because the responses to statements sought, petitions and Bills before the Committee may not have been executed. It is about time we start to look at results and outcomes as opposed to the process of committees.

I congratulate Sen. M. Kajwang because his report had a lot of content. I hope that in the future it will be big on scrutiny to the county public investment and appropriation accounts and examinations of some of the investments that the country is making.

The Senate Minority Leader (Sen. Orenge): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Senate Minority Leader?

The Senate Minority Leader (Sen. Orenge): Mr. Deputy Speaker, Sir, I have a complaint. I pressed my light to be recognized and when they gave the Member a chance to speak, they switched me off. I am raising this because last week I sat here throughout and the same thing happened. I was on top of the list---

The Deputy Speaker (Sen. (Prof.) Kindiki): Ordinarily, Senate Minority Leader, your office requires that sometimes you speak first and other times you speak last. On this, I had seen your name. Regardless of where your name was, by virtue of your office, I would have given you a chance. I just felt that you should be the last one to speak before the Chair by virtue of your office.

The Senate Minority Leader (Sen. Orenge): Mr. Deputy Speaker, Sir, I do not give myself any special privileges.

The Deputy Speaker (Sen. (Prof.) Kindiki): Would you like to speak immediately?

The Senate Minority Leader (Sen. Orengo): Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, this is a very good report because it goes a little bit beyond the requirements of Standing Order No. 51(b). The work of this Committee is very important to Parliament as a whole and not just to the Senate.

If you look at Article 229 of the Constitution, the requirements of debate and approval or disapproval of the Auditor-General's report after consideration by the Senate or the National Assembly is on mandatory terms. It is not just in mandatory terms, but also time bound. It provides that as soon as the reports are tabled, they should be debated within three months. I thought the Committee was coming up with very practical solutions. If we cannot execute this mandate of oversight and use the office of the Auditor-General effectively, then under the Constitution, we may fail one of our core functions, particularly in relations to counties.

Mr. Deputy Speaker, Sir, I want to suggest, subject to any directions that you may give and given the fact that this is very good report in terms of giving us a way forward on how to consider it, will it be in order if this report was taken before the Senate Business Committee (SBC), together with the leadership of that Committee, to find out a practical way of dealing with these Auditor-General's reports? The SBS should pronounce itself when it comes to suggestions on how to deal with the many reports within the time limited and specifically times as stated out in the Constitution.

Some also require legislation, probably, because the Constitution says after discussion and debate, Parliament shall take appropriate action. So in effect, it is a very important tool for Parliament. This is because we do not just debate. The Constitution says that Parliament should take appropriate action. How we do it is incumbent upon us. I think we should reach some consensus. In the last Senate, I cannot consider ourselves to have taken any appropriate action that is compulsive and cohesive in terms of the counties and their work in so far as expenditure and financial management of public revenue is concerned. Is it not appropriate to look at some of the practical suggestions which have been made by the Committee? As I said, this is a good report that goes beyond what is provided for under Standing Order No. 51(b).

The Deputy Speaker (Sen. (Prof.) Kindiki): Finally, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir. If you speak last most of your points might have been spoken by others. However, let me address myself to a few ones that I think have not been touched by my colleagues.

We are talking about audited reports of the Financial Year 2013/2014. This is what we used to appropriating revenue in the Finance, Commerce and Budget Committee. It is the only audited accounts we received from the National Assembly. How are we better off?

I really commend Sen. M. Kajwang' for doing a good job and tabling the report before us. It was not easy for him and his team to have held 91 sittings without a quorum hitch. However, with all that hard work, they are still dealing with accounts of 2013/2014 and 2014/2015 financial years. So, in as much as an audit report is historical and not proactive, if we are four years behind, this is something unacceptable. Therefore, my request to this House is to consider Sen. M. Kajwang's request to extend the Committee's time, so that these things can be expedited. We could give them a specific period of time

so that we conclude the historical issues and be able to address the current audited reports.

Why is the Kenya Revenue Authority (KRA) failing Senators now? Why were they not receiving returns from the former Senators? Sen. M. Kajwang' needs to question them because they have failed in their duty to ensure that they do what they ought to have done.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. M. Kajwang', I will give you just three minutes to conclude. We have taken a lot of time on this issue. We still have one more Statement from another Committee. After that, I will give directions having listened to the interventions? I need to give some guidance on one or two issues.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I only have three issues which I will address in three minutes.

I take note and appreciate the comments by the Members of this House, particularly on the issues of statutory deductions and delayed remittances. That is something that as I had indicated, we will first try to deal with internally and administratively before we go out to enlist the help of the Auditor-General. However, we will need to have a conversation with the KRA and some of these bodies to find out why sitting Senators are suffering, yet the perpetrators of those crimes are well known.

Secondly, the CPAIC is sessional. There are only two sessional Committees in this House; that is, the CPAIC and the Committee on Delegated Legislation. Allow me because when we go on recess then that will mark the end of the term of the CPAIC as a sessional committee and we will be required to reconstitute it. However, I want to assure the House that sessional committees usually do an end of session report and that report is usually taken to the Liaison Committee which then considers it. If it deems it fit to bring it back to the House, they will do so. Probably, we need to amend our Standing Orders to allow the end of session report to come directly to the House rather than going to the Liaison Committee for consideration.

I also want to agree with the Senate Minority Leader, Sen. Orengo, on the engagement with the SBC. When we were in Uasin Gishu County, I presented to the SBC some of the initiatives that I have reported again to the House today. We had agreed that we will schedule another meeting to have a deeper discussion on the implications of the proposals that I am making. So, that proposal is very welcome. I hope we can do it quickly before the life of this Committee dies.

Finally, Mr. Deputy Speaker, Sir, I want to thank this House for entrusting me with that responsibility to lead this particular Committee. There have been serious challenges. Some of them have been expressed by Sen. Farhiya. When we come from a retreat and we have spent 12 hours in a meeting, and we come out congratulating ourselves, the question is always for which year was that audit report and that deflates us. We spend an entire weekend in Mombasa dealing with 2013/2014 audited accounts. We are not yet out of the woods. However, I believe that there is real commitment and we are seeing better cooperation from governors and the Auditor-General. I hope that in the next and subsequent sessions, we will be able to do much.

Mr. Deputy Speaker, Sir, I thank the House. I hope that when we come back in the next session when we reconstitute the Committee, I still offer myself to continue doing this tough job.

Sen. Orengo, the Senate Minority Leader, talked about the three months within which we are supposed to debate these reports. However, there is a black hole between the time the Auditor-General submits his report to the House and to the time Parliament adopts the report. That black hole is dangerous. This means that we sitting in those committees, can change the rules at will. We can be opaque and do all sorts of things. It would be important if players are coming into a game when they know the rules of the game. It will be our responsibility, as a Committee and the Senate, to bring to an end that opacity which sometimes makes reports stay for far too long.

Thank you, Mr. Deputy Speaker, Sir. I take note of all the comments made by the other Senators.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. M. Kajwang'. If I was not sitting where I am sitting, I would have applauded you for the very good report and the good job that you have done.

(Applause)

I listened to you very carefully. As the Senate Minority Deputy Leader said, the recommendations are very practical and are at the heart of our job here.

