

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 12<sup>th</sup> June, 2018

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

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

#### BREAKFAST MEETING WITH THE CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION

**The Speaker** (Hon. Lusaka): Hon. Senators, I have the following communication to make.

The Senate, in partnership with the Centre for Alternative Dispute Resolution and the Chartered Institute of Arbitrators, Kenya Branch, has scheduled a Breakfast Meeting to sensitize Senators on Alternative Dispute Resolution (ADR).

The Centre for Alternative Dispute Resolution has invited a number of seasoned facilitators who shall cover diverse topics, including-

- (1) Dispute Resolution Mechanisms.
- (2) Structures and Principles of Arbitration; and,
- (3) Overview of the Intergovernmental Dispute Resolution Regulations.

As Hon. Senators will observe, these topics are at the centre of the Senate's role in ensuring the success of devolution and, specifically, the settlement of disputes that may arise between the various governments.

Hon. Senators, this is to invite all Senators to the Breakfast Meeting, which will be held on Thursday, 14th June, 2018 from, 7:30 a.m. at the Intercontinental Hotel, Nairobi. I encourage all Senators to take note and to plan to attend. Kindly confirm your participation with the Office of the Clerk of the Senate for planning purposes.

I thank you.

**PAPER LAID**

## REPORT ON THE COUNTY BOUNDARIES BILL

**Sen. Kinyua:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 12<sup>th</sup> June 2018.

Report of the Standing Committee on Devolution and Intergovernmental Relations on Consideration of County Boundaries Bill (2017)

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

**STATEMENTS**ALLEGED IMPORTATION OF BUSES FROM  
SOUTH AFRICA BY GOK

**Sen. Nyamunga:** Mr. Speaker, Sir, pursuant to Standing Order 46(2)(a), I rise to make a Statement on an issue of general topical concern. This is with regard to the alleged plan by the Government of Kenya to import buses for the State Bus Rapid Transit Services from South Africa, instead of manufacturing them locally.

Mr. Speaker, Sir, it is not right for the Government to rally Kenyans around the 'Buy Kenya, build Kenya' initiative and the Big Four Agenda, especially the manufacturing pillar, while at the same time being seen to be undermining the initiatives. It is in the public domain that the Government of Kenya is alleged to have placed an order for 30 buses from South Africa at a cost of Kshs500 million for the State Bus Rapid Transit Services, despite there being companies that have capacity to assemble the buses locally.

Mr. Speaker, Sir, Kenya has more than six motor vehicle assemblers and around 12 body builders. Therefore, importing the buses when they can be manufactured locally does not only hurt the individual businesses, but amounts to exporting jobs at a time when local companies are reeling from the effects of economic slowdown and when there is a very high unemployment rate in the country.

Mr. Speaker, Sir, manufacturing locally would benefit many companies, including companies that manufacture batteries, springs, gaskets, lubricants, iron bars and sheets, among many other items. The vibrant supply chain would directly benefit over 6,000 people employed across the industries. The local firms have the capacity to meet any demand within and outside Kenya and have built adequate factories and trained manpower over the years. They have already built over 104 high capacity buses currently being piloted on the Kenyan roads. They have, in the past, also been engaged in building double-decker buses that operate on Kenyan roads.

Mr. Speaker, Sir, I observe that while Kenya is importing buses from South Africa, other countries like Tanzania are having their buses for the Bus Rapid Transit Services manufactured and assembled here in Kenya.

Mr. Speaker, Sir, I appeal to the Government to rescind its decision of importing buses from South Africa and, instead, allow local firms to manufacture and assemble them. The initiative will be more cost effective, it will offer employment to Kenyans and it will serve to grow our economy. Further, the Government will be working towards meeting one of its Big Four Agenda; that of growing the manufacturing sector and raising its share of the Gross Domestic Product (GDP) from nine per cent to 15 per cent.

I thank you.

**Sen. Ndwiga:** Mr. Speaker, Sir, we need to support the statement read by the Senator. It seems like there are some people who make policy decisions which you and Kenyans cannot understand the following morning. If we are assembling vehicles in this country, why would you want to import assembled vehicles? This cuts across many sectors of our economy because there are so many things that happen here. Yesterday, I heard farmers in Mwea complaining that they have nowhere to sell their rice, yet we are importing rice from Pakistan. There is a madness somewhere which must be curbed.

Mr. Speaker, Sir, I suggest that you order that this issue be handled by the relevant House Committee, because it is serious and that the Committee reports to this House within one week.

**Sen. Were:** Mr. Speaker, Sir, I use Mombasa Road most of the time and I see so many vehicles assembled at the General Motors (GM), buses included. Those are vehicles assembled in GM, here in Kenya. Why would we, therefore, be importing buses from South Africa? In fact, Isuzu Kenya even has an agreement with schools on how they can buy school buses on a preferential basis. There are, therefore, already mechanisms in this country on how we can acquire buses. Why would we, therefore, be importing buses from South Africa?

With those few remarks, Mr. Speaker, Sir, I beg to support this statement. The relevant Committee should take this up as a serious matter. We cannot say 'Buy Kenya, Build Kenya' and continue doing things that are wrong behind Kenyans' backs.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity. I also stand in support of the Statement by Sen. Nyamunga. This is a matter of national importance. The truth of the matter is that governments exist to serve their citizens. Before we take a single shilling from the resources that we have out of this country, it is important to make sure it is spent in this country to build our economy and to create jobs. In line with the President's agenda on manufacturing, this presents a very good opportunity for us to invest in the manufacturing sector for motor vehicles.

Mr. Speaker, Sir, I, therefore, agree with Sen. Nyamunga that we should not spend money importing vehicles into this country when we can assemble them locally. By doing so, we shall create jobs for our youths, build our manufacturing sector and grow our economy.

I beg to support.