When all is said and done, what we talk about in this Chamber, we should ensure two things; that counties are resourced and the resources that go there are used to benefit the people. If we do not achieve that, then we have no business being in town. I want to thank you Sen. M. Kajwang'. I think the quality of the recommendations is very good. I noted so many of them and, therefore, Sen. M. Kajwang', you have done this House proud.

Having said that, Hon. Senators, one sticky issue - even as the Chairman and many of those who spoke about this have accepted - is that, we are engaged or the Committee is engaged in a historical process. Therefore, the utility of these very powerful, useful and good reports may be overtaken by events because if we are still looking at 2013 and we are now approaching 2019, I find no other description rather than to say that the Committee is engaged in archaeology - excavation of historical facts.

This is the work of paleontologists and, therefore, in short, Senators - this I say with a lot of conviction and I believe this conviction is shared by all of us - if we continue this way, whereby we are looking at six years back and tabling and discussing that as the basis of accountability for counties, there is no difference between that and discussing - if I may say - the business of county "X" when Vasco Da Gama was the governor.

This is exactly what we are trying to do. It is like discussing a certain county and its operations when Vasco Da Gama was the governor. Therefore, having listened to the concerns, comments and the beautiful report from the Chairman of the Sessional Committee on County Public Accounts and Investment Committee (CPAIC), I would like to invoke Standing Order No.1, because that way, we can make certain directives as we are about to. It states-

“In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker”.

The words “expressly provided for”, in my view, does not just mean a matter not addressed by the Standing Orders. Standing Order No.1 can be applied even if the same matter to which the Standing Order is being applied, the same matter has been provided for, but it is not expressly provided for. So, that “expressly provided for” means that the provision could be there, but it is not express in its relationship to the matter to which it is being applied.

That is why the law keeps on saying “notwithstanding any other section or provision on this matter”. Therefore, I invoke Standing Order No.1 and direct that the report that has just been presented by the Chairperson of CPAIC be supplied to the Senate Business Committee (SBC) as requested by the Senate Minority Leader for further action, so that we do not lose these very good recommendations just because the Standing Orders do not require Sen. M. Kajwang’ to file their report with the SBC.

Secondly, I direct - again notwithstanding any other action that may be taken in accordance with our Standing Orders - pursuant to Standing Order No.1, that the end of Session Report from the same Committee be taken in accordance with our Standing Orders, that report be tabled in this House for debate and further action.

It is so ordered.

(Applause)

Very well, Senators. Before we hear the last Statement for the day from the Chairperson of the Sessional Committee on Delegated Legislation, in exercise of the power of the Speaker under Standing Order No.40 (3), I direct that the following items appearing on the Order Paper be deferred for various reasons, mainly; that we cannot, for example, technically carry out Division for many of these items and secondly, we may not have enough personnel at the Speaker’s Panel to conduct a Committee of the Whole for the remainder of today’s sitting. Accordingly, I direct that Order No.8 be deferred. Further, I direct that Orders No.9, 10, 11, 12 and 13 be also deferred.

BILLS

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

THE URBAN AREAS AND CITIES (AMENDMENT) BILL
(SENATE BILLS NO. 4 OF 2018)

(Committee of the Whole deferred)

The Deputy Speaker (Sen. (Prof.) Kindiki): Finally, once the Chairperson of the Sessional Committee on Delegated Legislation completes their Statement and observations thereunder, the next Order to be called out will be Order No.14 and the rest of the items will follow depending on the opportunity we have.

Very well, proceed Sen. Farhiya.

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

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

STATEMENTACTIVITIES OF THE SESSIONAL COMMITTEE
ON DELEGATED LEGISLATION

Sen. Farhiya: Thank you, Madam Temporary Speaker. I want to give a Statement relating to the activities of the Sessional Committee on Delegated Legislation pursuant to Standing Order No.51 for the period between 11th January to 4th December 2018.

Standing Order No.51(1)(b) provides-

“A Committee Chairperson-

(b) shall, at least once in every three months, on such day as shall be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a Statement relating to the activities of the Committee.”

In fulfillment of this provision, I wish to make a Statement regarding the activities of the Sessional Committee on Delegated Legislation for the period, 11th January to 4th December, 2018.

Madam Temporary Speaker, the Sessional Committee on Delegated Legislation was constituted in December 2017 during the first Session of the Twelfth Parliament pursuant to the provision of the Senate Standing Order No.219.

The Sessional Committee on Delegated Legislation is established under Standing Order No.221 and it is mandated to consider all statutory instruments submitted to the Senate and ensure conformity with the provisions of the Constitution and any other law.

This Committee, established by the Statutory Instruments Act of 2013; the provision of Section 13 requires that the Committee carries out scrutiny of any statutory instruments to be guided by the principles of good governance, rule of law and in particular, consider the statutory instruments.

There are a couple of things we need to consider but at this point, I would not wish to bore the House because they are all stated in the Standing Orders. Therefore, I will proceed to the next agenda given the time constraint.

Madam Temporary Speaker, during the period under review, the Committee held 31 sittings and one induction workshop. The Committee attended two workshops organised by other Government agencies, including the consultative workshop on Alternative Dispute Resolution (ADR) regulation by the Ministry of Devolution and ASAL Areas and the Law Society of Kenya (LSK) Annual Conference.

Madam Temporary Speaker, on reporting the activities of the Committee, I wish to provide the details of each activity as follows.

The following Statutory Instruments were considered by the Committee. One, Traffic (Driving Schools and Driving Instructors) Rules 2018. The authority giving the regulations is the Ministry of Transport, Infrastructure, Housing and Urban Development and the National Transport and Safety Authority (NTSA). The legal status of publication is LM81/2018 on 26th April, 2018. It was tabled in this House on 31st July, 2018 and the deadline for submission was 8th November, 2018. The status is that the Committee met and directed that the NTSA should conduct adequate public participation and republish the regulations. That has been dispensed with until they do what is required.

Madam Temporary Speaker, the second regulation that we considered was The Public Finance Management, Senate Monitoring and Evaluation Regulations 2018, submitted by the Parliamentary Service Commission (PSC) and published as reference No.LM71/2018 on 21st March, 2018. It was tabled in this House on 27th March, 2018. The deadline was 3rd May, 2018 and it was approved by the Committee on 9th April, 2018. However, these regulations were annulled by the National Assembly Committee on 26th June, 2018.

Madam Temporary Speaker, the third regulations that we considered was the NTSA Commercial Vehicles Regulations 2018 by the Ministry of Transport, Infrastructure, Housing and Urban Development and the NTSA. Let me just leave you with the other details. This document was approved on 30th April, 2018.

Madam Temporary Speaker, the fourth regulation that we considered was the Land Regulation General Order 2017, by the Ministry of Lands tabled in this House on 7th December, 2017. The deadline was 30th June, 2018 and the Committee approved this regulation on 16th May, 2018.

Madam Temporary Speaker, the fifth regulation that we considered was the Land Registration Units Order 2017, by the Ministry of Lands. It was published on 22nd January, 2017 and tabled in this House on 7th December, 2017, with the deadline being 30th June, 2018. It was approved by 16th May, 2018.

Madam Temporary Speaker, the other activity we did was statutory instruments for pre-publication scrutiny and we handled three of them. The first was the Intergovernmental Alternative Dispute Resolution (ADR) Regulations 2018 by the Ministry of Devolution and ASAL Areas. This regulation was not gazetted; so it was just pre-publication discussion. This happened on 6th February, 2018. A validation workshop that involved committees of both Houses was held on 22nd to 24th March, 2018. The Cabinet Secretary (CS) for Devolution and ASAL Areas should proceed with processing of the regulation in accordance with the Statutory Instruments Act.

Madam Temporary Speaker, the second instrument that was brought to our Committee for pre-publication scrutiny was The Coffee General Regulations 2018 by the Ministry of Agriculture and Irrigation. It is not yet gazetted and we received it on 6th July, 2018. The Committee met the Sub-Sector Implementation Committee on 14th November, 2018. The recommendation of the Committee was that the CS for Agriculture and Irrigation should proceed with the processing of the regulations in accordance with the Statutory Instruments Act.

Madam Temporary Speaker, the third instrument was the Coffee Exchange Regulations 2018 by the Ministry of Agriculture and Irrigation. These regulations have also not yet been gazetted, but they were received by the Committee on 6th July, 2018. The Committee also met the Sub-Sector Implementation Committee on 14th November, 2018. The CS for Agriculture and Irrigation should proceed with the processing of the regulations in accordance to the Statutory Instruments Act.

Madam Temporary Speaker, the other activity by the Committee is benchmarking visit by county assemblies' Committee on Delegated Legislation, facilitated by the Committee. I will just read one objective – because most of the things were the same – and then I will only mention the committees.

The first one was Murang'a County Assembly Committee on Delegated Legislation, which came for the visit on 1st August, 2018. The objective and purpose of

the visit was to learn best practices from how the Senate Committee conducts its business. They were also interested in sharing experiences and challenges faced in the approval of subsidiary legislation. There was a general concern that the county executive arm of the county government has been making regulations and using the said regulations without seeking the approval of respective county assemblies. This must stop.

Consequently, Madam Temporary Speaker, most of the other committee visits had similar objectives and their remarks were almost similar. Therefore, for the sake of saving time, let me mention the other county assemblies that visited and the dates they visited; given that the stories are the same. Bungoma County Assembly Committee on Delegated Legislation visited on 17th October 2018; the Kisumu County Assembly Committee on Delegated Legislation visited on 21st November, 2018 and the Kisii County Assembly Committee on Delegated Legislation visited on 28th November, 2018.

Given that this Committee does not do Bills and stuff like that, we do not carry out any public participation. However, we had a challenge where we thought what was adequate in terms of public participation in our review of statutory instruments that came to our attention. It was the Committee's observation that there is no clear framework in terms of what constitutes sufficient threshold for public participation. We recommend that Parliament should fast-track the enactment of the Public Participation Bill, 2018 to remedy the situation. When that happens, there will be a clear framework on how that needs to be done.

There were two stakeholder engagements that we did. As already mentioned, there was the one with the Ministry of Devolution and ASAL Areas, which was reviewing of Alternative Dispute Resolution (ADR). The other one was with the Law Society of Kenya (LSK) on the need to involve Parliament in the work of LSK, the need for the Committee to pay close attention to the concept of public participation in law making, collaboration between the Judiciary and Parliament in regulation making and the need to provide a legal framework that allows Kenyan lawyers to practice within the East Africa Community (EAC). As aforementioned, we met the coffee sub-sector, the National Transport and Safety Authority (NTSA) and the Ministry of Lands on the regulation of land.

On planned activities, we have one benchmarking activity that was scheduled in November 2018, but did not materialize due to lack of funds. We have a workshop with selected Ministries of the national Executive, because there are Bills that are passed all the time, yet the regulations have not been forthcoming from the Ministries. We want to hold a meeting with the concerned Ministries that are devolved to ensure that regulations are made.

These Ministries include the Ministry of Devolution and ASAL Areas, the Ministry of Health, the Ministry of Agriculture and Irrigation, the Ministry of Transport and Infrastructure Development, the Ministry of Lands, the Ministry of Education, the Ministry of Information, Communication and Technology, the Ministry of Energy, the Ministry of Environment and Forestry, the Ministry of Labour and Social Protection and the Ministry of Sports and Heritage. We plan to meet these Ministries in March to ensure that there are regulations that support the Bills that we pass, so that the implementation is not haphazard.

We did county visits as well. We visited Trans Nzoia, West Pokot, Busia and Bungoma counties. We had discussions on issues that are impacting in the Committee.

There is a second round visit, which we intend to have in April. The counties include Homa Bay, Kisii, Migori and Nyamira. We also want to have a workshop with the county assemblies' chairpersons of the committees on delegated legislation in May 2019. The activity will bring all the respective chairpersons and vice chairpersons from all the 47 counties.

We will also have the Regulatory Impact Assessment Training for the Members of the Committee on Delegated Legislation, which will be held on---

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, you may have to shorten because we are running out of time. Try your best.

Sen. Farhiya: Madam Temporary Speaker, I am almost done; I am on the second-last page. The Regulatory Impact Assessment Training for the Members of the Committee on Delegated Legislation will take place in November, 2019. This activity involves training of five Committee members and two officers.

The challenges that the Committee faced include the lack of funding and delays in Exchequer releases. Our recommendation is that Parliament should consider revisiting current guidelines relating to Exchequer releases, with the aim of providing for an effective and efficient mechanism that ensures that the activities of the Committee are funded throughout the financial year.

Another challenge we had was lack of clear feedback from the ministries on processing regulations after pre-publication scrutiny. Our recommendation is that Parliament should consider introducing an amendment to *The Statutory Instruments Act* of 2013 that provides for---

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, if you have to consult, please, do so in low tones.

Sen. Farhiya: Thank you, Madam Temporary Speaker. There was lack of legal and institutional framework on public participation, which as I have already mentioned, can be solved by fast-tracking of the Bill that is in Parliament.

The other challenge is that the power allowing the regulatory making authority to gazette or publish regulation before seeking approval of Parliament gives the regulatory making bodies the incentive to ignore Parliament's approval. Parliament should consider introducing stringent requirements that obligate the regulatory making authority to forward the regulation to Parliament before gazettelement or publishing.

The last challenge is that sometimes the Committee lacks quorum. Perhaps, it is the same fate as other committees, which at times also have quorum challenges.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we must appreciate that time is not on our side. For that reason, we may only allow one or two comments before we continue to the next Order.

Sen. M. Kajwang: Madam Temporary Speaker, allow me to congratulate the Committee on Delegated Legislation, which is also a Sessional Committee, for a very thorough report and a job well done. Sen. Farhiya has indicated that there are cases when the Senate adopted some regulations and they were annulled by the National Assembly. Without pre-empting debate, because I have seen *The Statutory Instruments*

(Amendment) Bill on the Order Paper, I want to get an update or be informed on what happens in that case. Have we attempted to go into mediation? This is with respect to the Public Finance Management regulations on the Monitoring and Evaluation Fund for the Senate.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Senator for Turkana County, are you in a position to prosecute your Statement?