**Sen. Kibiru:** Mr. Speaker, Sir, I also rise to support the Statement by Sen. Nyamunga. I am the Chairperson of the Committee on Tourism, Trade and Industrialization and we are currently inquiring into the fall of the retail markets. Some of the issues that are coming up from the stakeholders are worrying. In our meeting today, we were taken through the process of how we missed it from the early 1960s.

Mr. Speaker, Sir, when we are trying to create a sustainable environment for our products to ensure that we get the jobs and the economy growing, it is very sad if we can do such a thing as importing buses that can be assembled in this country. Hopefully, the Statement will be referred to my committee so that we can deal with it.

Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to support the Statement. It is obvious – and most of us will not say it – that this is yet another corrupt deal. It is not possible that these buses are better than the ones that are assembled in Kenya. It is not possible that we are going to save money; somebody has already cut a deal. They are most likely old buses that have been renovated so that somebody can make a cut out of it.

Mr. Speaker, Sir, what worries me sometimes when I listen to Government policies is the use of public funds. We say that we are broke; that counties should not be given more funds and that we should slash our budgets, yet we are importing buses. All our school children are using buses which have been assembled locally; all the Public Service Vehicles (PSV) or *matatus* have been assembled locally. Somebody somewhere is doing something wrong deliberately. Unfortunately, we are going to say so much, but very little is going to be done to stop this wanton misuse of public resources by people who, instead of buying Kenya and building Kenya, are building other countries.

Mr. Speaker, Sir, we are importing salt, sugar, pencils, toothpicks, rubber and matchboxes. We are soon going to import soup. Fish, eggs and honey are being imported from China and the only thing that we have not imported is air. We must stop because there is something wrong with this country.

The reason I was disappointed about the national prayers held recently is that people did not repent; they just prayed and forgot to repent their sins about misusing public resources. So, when you convene the next prayer breakfast, please make sure that people kneel down and are told their sins or the demons are cast from them because this is demonic.

**Sen. Mugo:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I also rise to support this Petition by Sen. Nyamunga. Surely, the people who are supporting these policies are embarrassing the Government. We know that Government leaders have time and time again talked about opening plants for assembling vehicles here in Kenya, which has happened. So, we would like to urge those who formulate the policies now that we have come to this era of stopping corruption absolutely, to follow the line. It cannot be anything else but looking for kickbacks. There is a time to think Kenyan and that time is now.

I support this Statement very strongly. I am sure the Committee to whom this Petition will go will do justice to it. However, more than that, we must ask the Minister in charge of this docket to do his work and stop this nonsense of importing buses. We must build Kenya. There are so many youths who are lack employment. Therefore, we must stop singing the song and take action.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I rise to support this Statement. Sometimes I wonder; I have never seen a person denying himself food or business. You have a business that will bring employment to this country that will make economic

sense, but you decide that it will go to South Africa. We cannot really understand. Like Sen. Mutula Kilonzo Jnr. has said, it is just another conduit for more money to be wasted.

We are talking about public money being wasted in corruption. In fact, today I was surprised to learn that there is actually a delegation from Zambia coming to Kenya to learn about corruption. I do not know whether they are coming to learn about fighting corruption or to be corrupt. This is appalling and a mess. I keep saying that when we go to other countries to learn about best practices, they tell us that the best practices are in a blueprint in Kenya. They tell you: "We have actually borrowed this best practice from Kenya."

We have assembling plants here in Kenya and we are able to do it, but because of corruption, we send that business to another country. This should not be allowed. We seem to have money for all the wrong reasons but never for the right reasons in this country. We have money for scandals, for cat walking, for the 'Ngiritas' and for air, but we do not have money for everybody else in this country.

We should strongly support this Statement. Also, as a Senate, we should talk aloud about this and stop the importation of the buses.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir. I stand to support this Statement. It is sad to hear such a business is going to take place in Kenya. More goods and services are manufactured in Kenya and it is high time markets for such goods and services are found in this country so as to improve the economy. When you hear that such goods or services are being imported, it is like dissecting Kenya and completely finishing its economy.

It is a high time, as Senators, we condemned this act. For those people who are involved, they should pursue to source those vehicles from the Kenyan market rather than import them. Corruption has taken root in Kenya. In such a situation, it always indicates that there is somebody somewhere who wants to consume money somewhere through dubious means.

I stand to support this Statement by saying that the Cabinet Secretary, who is concerned, should stop this importation and instead look for market for Kenya's goods.

I support.

**Sen. (Dr.) Mbiti:** Mr. Speaker, Sir, I rise to support Sen. Nyamunga's Statement. This is a very clear case of impunity. We have the same buses here in Kenya, but a Chief Executive Officer or an Accounting Officer just unilaterally opts to import them. They need to tell us what their interests are because that is a clear case of impunity. We have heard cases of governors who decide to procure test kits that are available for free. Donors have given us test kits but a governor decides to purchase it knowing very well that whoever is supplying it is stealing it from the facilities that have already been supplied.

Therefore, those cases of impunity should be addressed. For this particular case, whoever made this decision should be answerable, tell us why and how they reached that decision and to really convince this House.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I rise to support Sen. Nyamunga's Statement and the committal to a committee to take this issue further. As the other

Senators have said, this is not just an issue of omission but commission of something that is definitely not right.

I remember I sat here and listened to the President outlining his strategic direction, and one of the key strategic areas of focus was manufacturing. All of us were then to rally around this four priority agenda items, one of which was manufacturing.

If we are going to import such basic things as buses that have been manufactured in this country, even for the neighbouring countries as has been enumerated, then something is wrong. It does point, as others have said, to the corrupt practices that have permeated to all the sectors of our country. One of the things that bogs my mind---

If they had been maybe importing from Germany on account of safety or durability or all other features we have known German cars to represent, then perhaps somebody would have thought it was okay. I do not know if South Africa is known for its motor vehicle industry. Therefore, on all accounts, this points to something fishy and, as has been said, corrupt.