Sen. (Prof.) Ekal: Yes, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Senator, just one minute. I thought we were on the next Order. If it is on the same, then the Senator for Siaya will have the floor.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I wish to congratulate Sen. Farhiya and the Committee on Delegated Legislation for that exhaustive report. It follows quickly on the feet of the report that was given by the Committee on County Public Accounts and Investments.

Sometimes it is lost to us why this Committee is very important. In fact, this Committee protects the authority of Parliament to make laws. This is because the Constitution says that no other body than those who are given that authority to make law or any regulations with the force of law, can do it without going through Parliament, and the parameters placed by Parliament. The only body that I know under the Constitution which can make laws and does not come under that remit are the county assemblies. However, even the county assemblies, in the laws they make, there are parameters within which they are required under the Constitution, so that they do not invade the territory of Parliament.

I plead with this Committee, although probably they lack the resources, that what should be happening is that for every legislation passed by county assemblies and regulations made by any State organ or body that is enabled by Parliament to make regulations, they need to get themselves seized of. They need to get themselves seized of the work of the county assemblies in terms of legislation and state organs, including Cabinet Secretaries. Sometimes they make regulations that actually go opposite of what the law prescribes. In fact, you will find that a lot of times, when it skips the notice of Parliament and the courts, the Cabinet Secretaries and Commissions make decisions that have got the force of law, without following what is spelt out in Article 94(6) of the Constitution.

I want to beg this Committee that you are our protector. You protect our territory because the legislative authority is only vested in Parliament and the county assemblies.

There should be no other law making body, except those that we have authorized. However, once we have authorized any state organ, anybody, or State officer, we should look into those regulations to ensure that they do not go beyond what they are commanded.

Madam Temporary Speaker, for the benefit of the Committee, the Constitution requires of Parliament that while we give authority to any organ to make laws, we must state the extent of that authority in the law. The regulations must fall within the law. Sometimes, we overlook this Committee because the other committees are more attractive. They deal with matters, which as far as the public is concerned, want to hear

what we have to say. However, in terms of safeguarding what the Constitution says, this is one of the most important committees of this House.

Madam Temporary Speaker, this Committee can also help us with our siblings in the National Assembly. The Constitution says that a law is not law until it is enacted by Parliament. It cannot become a law even if it has gone through the county and the National Assembly. We should review those laws because what is happening is that when we passed things to the National Assembly, including the matters that are now before them that they have annulled; we similarly can take it up to ourselves to ensure that anything that is enacted into a law, must have the participation of the Senate. Even if something that does not concern the counties, the Constitution still requires the Speaker of the Senate at least to have some intervention under Article 110.

Sen. Farhiya, I just want to encourage this Committee. In fact, in my previous membership of the other House, I always preferred to be a member of this Committee because of its importance. My Chairman in the Committee on Labour and Social Welfare knows that many times, laws are annulled by courts because ministers have gone beyond the authority by making regulations which do not conform with the law.

I thank the Committee for that report. I believe they should be given more resources and personnel to look at the laws, which are being made by the county assemblies and regulations generally, which are being made particularly by Cabinet Secretaries and Commissions. We have now a Government by Commissions. They also have the power to make regulations. Sometimes, they make regulations which go beyond their mandate.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. I would like to give the next speakers just one minute each because of time.

Sen. Cherargei, proceed.

Sen. Cherargei: Madam Temporary Speaker, thank you for giving me this opportunity. I know Sen. Orenge has deeply canvassed on this matter. I would want to thank the Committee on Delegated Legislation and Sen. Farhiya for that elaborate presentation of the Committee work.

As the Chairperson of the Committee on Justice, Legal and Human Rights, there are so many issues. I agree entirely with Sen. Orenge that there are many issues that come to my Committee that always need the input of the Committee on Delegated Legislation. Therefore, I support the suggestion that they need more resources and manpower to effectively deal with the many issues before them.

Madam Temporary Speaker, last time, there were so many issues that we discussed with the Chairperson of the Committee. We tried to follow-up on some of them with the National Assembly so that they could execute them.

Finally, Madam Temporary Speaker, I hope that when we resume next session, the Committee on Justice, Legal and Human Rights and the Committee on Delegated Legislation will sit together and agree on the way forward. This will make it easier to do follow-up of some of these issues alluded to by Sen. Orenge and other colleagues.

The Ministry of Devolution and ASALS is formulating the policy framework on the economic blocs being mooted by counties. We expect the Committee on Delegated Legislation to look into that policy and regulations that the Cabinet Secretary in charge of Devolution and ASALS has formulated.

Thank you.

Sen. Halake: Thank you, Madam Temporary Speaker. I rise to congratulate the Vice-Chairperson of Committee on Delegated Legislation. As Sen. Orengo said, this is a very important Committee. One would be able to facilitate some of the things that have been the peg mind, so to speak, with regard to legislation and statutory instruments.

I had a similar question to the Senator of Homa Bay with regard to what happens in certain cases. For example, what happens when Bills that have been passed in this House are deemed as money Bills? Does the Committee on Delegated Legislation have a role to play in helping in formulation of legal instruments to decipher some of these things? There were 38 Bills that were passed in this House, but they were deemed as money Bills in the 'lower' House.

Madam Temporary Speaker, allow me to congratulate the team for the work and the comprehensive report.

The Temporary Speaker (Sen. Nyamunga): Sen. (Eng.) Hargura Godana for Marsabit County, proceed.

Sen. (Eng.) Hargura: Thank you, Madam Temporary Speaker. Allow me to congratulate Sen. Farhiya for the detailed report.

Madam Temporary Speaker, the importance of the Committee is in as far as making sure that the regulations in whatever Bills we pass are brought to this House. Last week, we were debating the amendments to the Statutory Instruments Act. It was a pity that the Senate had been left out in the process of checking the regulation.

Madam Temporary Speaker, we pass good laws with very good and clear intentions. However, when we give that responsibility to another body or other office to come up with a regulation and we do not see it, then we are not sure whether that regulation is actually addressing what we had in mind. So, it is good to make sure that the Statutory Instruments Act is amended. I urge the Committee to follow up all the regulations which come up, so that the spirit of what we pass here is not lost.

Thank you.

Sen. Wetangula: Thank you, Madam Temporary Speaker. Let me also add my voice to congratulate Sen. Farhiya for a very elaborate and well-thought-out report. I seat in the Committee on Finance and Budget with Sen. Farhiya and she is very thorough in whatever she does.

The report outlines many issues and challenges but I just want to emphasise the point that Sen. Orengo touched on; that we pass laws and many of those laws we say very clearly that regulations shall be promulgated by various ministries or authorities. In many cases, those regulations and rules are never promulgated. Sometimes they are promulgated but never find their way to us.

It will also be good for the Committee to carry out a check on each legislation that we pass. This can be helped by the Clerks-at-the-Table and the research teams, so that where regulations are supposed to be promulgated by any authority under the authority of that law, it must be done and presented to Parliament because the devil is always in the details.