Mr. Speaker, Sir, Sen. Nyamunga did not say which Ministry was importing these buses, but we must get to the bottom of this and make sure that every aspect is looked into with a view to ensuring that we unearth the truth. We are the stewards of the resources of this country and, therefore, we cannot let these things pass and then end up building bigger things. In this country, we have come to accept this as normal. We have normalized corruption as the in-thing. I am surprised that anybody would be coming to us to learn how to stop corruption when it has become a big cancer to ourselves.

That said, I would like to congratulate Sen. Nyamunga for picking this out. It is up to all of us to look out for these kinds of issues and ensure that cascaded corruption is contained. Further, this House should keep vigil over these issues.

I thank you and I stand to support both the Statement and the fact that it should be committed for further analysis and processing.

**Sen. Olekina:** Thank you Mr. Speaker, Sir. When I saw this Statement on the Order Paper I called the Senator and was perplexed. We will spend US\$5 million, when you do the mathematics, to import only 30 buses. That is about Kshs17 million per bus, which is about US\$170,000. By this action, we are indeed negating the Big Four Agenda and I thank the Senator for talking about it.

Instead of creating jobs locally and building our manufacturing sector, we are now obsessed with things from outside. When will we ever look at ourselves and say that we can build our manufacturing sector, help our devolved governments or even give incentives to companies to come and manufacture them here?

I support this Statement and concur with the sentiments of my sister that it should be committed to a particular Committee so that action can follow for it is very sad. What will we tell the millions of our university students who graduate every year and walk in the streets because they cannot get any job? This is sad and there is no reason we should keep quiet. This House has got to condemn the move by whichever department. I do not know the department that is purporting to import.

Even if the buses were to come from Germany, they would not last for long because our roads are dilapidated. The vehicles that are manufactured here are better. A company like Labh Singh Harnam Singh (LSHS) or the other one that assembles buses

here know the conditions of our roads. Therefore, the local companies are better suited in helping us.

We are now moving from China to South Africa. When will we ever look at ourselves and say, 'yes we can?' Just like Hamlet asked himself, when he wanted to commit suicide, in Shakespeare's play Hamlet, we should ask ourselves whether we are ready to develop or we will always look at other countries. If Tanzania is buying vehicles from here, why can we not do the same? We do not value ourselves anymore.

Mr. Speaker, Sir, I support this Statement. I hope that the President will not support this move. If he knows that it will negate his Big Four Agenda then, of course, he will be the first one to say "no".

**Sen. M. Kajwang'**: Thank you Mr. Speaker, Sir. I join my colleagues in supporting the Statement by Sen. Nyamunga. As a country, we forget that in 1990, Kenya attempted to build its first car, which was called the Nyayo Pioneer and about five prototypes were developed.

For those of us who were alive around that time, we remember that the first car could not start. President Moi attempted to start it, but it stalled. It was not a great success. We spent close to Kshs1 billion on the project of coming up with a Kenyan car. From 1990 to date is enough time for someone to become a voter; we are talking of more than 28 years down the line. As a country, we have not learnt our lessons from that initial experiment.

We went ahead and established the Numerical Machining Complex (NMC). The mission of NMC states that it is set up or formed for the purpose of manufacturing motor vehicles. The question is: How many motor vehicles has NMC ever produced, yet it continues to be funded and financed by tax payers' money? It continues to gobble money and here we are, instead of challenging NMC to give us a vehicle, we are going to South Africa to buy a vehicle.

Building a motor vehicle has been demystified. Elon Musk, the South African who migrated to United States of America is building electric vehicles and spaceships, which was previously the domain of Boeing and big government contractors. As a country, we cannot say that we want to achieve the Big Four Agenda when we are doing these kinds of ridiculous things.

We had the 'buy Kenya, build Kenya' mantra and challenged the Cabinet Secretary for Industrialization and Enterprise Development and the Government to revive it. There is no way we will achieve the Big Four Agenda if, on food security, our maize comes from Mexico and sugar from Brazil; on health care, our equipment comes from the United States of America and our doctors come from Cuba and on manufacturing, our buses are coming from South Africa. When building our houses, where do our tiles come from? Most likely, they are not produced from the kilns in Athi River. We import tiles from China and even roofing materials from the West.

As a nation, we must be serious and I join my other colleagues in pushing for the Government to take measures to ensure that these are done here. We have people who build the *matatus* that ply the Eastleigh and Rongai routes. It is only in Pakistan where you will find more colourful and vibrant *matatus* than the Kenyan *matatus*. I believe that

Kenya has the capacity to build these buses. Already, there is a company that is doing that for the Tanzanian government and we must reject and resist the flight of capital.

Thank you, Mr. Speaker, Sir.

**Sen. Kinyua:** Ahsante Bw.Spika. Nasimama kuunga mkono Taarifa hii kwa kusema ya kwamba nchi yangu ya Kenya ni nchi ambayo ni ya ajabu. Ni kama nchi ya kusadikika. Ukweli ni kwamba nikama tumeadhiriwa na ukoloni mamboleo kiasi cha kwamba hakuna kitu ambacho tunakithamini hapa nchini. Ni lazima tutafute kitu kinachotoka ughaibuni ndiposa tusema ya kwamba tunaendelea vizuri.

Kwa hivyo, ukiona mambo kama haya yakitendeka, inaonekana uufisadi unakithiri. Kwa hivyo, nivizuri tujiamini kwanza. Inaonekana kwamba tunaendelea na ukoloni mamboleo. Tumepeleka fikira zetu na imani yetu yote ughaibuni. Kile ambacho tunafaa kufanya ni kujiamini.

Nilienda Ujerumani na ndugu yangu Sen. Mutula Kilonzo Jnr. ambako kahawa ambayo imetoka hapa nchini inauzwa. Hiyo ndio kahawa ambayo ni nzuri sana. Tukienda huko, tunaaminika ilhali sisi wenyewe hatujiamini. Kwa wale ndugu zetu kutoka Zambia ambao wamekuja kujifunza mambo ya kupigana na uufisadi hapa Kenya, tunawakaribisha. Tutawafunza kwa sababu sisi wenyewe tumeona mambo hayo. Tukitilia mkazo ya kwamba tunataka kuwachana na hayo mambo, nina imani na ninajua ya kwamba tutaweza kufana. Lakini, itakuwa vigumu kama hatujiamini sana. Kamati ambayo itafuata mambo haya inafaa kupata chanzo na maana ya mambo haya kutendeka.

Asante, Bw. Spika.

**Sen. Mwangi:** Thank you Mr. Speaker, Sir. I rise to support Sen. Nyamunga's Statement. It is wrong to import vehicles from South African when they can be made here. Corruption has been made official in this country to the extent that we may be about to build an office and say that, that is where corruption will be done.

We have heard of people who have stolen Kshs9.9 billion from National Youth Service (NYS). One wonders how Kshs9 billion can be siphoned out of NYS without the knowledge of the Cabinet Secretary and the officers from the Ministry such as the Principal Secretaries.

It is time that those people who are heading institutions where corruption is perpetrated are arrested. Let us not only arrest the Director of NYS. Let us bring everybody to book. Let us arrest those heading those institutions. Corruption can only be fought from above. We cannot fight it from a messenger's position. Unless we do that, we will sing this song for a long time and nothing much will happen.

We have local car assemblies in Kenya, why would somebody dream of importing buses from South Africa? We need to create jobs in this country because our young people do not have jobs. We have decided we want to get buses and instead of purchasing them from the local car assemblies, we want to purchase them from South Africa.

Most of the offices in Kenya today are used as conduits to siphon money to some destination. This Senate needs to stop that. We have people who are importing bananas, carrots, onions and other fruits yet our farmers have no market for their produce whereas we are importing from South Africa what can be produced locally in Kenya. We should



think of banning such importation. I am convinced that there are some corrupt people who are allowing farm produce to be imported into this country.

I support the statement.

**The Speaker** (Hon Lusaka): Sen. Madzayo, the Floor is yours.

**Sen. Madzayo:** Asante, Bw. Spika. Hivi karibuni tumeona ---

**The Speaker** (Hon Lusaka): Sen. Madzayo, are you speaking off the microphone?

**Sen. Madzayo:** La, kipaaza sauti kiko sawa.

**The Speaker** (Hon Lusaka): Please, proceed.

**Sen. Madzayo:** Bw. Spika. hivi karibuni tumeona kwamba, mhe. Rais baada ya kusalimiana kwa mkono na kupigana pambaja na mhe. Raila Amolo Odinga, waliipa kipaumbele swala la kupigana na ufisadi. Jambo hili la kutengeza mabasi laonekana limechukuliwa kabla ya Rais mwenyewe kuchukua hatua ya kupigana na ufisadi.

Hivi sasa, kuna watu ambao kabla ya amri hii ya kupigana na ufisadi kikamilifu, wao walikuwa na mipango ya kuiba; walikuwa na mipango ya kufanya ufisadi ndani ya ofisi ili wapate pesa kutoka kwa umma. Ikiwa hili ndilo jambo ambalo walikuwa wanalidhania hawa wafisadi, basi nafikiria, mhe. Rais sasa hivi, ni wakati wake wa kuchukua nafasi hii kuweza kukomesha jambo hili.

Katika nchi yetu ya Kenya, tuko na makampuni ambayo yanatengeneza mabasi. Mji wa Mombasa kuna Associated Vehicle Assembly wanatengeza mpaka malori, wacha mabasi. Ikiwa tunatengeza malori, sembuse mabasi? Tunao vijana wetu wa jua kali hapa Nairobi wanaopaka magari rangi, wanafanya *repair* na *bodywork*. Tuna makampuni kule Thika zinazotengeneza hata Land Rover. Sioni kwa sababu gani nchi yetu iingie hasara ya mamilioni ya pesa kama haya ya kuleta mabasi kumi, ishirini, thelathini au hamsini kutoka Afrika Kusini. Huu ni ufisadi. Tunamwomba mhe. Rais achukue hatua na kukomesha jambo hili ili lisitendeke tena. Kando na kutotendeka tena, mtu asiwe na fikira ya kufanya kitendo kama hiki ambacho wananchi wa Kenya watapoteza pesa kwa ajili ya ufisadi.

Asante. Naunga mkono.

**The Speaker** (Hon Lusaka): Hon. Senators, since the statement was sought under standing order No. 46(2)(a), it does not require referral to a committee. The relevant committee will pick up the matter and follow it up. I am sure they are seized of the matter because they heard the member when she presented it.

Senator for Mombasa County, Sen. Mohamed Faki Mwinyi Haji.

#### DISAPPEARANCE OF SEVERAL PERSONS FROM MOMBASA COUNTY

**Sen. Faki:** Thank you, Mr. Speaker, Sir. I rise pursuant to provisions of Standing Order No.46(2)(a) to make a statement on the disappearance of several persons from Mombasa County and the country in general.

In the recent Past, several persons in Mombasa County have been abducted and disappeared in mysterious circumstances without trace. The recent case is that of Husni Mbarak who went missing on Friday 25<sup>th</sup> May, 2018. He was abducted by four-armed

people who were driving a Toyota Fielder registration No. KCP 254Y, white in colour. The incident was reported to Central Police Station in Mombasa vide Occurrence Book No. 56/25/5/2018.

The abduction of Husni follows a pattern of many others who have been abducted in similar circumstances. So far, no action has been taken, neither has the family been given any update on the investigation following the abduction.

Others who have been abducted include: Farah Abdi Fara who was abducted on 5<sup>th</sup> July, 2015 together with Ahmed Salmin. Bashir Omar was Abducted on 9<sup>th</sup> July, 2015 but was later released. Mohammed Avukame was abducted in August, 2017 and Khalifa Mohamed Khalifa who was abducted in August, 2017. So far, they have not been traced.