A lot of injustice is done to *wananchi* out there by illegal regulations and by-laws that are always passed and never subjected to the scrutiny of Parliament that has the authority to make law. I want to also encourage that this be done by both the Committee

on Delegated Legislation and the Committee on Justice, Legal Affairs and Human Rights to help bring up better laws in the country.

The Temporary Speaker (Sen. Nyamunga): Sen. (Prof.) Ekal. Do you want to make a comment on the same Statement?

Sen. (Prof.) Ekal: I wanted to make a comment and also---

The Temporary Speaker (Sen. Nyamunga): Just go ahead and make the Statement first.

Sen. (Prof.) Ekal: Do I contribute?

The Temporary Speaker (Sen. Nyamunga): Yes, on this Statement and not on your Statement.

Sen. (Prof.) Ekal: Thank you, Madam Temporary Speaker, for giving me the chance also to congratulate Sen. Farhiya for work well done. It is clear that a lot of what we do is done by committees. Here we discuss but not much comes to fruition other than being in the newspapers but in committees, we pass laws and those laws are the ones that are effected in the country.

It is the committees that put power to the laws that we pass. In this situation where the Senate committee Members put their heads down on a particular situation, that brings out what we need to bring to the public. If the Committee does not go to work as we have seen now, then not much is going to be accomplished.

In some of our counties such as Turkana now and Wajir---

The Temporary Speaker (Sen. Nyamunga): Sen. (Prof.) Ekal your time is up. You may resume your seat.

Hon. Senators, I defer Statement 1(a) to tomorrow.

INVASION AND TAKE-OVER OF KAPETADIYE DAM BY
PASTORALISTS FROM A NEIGHBOURING COUNTRY

(Statement deferred)

We want to proceed with the other business of the House, and that is Order No.14. What is the point of order, Sen. M. Kajwang'?

ACTIVITIES OF THE SESSIONAL COMMITTEE
ON DELEGATED LEGISLATION

Sen. M. Kajwang': Madam Temporary Speaker, I want to beg your indulgence that Sen. Farhiya, who read the Statement, could also talk to some of the issues that we have raised.

The Temporary Speaker (Sen. Nyamunga): That was an oversight. Sen. Farhiya you can reply or make the last comments on your Statement.

Sen. Farhiya: Thank you, Madam Speaker. One of the amendments that are on the Floor of this House as mentioned by Sen. (Eng.) Hargura, it is that the National Assembly actually wants to take away our role.

The original Bill was that any regulation be tabled in both Houses and then the Clerks of each House decide whether this is for this Committee or not. They have deleted that and only said, the relevant House, but regulations should go to the National

Assembly. How will the Senate know that this regulation was meant for the Senate or the National Assembly, if it is not brought to our Clerk? That is one of the things that we are trying to amend.

This Committee initiated two Bills; the Statutory Amendment Act to correct that anomaly and, the County Statutory Instruments Bill, 2018, which is supposed to address the statutory review process for the county assemblies.

One of the issues as you have all mentioned is that, the amendment involved both Houses yet it was assented to even before coming to this House. Those are some of the challenges that the Committee has and that is the anomaly we are trying to address through the Bill that we are again amending, so that we take it back to the original bit.

In terms of the Monitoring and Evaluation Fund that was annulled, we asked that question and it was decided at that point that the House leadership takes over in terms of dealing with the other House, but our Chair tried to reach out to the other Chair even before those regulations were tabled in that other Committee, to speak to them so that they get the way forward. Despite that, they still annulled. This is part of the problem of now trying to make sure that this House is either “dealt with properly” so that we do not have any authority in terms of dealing with that.

In terms of regulation making for all the Bills that have been raised by most of the Senators, that is why we are meeting all those ministries. We have taken all the Bills that were passed in this House that have no regulations. The ministries concerned are the ones we are calling in March to explain to us why they have not made regulations on those ones. We are trying to look for an appropriate date in March that we can meet with them to find out why they have not made those regulations.

This Committee is also trying to empower the county assemblies so that there is a legal framework for them to review and even demand the regulations are also reviewed by the Executive. It is a good idea from the Chairperson of the Judicial Leaders Advisory Council (JLAC) that we have a meeting to discuss a few issues. I have also taken note of the policy on economic blocks. That is something that we will discuss in our Committee since we have not discussed the same before. I hope I have expressed everybody’s concern.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we now move on to Order No.14

BILL

Second Reading

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO.10 OF 2018)

(Sen. Murkomen on 29.11.2018)

(Resumption of debate interrupted on 29.11.2018)

The Temporary Speaker (Sen. Nyamunga): Sen. Irungu Kang'ata had a balance of 13 minutes. I do not see him in the House.

Sen. (Eng.) Mahamud, you may proceed.

Sen. (Eng.) Mahamud: Thank you, Madam Temporary Speaker, for giving me a chance to contribute to this Bill; The County Governments Retirement Scheme Bill (National Assembly Bills No.10 of 2018).

This is a Bill to put in place a retirement benefits scheme to establish the County Government Retirement Scheme for employees in the service of the county governments. A number of people working or employed in the county governments were in the Civil Service before, whereas others were from the defunct local authorities. It is important that we have a new retirement benefits scheme for them and, so the Bill addresses that.

Perusing through the Bill shows that the objects and purpose of the Act is to establish the scheme. Clause 4(1) says-

“There is established the County Government Retirement Scheme”

The Scheme is a body corporate which will, of course, help in dealing with the retirement benefits of the employees there.

Madam Temporary Speaker, who are the beneficiaries or what is the membership of this Scheme? Clause 5 of the Bill states that-

“A public officer or any other person approved by the Board may become a member of the Scheme under the auspices of a sponsor.”

Basically, there are others who are approved, but we do not know. However, for now, these are public officers who work in the county government. This does not, of course, include the Members of County Assembly (MCAs). Initially, my worry was that they were going to bring a scheme which has everybody, including the MCAs. That is the reason a lot of concern was being raised by the Council of Governors (CoG); they did not want to be a part of this. Basically this is only for public servants within the county government.

Madam Temporary Speaker, the Bill talks about a Board of Trustees, which is normal. It also proposes to have a Chief Executive Officer (CEO) of the Scheme under Clause 18. There is also a proposal to have a fund manager – because there will be a fund – under Clause 22(1). The first job of that person will be to implement the investment policy of the Scheme as approved by the Board. Clause 18(2) indicates that the CEO shall be an ex-official of the Board. Clause 22(1) introduces another person called the Custodian of the Scheme, who, in addition to the duties prescribed under the Retirement Benefits Act, shall also receive all the contributions.

Madam Temporary Speaker, Clause 23 introduces somebody referred to as an Administrator. When the Senate Committee on Labour and Social Welfare will be looking at this Bill, they should look at the relationship between the CEO, Fund Manager, Custodian and also the Administrator. This is because there are quite a number of officials who are involved in this. Maybe this is the nature of retirement benefit schemes. Initially, I was of the view that there are too many officials provided for in this Bill.

Madam Temporary Speaker, the Bill also elaborately details the law and how it works when one retires. It also talks of early retirement benefits and membership. It also explains that if one is an employee of the county government, they can join the Scheme. However, if one is currently on an existing public service pension scheme and who has

less than five years to retire, the Bill says one should not join the Scheme. They should wait to be given the benefits through the retirement scheme governing public servants.