Mr. speaker, Sir, it is extremely painful for the family and friends of Mr. Husni Mbarak and others who have fallen prey to such abductions. It is impossible that such a large number of people could disappear without a trace and the state agencies do not do something about it. The pattern of disappearances points to only one conclusion; that these are state sponsored disappearances similar to the *Mungiki* crackdown as alluded to in the famous report of Professor Allison.

The disappearances are causing great fear, anxiety and trauma to the families. I cannot imagine the pain that the mother, father, grandmother and the siblings of Husni Mbarak have undergone since 25<sup>th</sup> May, 2018. Whatever allegations levelled against Husni Mbarak - who turned 18 years old in March, 2018 - that the state agencies allege he could have committed could have been tried in our Judicial system.

Recently, the Supreme Court ordered the detention of two Iranian suspects who were facing terrorism charges after the lower courts had acquitted them. Our courts cannot fail to adjudicate on the allegations the State agency may have against these young men.

Our community is aware of the problem of radicalisation of our youth in Mombasa County and the country at large. Whereas we are making all efforts to counter the problem, the abductions and forced disappearances cannot be a solution. The state agencies need to relook at their strategies. Our constitution guarantees the right to life under Article 26, the right to human dignity in Article 28 and the right of freedom and security under Article 29. These are rights enshrined in our Constitution, therefore, they are not a mirage.

I, therefore, wish to draw the attention of the Senate to this grave matter and appeal to the relevant national Government agencies to investigate the mysterious disappearances and abductions of persons with a view to establishing their whereabouts and bringing the perpetrators to book.

I thank you.

**Sen. Madzayo:** Bw. Spika, ningependa kuongea kidogo kuhusu kauli ambayo Sen. Faki ametoa. Hivi karibuni, tabia ya polisi imekuwa ya kusikitisha sana, haswa ukizingatia ya kwamba wanapigana na majambazi. Katika maeneo ya Pwani, vijana wengi sana wamekuwa wakishikwa na kuitishwa vitambulisho. Akiwa nacho, anaamrisha aingie ndani ya gari, kisha aende kujibu mashtaka mbele. Yule asiyekuwa na kitambulisho atapona tu akitoa Ksh200 au Ksh300 ili aweze kupata uhuru wake. Tunaona tabia kama hizi zinaanza kuingia katika polisi wetu hapa Kenya.

Bw. Spika, kupoteza mmoja katika familia ni jambo la kusikitisha, hasa ukizingatia kwamba Waislamu, wakatihuu wa Mwezi Mtukufu wa Ramadhani, wamekuwa wakiitishwa vitambulisho au wanasimamishwa, wanawekwa pamoja na kupelekwa stesheni ya polisi saa kumi na mbili au saa moja za jioni. Hili ni jambo la kusikitisha.

Pili, ikiwa mtu atashikwa na polisi, kunayosheria. Lazima afikishwe mahakamani amastesheni ya polisi, aandike *statement*, alale rumande ama aachiliwe iwapo hana uhalifu unaoweza kuleta tashwishi. Lakini tunaona kwamba mtu akishikwa sasa, anawekwa ndani halafu keshoye anapelekwa kortini na yale aliyoshikiwa nayo sio hiyo atakayoshtakiwa nayo. Ndio sababu tunaona mara nyingi polisi wanashika watu na baada ya kuachiliwa, wanaanza kesi zauongo, tena zakubandikiwa. Nitabia mbaya. Mwishowe, unapata kwamba polisi hawana kesi na wale watu wanaachiliwa.

La kusikitisha ni kwamba mtu akiachiliwa, baadaye unampata amepigwa risasi na kuuawa. Wanasema eti huyo nijambazi aliyekomaa, kwa hivyo hakuna haja ya kumshika na kumfungulia mashtaka kortini; la kufanya ni kwenda kumchukua na kummaliza. Wazungu wanasema hii ni *extra judicial killing*. Sisi tunasema kwamba kitendo hiki sio haki. Askari akimshika mtu, basi lazima ampeleke kortini.

Masuala haya sio kuhusu dini au kabila; bali kila Mkenya yuko na haki ya kulindwa na sheria, lakini hili jambo liko sana hapa nchini Kenya. Ingekuwa vizuri ikiwa polisi wataambiwa waache tabia kama hizi ili mtu yeyote akishikwa, wazingatie sheria za Kenya. Yule aliyeshikwa akipatikana na hatia, basi apewe adhabu kulingana na sheria. Lakini kuangamiza jamii katika familia sio jambo zuri hata kidogo.

Asante sana, Bw. Spika.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to comment on the Statement brought by Sen. Faki. From the outset, I support it simply because we have a lot of challenges in our counties, one of which is the enforced disappearance of youth. You cannot just expect children to disappear from homes and even schools. For example, you will find that a child has disappeared from school in Isiolo County, yet the school authority and the parents do not know anything. Who is going to be responsible? They only hear of the disappearance when schools are being closed.

Honestly, is that really fair? How can you give a child an off, he does not report, the parents are not aware and it is not even reported to police? We, therefore, need to crack the whip and ensure that schools take action against children who disappear, report such a matter to the police or even alert the parents. This is very unfair because the right to life is an important aspect in our constitutional provisions.

Mr. Speaker, Sir, regarding the issue of terror suspects, you will find children being suspected, arrested and taken to court. Sometimes, there is no evidence and the prosecution asks for more time to investigate. Why did you not investigate in the first place before you arrested these children? Secondly, there is no evidence that the child is remanded for even one or two years; some of them are even below 18 years. It is very unfair.

You will find poor, single mothers in Isiolo running around, trying to ask for assistance from Members of Parliament (MPs) or the leadership. There is a lot of

violation of the rights of citizens in this country and we need to stop that. Again, on the issue of presenting them to court, some of them are not presented to courts. They are kept in those remands or even in police custody for a long time, simply because they do not have evidence. Police need to stop that.

Finally, Mr. Speaker, Sir, the issue of enforced disappearances is becoming rampant, especially in areas where Muslims are living. Curfews are even imposed on people during the night, where they are asked for Identification Cards (IDs) and yet they are Kenyans. Some youth cannot even watch football in those towns because there are police arrests every now and then. Again, without evidence to arrest them, they are taken to a police station and then asked to pay a certain amount of money for them to be released. The youth are even denied the opportunity to enjoy their right to entertain themselves. This is a very serious thing that is happening in our country and we should stop it.

Mr. Speaker, Sir, it is important for this Statement to be allocated to a particular Committee to investigate the matter so that the police can stop these kinds of things they are doing in our country.

Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. We must condemn every time the police take away a person without following the due process. Life in Kenya has become meaningless; the right to life, under Article 26, is meaningless. In Kenya, all you have to do is be in a vehicle in a city park or walk on the streets and you will be shot dead by the police. All you have to do is be in Mutindwa in Embakasi, playing on the balcony and a stray bullet is shot somewhere in the street and hits you.

Alternatively, you can be casually walking anywhere in the city and you die. You can also be in a plane from Kitale to Nairobi and your pilot is misdirected, and you die. Life has lost meaning and we do not condemn it. You can be Willy Kimani; you walk into a police station, defending your client; the police get you, put you in a sack, torture you, cut you into pieces and throw you in a river because nothing will happen to them.

Mr. Speaker, Sir, allow me to challenge you even if we are not supposed to challenge you. You called us for a meeting on counter strategy on terrorism. The Anti-Terrorism Committee said that they have a county plan on how to deal with terrorism. We made submissions early in the morning over breakfast, when we were fresh and knew what we were talking about. We said we needed to discuss the question of terrorism and how the youth of this country, particularly the Muslims, are being discriminated. We said that these county plans need to come to the Senate so that we can speak to the youth because we have some influence. However, that breakfast ended the way it did and nothing has happened.

Mr. Speaker, Sir, while we cannot condone terrorism, we cannot allow people's lives to be taken away so casually and it is business as usual. They find you, shoot you, take you to the forest along Nairobi-Nakuru Highway, and then people cry at your funeral and that is the end.

Mr. Speaker, Sir, my learned colleague, Senator 001 belongs to the Committee on Justice, Legal Affairs and Human Rights, while Sen. Dullo was in the Kenya National Commission on Human Rights (KNCHR). The statistics of extra-judicial killings have

been discussed in Kenya and no action has been taken. We have had these Statements so many times and nothing has happened.

The call to action is now. If the Senate will sit at any other place rather than in Uasin Gishu County, we should go to the former Coast Province and speak about these issues. We should possibly form a committee to find out the statistics of how many Kenyans have disappeared. Terrorism will not be stopped by selectively picking and shooting youth who are particularly Muslim and making them miserable. This will not stop the youth from joining Al shabaab or the Islamic State in Iraq and Syria (ISIS). They do not join it because they like it. They join it because, instead of spending our money well, we give it to Ngirita for free. That is the recourse for corruption.

Mr. Speaker, Sir, I condemn this action. Action needs to be taken. However, more importantly, other than the Ethics and Anti-Corruption Commission (EACC), a group called Independent Police Oversight Authority (IPOA) that is supposed to check the conduct of police should be disbanded. It has served its purpose and it is wasting public money.

**Sen. Wario:** Asante sana, Bw. Spika, kwa kunipa nafasi hii kuweza kuchangia swala la polisi kubeba watu katika sehemu zao na kupotea.

Hali si hali katika Kaunti ya Tana River. Polisi hubeba watu kwa magari ambayo hayana namba ya usajili. Hivi karibuni, vijana kwa majina Mohammed Ismael Somane, Jibril Abdi Somane walibebwa katika hali ya kutatanisha katika mji wa Hola. Watu ambao hawafahamiki walikuja na kuwabeba vijana hao na mpaka siku ya leo, vijana hao kutoka sehemu ya Bura hawapatikani.

Magari yaliyowabeba yalikuja kwa hali ya kutatanisha. Wakati mtu wako anabebwa na watu wasiojulikana, utafanyanini? Huwezi kujua kama ni jambazi au polisi. Tumemaliza mwezi mzima na vijana hao hawajulikani mahali walipo. Familia zao ziko kwa hali ya majonzi kwa kuwapoteza vijana hawa. Hiyo ndiyo imekuwa maisha yao.

Tunavyoona, watu kutoka jamii ya kiislamu ndio wanaobebwa. Tumelaani vikali jambo hili. Kwa wakati huu, imekuwa vigumu kwa watu kwenda Mskitini kuswali au kutembea usiku.

Bw. Spika, vijana wengi hawataweza kutazama Kombe la Dunia kwa sababu wataulizwa kuonyeshana vitambulisho, waeleze wanakotoka na wanakoenda. Hali imekuwa ya kutatanisha katika sehemu zetu.

Bw. Spika, kila mtu ana hakiya kuishi kama inavyo nakiliwa katika Kifungu 26 (1) cha Katiba yetu. Sasa, hali yetu katika upande wa Pwani imekuwa ya kutatanisha. Vijana wetu wanatoweka na hatujui mahali wanakopelekwa.

Mimi ningependa Seneti iweke Kamati ya kutafuta watu wetu kwa sababu hatujui mahali walipo. Mabibi na watoto wanalia na wamebaki bila baba. Katika hali hiyo, ningependa Kamati hii itafute watu wetu ili tujue mahali walipo. Kama waliobebwa wangepelekwa kortini, tungeenda kusikiza ili tujue ni sababu gani walishikwa. Lakini, kwa sasa, watu hawapelekwi kortini; wakibebwa wanaenda kabisa.

Bw. Spika, katika maisha ya kiafrika, huwa tunaomba watu wetu tunapona kaburi zao. Tunalaani vikali kwa sababu hatujaona kaburi za watu ambao walibebwa kwa hali ya kutatanisha. Polisi wa Kenya hawafanyi kazi nzuri. Wanavyofanya kazi haistahili kabisa. Sisi tunalaani kitendo hiki.