Madam Temporary Speaker, Part IV provides for the establishment and management of the County Governments' Retirement Scheme, which shall be administered by the Board in accordance with the Act and other relevant laws. It contains the financial provisions and establishes the County Retirement Scheme Fund. It is a good law because there was no scheme in place earlier and our people who were working in the counties can now have a harmonised scheme. We usually hear a lot of issues outside there because of the existence of the Local Authorities Provident Fund(LAPFUND) and the Local Authorities Pensions Trust (LAPTRUST). This Scheme, therefore, proposes that these are now joined and become part of the Scheme. That is why we can hear some resistance outside there, because schemes that were there before do not want to be swallowed.

Madam Temporary Speaker, Part VI of the Bill contains the Savings and Transitional provisions. Clause 55(3) says-

“A person who, at the commencement date, is an employee of the national government and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid out under the provisions of the Pensions Act and the Widows and Children Pension Act or any other relevant legislation.”

My only worry here is what will happen to that gap from 2013, when civil servants were seconded to the counties? Will that Scheme take care of them? The same applies to people who have been employees of local governments.

Clause 54(4) states that-

“A person who was an employee of a local authority and was a member of the Local Authorities Pensions Trust and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid in accordance with the provisions of the Local Authorities Pensions Trust Rules, 2007 or any other relevant legislation.”

This is in accordance with Legal Notice No. 50. Therefore, if one is remaining with five years or less to retirement, they are not supposed to join, but they should benefit from the LAPTRUST. Is that still in place? These are the gaps the Committee is supposed to look at, so that many people are not locked out.

Madam Temporary Speaker, the members of the LAPFUND and the LAPTRUST, as the umbrella retirement funds, shall be transitioned into the Scheme. All the records of the LAPFUND and LAPTRUST retirement funds shall be transferred into the Scheme Administrator.

Finally, Madam Temporary Speaker, Clause 57(1) of the Bill says that any eligible employee who joined the service or a sponsor on permanent and pensionable terms after the first general elections under the Constitution shall be deemed to be a member of the Scheme with effect from the date of employment.

This is actually joining these together and doing away with those other schemes. We await the report of the Committee. This is a very good Bill. This is the first time it is coming here because of what we have in the country. We need to take care of our people who are working in the counties, those who came from the Civil Service, those who were

previously working in the local authorities and the new ones who are there now, so that they can have benefits when they retire from the public service.

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

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

Of course, the Scheme will be contributory by both the employees and the sponsors or the employer.

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

The Senate Minority Leader (Sen. Orengo): Thank you, Madam Temporary Speaker. After congratulating you on your election as the Temporary Speaker, it is once again a privilege to speak to this Bill while you are on the Chair on your very first day.

From the outset, I support this Bill. As the distinguished Senator from Mandera has indicated, the Bill brings together the two existing schemes under the LAPFUND and the LAPTRUST, which shall be transitioned into this Scheme. This, in effect, is a mandatory Scheme for county employees, both in the executive and in the county assemblies. It is important that it establishes a uniform retirement scheme for the county governments. This is what it should be because, previously, we did not have a mandatory contributory and uniform retirement benefits scheme.

It is also purported to be brought in pursuance of Article 43 of the Constitution, which has two important parts. One is generally for purposes of giving social protection to citizens; while the other component is under Article 43(3), where for those who are needy and poor, there should be provided a form of social security and so on, and so forth.

There is a tendency of invading these pension funds all over the world. If you look at the cases in South Africa, both in the public and the private sectors, there have been scandals on invasion of pension schemes because it is ready money available for those who can access it. In the United States of America (USA), there have also been some scandals in relation to pension schemes in both the private and public sectors.

Some of you may remember that there was someone who had offered to build the tallest building in the city of Nairobi at Uhuru Park, which Wangari Maathai and her colleagues made impossible. In fact, the President, at that time, had laid a foundation stone. If it had been built, it would have been built on funds which had been stolen from a pension fund belonging to the middle group in the United Kingdom (UK). This gentleman finally committed suicide in the high seas when the law caught up with him. He was called Robert Maxwell and he was described as a crook of the century.

(Sen. Wetangula spoke off the record)

Yes, there is a story about it. It is said that when his body was found, he was naked. The mafias do not strip people, especially when it is Italian mafia but there is a whole story about it. It is in the same Mediterranean Sea where the late Princess Diana used to go sailing with a tycoon of Egyptian descent but that is another story.

Our friend, the former Chief Justice talked about Kenya being a bandit economy and to some extent, pension funds always have bandits waiting to plunder those funds. I

am not being abstract. It has happened. If you look at the reports of the Public Accounts Committee in the National Assembly in the past years and the reports on the National Social Security Fund (NSSF) or the National Hospital Insurance Fund (NHIF), you will find that a lot of the money that was made by some individuals in this country was made through invasion of these kinds of funds.

Right now, there is competition as to whether we should have a private administrator or a fund manager from outside managing this Scheme. It is not in the Bill but previously, there were people who were advocating for that to happen. We had those who were saying that this should be purely in the public domain. I think that the debate is still out there on what is the right thing to do. I am saying all these before I go into the specific provisions of the Bill. For this occasion, I will refer to the Engineer as a learned friend because we are going through this Bill clause by clause.

In a country like Kenya, we have to make sure that funds which are generated by the public, whether they are part of the Consolidated Fund, those that go to the National Treasury, a public fund or into a fund like the one being created under this Scheme, are properly protected. There are people out there who are always waiting for this kind of funds or other public funds to make quick bucks. I will dare say that in this country, a lot of the rich people around have raided funds like this be it from the NSSF or the NHIF.

Of course, I have no evidence in regards to the two funds which are being amalgamated. If we did a scrutiny of the richest people in this country, you will find that a lot of them have either made money from public institutions or they have done business with public institutions. Therefore, the fight for the control of this Scheme is a fight that would sometimes find itself in this Chamber or this House or even beyond. Most obviously, it is taking place beyond this Chamber.

I want to persuade us that Kenya will not grow unless we protect these funds. Other than getting money through tax revenue, investment from foreign countries and direct foreign investment as a component of available cash to spur growth, investment through saving is an important component of a national base for spurring development. Therefore, investments like this through savings are not only important for the national economy but also important for individual citizens who contribute to these funds. It is critical, especially in Kenya where we are borrowing, because we cannot raise enough revenue. We borrow locally. We are now going to borrow from China under some very strenuous circumstances; borrowing under the instruments of sovereign bonds which put the country and the economy through a lot of stress. The cheapest money that the Government could have made access to and it is competing for this money with the business sector is such pension funds.

I want to say this without fear of contradiction that in Kenya today, there are people who are making money through plundering such funds, having access to the National Treasury and doing businesses through procurements that are done in a very unsavory way. If you look at South Africa and the fall of the former President, if he was still the President - I would not cite his name because that would go against the Standing Orders - a lot of things being said about the deep state in South Africa are about raiding funds and assets of public institutions. The President and the President's men in South Africa were once such a lot.