Ninaunga mkono Seneta wa Mombasa na kuomba watu wetu watafutwe waliko.

**Sen. M. Kajwang:** Mr. Speaker, Sir, I rise to support and contribute to this Statement by Sen. Faki about the disappearance of persons. He was specific on the disappearance of persons from Mombasa County but this is a problem that affects the entire nation.

In 2016, Amnesty International in their report, ranked Kenya high in extra-judicial killings, police killings and forced disappearance. This is a problem that we cannot just sweep under the carpet. All of us can relate, from Willy Kimani that Sen. Mutula Kilonzo Jnr. has talked about, J.M Kariuki who disappeared until he was found murdered and Robert Ouko who initially disappeared until he was found murdered. People say that he shot his head and burnt himself.

Mr. Speaker, Sir, even in my own County of Homa Bay, one man by the name Kabera Matunga, who was a man about town and would always be found around the offices of politicians disappeared into thin air two years ago and has not been seen ever since. We do not know where he is, we have not found his bones and so his family cannot mourn or bury him. He disappeared and the police are not able to account for him.

As a country, we must balance respect for human rights versus national security. A lot of these extra-judicial killings and disappearances have been conducted under the guise of national security. There has been some normalization of extra-judicial killings, telling young people that if they play with the police, they are playing with fire. That normalizes brute force and abuse of the rights of Kenyans by people who we have been entrusted to take care of our security.

Mr. Speaker, Sir, there is no reason why a thief, a corrupt person, a vagabond or terrorist should be killed by the police without going through due process. In fact, if we take the extra-judicial route, we are radicalizing our youth even more because they know that once they engage in these acts, there is no way out. It is either they succeed in their mission or they are killed.

As a way forward and a call to action, Kenya is a signatory to the International Convention for Protection of all Persons from Enforced Disappearance (ICPPED). What this House should move to do is for Kenya to go beyond being a signatory and ratify that Convention because right now, it is not criminalized. There is no crime in the Penal Code around disappearance of persons.

Again, as a call to action, there is a piece of legislation that was passed in 2014 called Persons Deprived of Liberty Act. I am sure that most of us do not know the existence of that particular Act of Parliament which was signed in 2014 and came into force in 2015. It talks about the rights of people once they are in custody and held by the police. If that Act would have been enforced, we would probably have a better framework for reporting the disappearances by the police.

Finally, a matter that is before this Senate is the Preservation of Human Dignity Bill. This is a piece of legislation that took a lot of effort in the last Parliament. I remember the then Senator 001, Sen. Hassan Omar Hassan whom Sen. Faki has taken over from, put in a lot of effort to bring together stakeholders and to come up with a framework and a piece of legislation that would give effect to Article 43 of the Constitution.

I encourage Sen. Faki to go beyond this Statement and make sure that the Preservation of Human Dignity Bill comes to this House and sees the light of day. I know that Sen. Halake has sponsored it, but there is nothing wrong in co-sponsoring some of these bills, so that Article 43 of the Constitution can be respected.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Lusaka): Let us have Sen. Halake.

**Sen. Halake:** Thank you very much, Mr. Speaker, Sir. I support and would like to add my voice to this, because this is something that I am very familiar with and can relate to.

A few months ago, university students that were studying for examinations in Eastleigh gave me a call in the middle of the night because they had been arrested on suspicion of being terrorists. They showed their university identification cards and said they were Kenyans studying for examinations, which is why they were still awake at that time. However, they were told that no identification would help them. They told the police that they were calling a Senator they knew from the Kenya Red Cross, and that I was going there, but they were told that no Senator could help them.

I am so happy that this Statement has been brought, so that all Senators, and not just one, will help in this cause. Over and over again in this country, the victims continue to be victimised further. Radicalisation has been the excuse under which our police service has continued to mistreat our youths. One is doomed especially if they are of a certain profile, especially if they are young Muslims and live in a certain place.

These were University of Nairobi students who were awake quite late, but were studying for examinations. They were locked in and we could not even get them out. For three days we camped at the Pangani Police Station and they missed their exams. When they got out, I had a dialogue with them and they asked me: "Would you blame us if we joined the *Al Shaabab*, which we were being accused of being members and yet we are not?"

Such is the vicious cycle that radicalisation is being fuelled by our own authorities. Innocent youth have been victimised because of a certain profile, race or professing a certain religion. Instead of our youths being supported, because they have been victims of false accusations of radicalisation, they have actually been victimised further by being arrested. In the cases that have been mentioned by Sen. Faki, of Husni Mubarak, Khalifa bin Khalifa, Bashir and Farah, who have disappeared without trace, who knows what is happening to them?

Behind these names and statistic are families and mothers. Women are right now organising themselves to counter violence and extremism. This is because they have realised that there is nobody on the side of their children. We, the women of this country, stand to condemn this. At no point will we allow these kinds of forced disappearances and extrajudicial killings on a certain profile of our children. This is not the solution.

As Sen. Mutula Kilonzo Jnr. said, we went to a breakfast meeting where we gave our views. Two weeks ago when I went to Isiolo County I looked for these county plans. I met with the Deputy County Commissioner who assured me that they have the plans and they will involve the Senate and I for having reached out to them. They have not yet reached out to me, but we will reach out to them. In the counties we come from, we know

of families, neighbours and friends who have lost people into thin air. Most of them were arrested to begin with. This is unacceptable and should be condemned.

Even though this Statement pertains to Mombasa County, as Sen. M. Kajwang has said, it touches on many more counties, especially where many Muslims live.

Mr. Speaker, Sir, I support my sister's submission that this should be committed to a Committee. I am not certain why this continues to persist even after the Eleventh Parliament had dealt with it. As the Senator who has just spoken has said, I am sponsoring a Bill that will ensure that we get back our dignity and rights as human being and Kenyans. Our Constitution guarantees it and we must, therefore, demand it, especially as custodians of the law and the Constitution.