South Africa, even under the old apartheid regime, inherited some strong institutions such as the power generating company, the Electricity Supply Commission

(ESKOM), which is almost coming down. The South African Airways was one big giant and it is also going under. In Kenya, if you look at the way institutions that we have across the board are falling apart or experiencing problems, you will realise that it is a function of the economic bandits invading funds which are otherwise established under the law like the one we are trying to have or in the private sector.

In the case of the United Kingdom (UK), the gentleman known as Robert Maxwell actually stole more than £400 million which was workers contribution. Sometimes he was so cocky that he said that the fund belonging to the workers, the mirror group pension fund, belonged to him because the company was his.

Therefore, under this law that we are trying to promulgate, we have to be very careful how it is structured. This is to make sure that there are no loopholes for people to have access to this fund, which should go towards the benefit of, first, as a saving for particular members, second, as a saving which is available for the country as a whole for purposes of economic growth. It also provides availability of money and revenue for growth and third, for purposes of retirement.

My colleague who spoke earlier took us through Clause 3 where the issues that I am speaking to are well set out in the objectives and purpose of the Bill. I am talking about how to avoid having people who have so much power and authority to manipulate such a Fund. My starting point is the powers given to the Cabinet Secretary (CS). This is a Fund contributed to by employees of county governments both in the executive and the assembly. Also, to some extent it will be contributed to by the county governments. It is an offshoot of devolution or an auxiliary structure of the system of Government that we have adopted. To that extent, I do not see why the CS should be the one to appoint the Chairperson, although he or she is appointed amongst the trustees as provided for under Clause 6. However, he who pays the piper calls the tune.

Therefore, I urge that at the amendment stage, the appropriate procedure should be for the trustee to appoint the Chairperson from amongst themselves. Then, for purposes of executing that appointment, the CS would gazette the appointment. However, the appointment should not be made by the CS. He or she is an officer of the national Government while this Fund largely belongs to the employees of the county governments.

To that extent, we have trustees that come from the national Government, that is, the Principal Secretary for Finance and Principal Secretary (PS) in charge of Devolution. All these put together with the appointing authority or power of the CS will, to some extent, give unnecessary control to the national Government. It could be a way of frustrating particular county governments indirectly through a Fund like this.

The persons nominated as trustees by trade unions should be more than two. We should specify the relevant trade union to which the workers of the county executive and assembly belong to. This is also for purposes of clarity because at the time of appointing or nominating the appointees, if it left generally that it should be nominated by the trade unions representing County Public Service Boards (CPSB)--- Again, even the way it is crafted in Clause 6 is not good enough.

On the question of appointments, I would say that the convening of the meeting of the nominating body should be clearer. If it is said that it is just the Council of Governors (CoG), I think there should be an appropriate person and not just a body. Probably for this purpose, it would be better to say the serving Chairman of the CoG.

Clause 7 is on qualifications. Our Constitution talks about meritocracy both in the public service and even we, as Senators, although there is no educational requirements. Parliament is required to make a law providing for educational requirements. I think in the next phase of elections, we will have those qualification requirements even for Members for Parliament.

It would be my prayer that in requiring people to have degrees, so to speak, because it states that one should hold a degree from a recognized university in Kenya. Right now out there, there are many people who are receiving degrees from all over, and they are said to be recognized. I think somewhere in the regulations, there should be provisions that would require somebody who has a degree from a recognized university to have some documentation showing that actually they had been to that university.

It looks like it is possible now for people to go all over the world or even internally and in the neighborhoods, to get all manner of degrees for purposes of qualifying for jobs, including elective ones. I hope that when we come to the Committee of the Whole stage that would be cleared.

The final point that I want to deal with in terms of these appointments is on the Chief Executive Officer (CEO). It looks like so long as he or she is not removed for cause, he or she can serve for as long as he or she has got the goodwill of the board. The board of trustees is required to serve for a term of three years, which is renewable for another term of three years. That second term is not renewable. Sometimes when CEOs stay for too long, they can become the institution.

So, I suggest that where there is a requirement for trustees to serve for a term, maybe for the CEO we could have a term of four years, which is renewable for another four years. He or she should not be in a position to overstay, because then, with the kind of structure that I see in this board, quite easily the board will become the CEO. Every time a new board comes in, the CEO will know all the tricks in the system and may at the end of the day, make it very difficult for the institution to operate.

The most important positions in this old structure are three; the Fund Manager, the Custodian of the Scheme and the Administrator. I like the idea because internally within the management, there are three officers who have got various responsibilities. There is one whose duty is just to receive the funds. The other one becomes the custodian of the funds and, thirdly, there is the administrator, who then opens and maintains accounts for each member and, of course, keeps records. When it comes to payments on retirement, it is the administrator who will be dealing with the many problems that come when somebody is claiming his or her money, when he or she is entitled.

I hope in this new age of technology we will not have a situation like the National Social Security Fund (NSSF) where you had somebody coming from Kapsabet Town claiming his funds here in Nairobi County from NSSF for 10 or 20 years and eventually he dies before receiving his benefits. It is very sad. By the time he gets paid, probably, he would have spent more than what he had saved.

Madam Temporary Speaker, I hope this administrator, who is very important official, will not frustrate the members of this Fund. I hope he or she will work efficiently, so that the concept of mandatory membership would then make sense. When you want to get your benefits and, you again go through such suffering, then it should not become a mandatory scheme. I hope the experience of others under the NSSF in this regard would not arise with this Scheme.

The other provisions that I am very uncomfortable with is Clause 48 which deals with offences. I am not quite comfortable when the punishment attracted under Clause 48 goes up to a sum not in excess of Kshs4 million, or to an imprisonment for a term not exceeding two years. When that relates to an administrator, manager or director in a company which is a sponsor or in relation to the directors of the Scheme itself, I would be comfortable with this particular clause. However, my reading of this provision would also cover even a member who for some reason, would want to frame a charge. Sometimes in the criminal justice system, we come into situations where it is so easy to craft a charge under which somebody can be frustrated.

Those of you who have been charged under the ‘hate speech’ clauses of the Ethics and Anti-corruption Commission Act, you find that sometimes the law can be read so broadly that those who should not be charged in the first place are charged. Similarly, I hope that the provisions that relate to these offences would be looked at more carefully or scrutinized, so that an ordinary member does not find themselves punished to this extent, Kshs5 million or imprisonment for two years, for something which would, probably, have been created by a manager or director in a position to do so. I hope that when the appropriate time comes, we will draw that distinction so that people are not made to suffer.

Madam Temporary Speaker, I support this Bill. However, those who have tried to make a case against this Bill have not convinced me that it should not find favour with this Senate. I have stated my position with regards to certain provisions of this Bill that would require some re-consideration and amendment.

After the year 2013, we really thought Kenya was going in the right direction because the current Constitution had created a new Republic. In fact, when the current Constitution was promulgated, the Grand Coalition Government of former President Kibaki was at that time being referred to as the ‘Third Republic’. Many people felt that we had crossed the Rubicon. We were creating a new country and a new Kenya where we would live by new standards and where we would give our people hope. Unfortunately, there are things that are happening out there that make people think whether having a new Constitution helps at all. There are other people who are thinking that change of leadership, whether through the ballot makes things any better.

There are those who are asking that the debate between the analogue and the digital; who have won? This is because the degree of corruption under the purveyors of the new technological world – although I think at that time characterisation of the other weighing or the competing forces was being digital, it was campaign posturing. However, with those new instruments that were given under the new Constitution, and under the new chapter dealing with leadership and integrity, Kenya should have been a better country than what it is today.

With this, where it goes wrong is when public servants, including the people who we are going to give this responsibility to manage this Fund, begin to create or take these funds into personal treasuries. You know what happened in Congo; what Mobutu did with a rich country like Congo. We have seen South Africa struggling with the effects of a corrupt Government. At least in South Africa, the political forces were in a position to make change happen without a major upheaval and without going to an election.

So, in Kenya, I am really worried the way we are showing Kenyans how the Kenyan leader lives in comparative terms to other leaders in other parts of the world. We

are trying to give a very bad example to our people. We were just being told the other day that – the distinguished Senator for Nairobi was saying – somebody could say that I am paying for beautification in Nairobi from my personal funds and we accept it as a country without questioning.

This is the same thing which Mobutu used to do. He could write one cheque to pay civil servants but the national Treasury would be unable to pay for months, yet one person would be able to do it and he would be praised for it. In Kenya we are reaching a level where we are worshipping money. We must restart with our leaders, including myself. We are worshipping money to the extent that people out there say that if this is what power entails, then if you create a fund like this and you want to go to State House, you must invade that fund or saving.

I must say even the distinguished Senator from Bungoma; the only thing that would stop his journey to State House is that probably he has not stolen enough.

(Laughter)

Let me paraphrase that. He has not stolen at all. If I say that he has not stolen enough, it shows that he has probably stolen and yet he has not stolen at all. However, sometimes even with the race to State House, if you look at all these countries in the Continent of Africa, those who can have a proper contest of power are those who have made money out of the State and from funds like this one.

Therefore, Madam Temporary Speaker, I am hoping that we will one day create a nation that runs the government the way you used to run the Red Cross. If we take anyone to run the Red Cross, he will disappear within one week because there will be nothing to eat. I hope that we could run the Government on the basis that you will sacrifice. The leadership in some of these countries like Singapore and Malaysia, which have made these countries great, is because they have been run as a personal commitment to do justice and good to those countries.

In those countries, those who have not toed the line have found themselves in a lot of problems. I am, therefore, very happy with the punishment that is set out here for those who try to do anything unbecoming. This should be translated to the country as a whole, so that we can build a nation that is true to the ideals that we set out for ourselves in this new Constitution.

Madam Temporary Speaker, with those few remarks, I beg to support and commend this Bill to the Senate.

Thank you very much.

Sen. Wetangula: Thank you, Madam Temporary Speaker, for an opportunity to contribute to this important Bill. We have had a serious state of confusion with two competing pension funds, the LAPTRUST and the LAPFUND to the extent that they have been competing in supporting activities of the Senate with the hope that they get favor in some legislative structure of sorts. This Bill seeks to sort out this confusion. It is important because the most downtrodden people in this country are the pensioners. I am a son of a pensioner; my father is 88 years old and he earns a small pension of about Kshs2,000. However, even to get that money is difficult and they sometimes go for six months without seeing it.

Madam Temporary Speaker, when you look at the people who sit on the National Social Security Fund (NSSF) Board, which is the biggest pension fund in the country, they go around wearing gold around their necks; gold rings on each finger; golden watches and even boast of buying watches worth Kshs5 million. These are funds of those who toil and moil from morning until evening; those who walk from Kibera to Industrial Area and do everything to turn the wheel of our economy. At the end of the day, they are taxed at source and they cannot access their money. Those who wine, dine and boast are those who do nothing, except the fact that they sit in positions of influence; which is very unfortunate. That is why it is important that we have a water tight law that will protect the worker.

Madam Temporary Speaker, the world over, workers who contribute money be it in Australia, New Zealand and in mature economies and democracies, retire happier and live longer. This is because upon retirement, they can access healthcare and they have money with which they can afford a holiday once a year. Quite often, we meet elderly couple on flights and when you ask them where they are going, they tell you they are pensioners in Australia and are going to Canada for a holiday.

How many pensioners in Kenya can travel even from Isiolo to Nairobi or Bungoma to West Pokot, just on a trip to see the country side as a retired person? Those who have been entrusted to look after their money are the ones who boast that they have offices in Geneva, Accra, Abidjan and everywhere else on workers' money.

This Bill comes at a time when devolution is just setting in and taking route. It is important that employees of the county governments also have a structure of pension that will help them upon retirement, knowing that some transitioned from the local authorities to the current employment. In doing this, we must avoid the mistakes of the past.

Madam Temporary Speaker, if you look at our history, the Ministry of Labour and Social Protection should, in fact, be called the Ministry of National Social Security Fund (NSSF). This is because the Cabinet Secretary for Labour and Social Protection does nothing, except paying keen interest on the NSSF and how they share money from it. Today, the NSSF has over 49 per cent of the shares of the National Bank of Kenya (NBK), which is a public bank. However, it is routinely raided by anybody and everybody of influence, and the workers' money just disappears.

Madam Temporary Speaker, sitting in this House as a representative of the people, I am sure you are not an exception. Every other day, you have one or two people asking you to assist them to access their right, which is their pension. My office is next to my distinguished colleague from Tana River, and quite often, his constituents stray into my office to tell me: "We missed our Senator; we are not looking for fare back home, but help to access our pension." When you ask one of them when he retired, he tells you that it was ten years ago. You can imagine having retired ten years ago and have not accessed your money, and those who are enjoying the largesse are different people.

Madam Temporary Speaker, we come into a new dawn where this law must serve and assist people. I agree with Sen. Orenge that we should not have the stranglehold on these pension funds by the national Government, because these are contributions by employees of the county governments. We should not have the Cabinet Secretary for the National Treasury and his or her representatives appearing to lord it over the Scheme and calling the shots at the expense of the real contributors and sponsors of the Scheme.

In fact, under Clause 6, the chairperson of the board of this Scheme should be elected by members of the trusteeship, other than being appointed by the Cabinet Secretary. This is because what will happen – and we live in this country – is that the Cabinet Secretary will always appoint somebody compliant. It will be somebody who will preside over the looting of the money and always be reporting back to his or her appointing authority. In fact, the person appointed by the Cabinet Secretary as the chair of the board will not be championing the interests of the contributors and sponsors, who are the county governments. That person will be championing the interests of the national Government that is doing nothing in boosting this Fund.

Madam Temporary Speaker, if we really want to protect the workers' money--- I look at this Bill and we are creating four very senior positions that will all gobble the money. We have a CEO, Fund Manager, Custodian of the Scheme and Administrator. All these are top-heavy appointments. I do not why we need this. If we have a managing trustee of the Fund and is properly---

The Temporary Speaker (Sen. Halake): Order, Sen. Wetangula. You will have 12 minutes when debate on the Bill resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Halake): 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 5th December, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.