Lawlessness and breakdown of the rule of law is especially perpetrated by our security authorities and people who should be upholding the law. It is unacceptable and condemned. We will definitely rally around to ensure that this does not continue.

I support and look forward to seeing this being processed further.

*(Applause)*

**Sen. Lelegwe:** Thank you, Mr. Speaker, Sir. I rise to support the Statement by Sen. Faki regarding the disappearance of persons in Mombasa County. I appreciate that Sen. Faki has requested for the Statement and take note that the issue is not unique to only Mombasa County. Issues of disappearance of persons when going about their business are rampant in Kenya. It is more in the regions where there are security operations.

Specifically in Laikipia County, there are several businessmen and Kenyans who have been branded as illegal herders by the Kenya Government or some people. We have lost them because they have not been found anywhere, three months after their disappearance.

I ask this House to put a rider on the Statement that the Kenya police should provide statistics of Kenyans who have disappeared. In Laikipia County, specifically, we have lost about four people in Rumuruti town.

I join my colleagues in condemning these acts by the police. I am sure that those people are not alive. We should have a Committee to investigate this and make sure that their families are informed about the whereabouts of their loved ones.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us have Sen. Loitiptip.

**Sen. Loitiptip:** Asante sana, Bw. Spika, kwa kunipa fursa hii pia niweze kuchangia Taarifa ya ndugu na rafiki yangu, Seneta wa Kaunti ya Mombasa.

Nitaanza kwa kukusomea orodha ya vijana ambao mimi binafsi nawajua wamepotea na mpaka saa hizi hawajaonekana. Wakwanza alikuwa ni rafiki yangu wa karibu sana anayeitwa Karim Abdurazak. Alitekwa nyara kule Malindi Total Petrol Station miaka miwili iliyopita. Mpaka leo hatujui hali yake au mahali alipo. Wengine ni Hashim Said Saled, Salim Mbaraki, Hosam Karim na Bashir Farah na wengine wengi.

Bw. Spika, inasikitisha sana kwa sababu ukiangalia Ukanda wa Pwani, Kuanzia Kaunti za Mombasa, Kilifi, Kwale na Lamu, kumekuwa na itikadi kuwa mtu yeyote



ambaye amefuga ndevu au nywele nyingi au mwenye asili ya Kisomali anachukuliwa kama gaidi. Vijana wengi sana wamepotea mtaani na inahuzunisha sana. Wazazi wengi wanalia na sisi vijana tunakosa mwelekeo. Inasikitisha sana kwa sababu polisi hawawezi kusema kuwa hicho ndicho chanzo cha kutumia mambo hayo kama mfumo wa uongozi. Vijana siku hizi mtaani wakiona “farasi mweupe” ambalo ndilo jina la gari aina ya Toyota Land Cruiser ya polisi, wanajua kuwa kwa mda wa mwezi au miwili hawataonekana mtaani.

Naunga mkono Taarifa hii na kukemea matukio hayo. Pia, tunaomba idara za kijasusi na idara tofauti za polisi walegeze kamba lakini wasitumie mabavu kwa sababu hatutaendelea mbele.

Kwa hayo machache, shukrani sana, Bw. Spika.

**The Speaker** (Hon. Lusaka): The Senate Minority Leader, Sen. James Orengo, proceed.

**The Senate Minority Leader** (Sen. Orengo): Thank you, Mr. Speaker, Sir. I also want to join in supporting this statement. The most important responsibility of a government is to protect the life of its citizens, leave alone property. The first and foremost is beginning with life. In respect of the Coast – Mombasa, Kilifi, Lamu, Kwale and in some respects, the whole of North Eastern province such as Wajir, Garissa, Mandera and now Laikipia is being mentioned - I have had some experiences also to do with Laikipia; the unexplained and unjustified disappearances of citizens is not a matter which has started today or yesterday. It has been there for a long time. In fact, Sen. Faki would remember that this started with the days of the Islamic Party of Kenya (IPK). Many people who declared support for that party were either arrested or detained and incarcerated for a long time. Some of them simply disappeared.

Normally, a disappearance of an ordinary citizen in the hands of other people is not something which is difficult to resolve. Somebody cannot just disappear in thin air in a town or village and the instruments of state cannot determine the whereabouts of such a person. That is why in the law, normally, the police should take seriously a report made of a missing person. The procedures are there under the law.

However, in Mombasa particularly, the constant unexplained disappearance of particularly young people is a matter which is of grave concern. This happens after these people have been profiled. Once they know you are a young man of Islamic faith and you have certain views, instead of dealing with you in accordance with the law, you are abducted. That happens. Despite investigations, no answer seems to be forthcoming. People who are known in the Coast have disappeared in similar circumstances.

Mr. Speaker, Sir, the problem with this matter is that we may wish it away. I was in New York at an important meeting of Amnesty International last week. Would you believe it, I have letters that were handed to me in that meeting by people from the United States of America and Kenyans there. The letters were addressed to the President of the Republic of Kenya, and talking about police brutality and disappearance of citizens. Even if we keep quiet about it, there are people out there who are taking these statistics and informing the rest of the world. In this meeting, there were leaders from the opposition in Ethiopia who had just been also released from prison in Ethiopia, some of them after serving a ten year sentence.

The police need to take this matter seriously. Disappearances must stop. The reason why it is happening in the Coast are explicable, but the police do not come out with answers that meet the test of the requirements of the law. I do not know whether it is wrong to be born and declare that you are of Islamic faith or whether it is wrong for you to wear a beard, particularly when you are a young person and you wear a beard, that in itself is a crime. It is just like the Njonjo days when if you wore beard, that was a crime.

I plead with the security forces in the country led by the Cabinet Secretary and the police as a service to take this matter seriously. As I have explained, even for me I was embarrassed in an international forum where I was being told of Kenyans who have disappeared, killed and detained. Therefore, we may keep quiet about it as Kenyans but there are some people out there who are taking statistics of what we are doing to our fellow citizens. If need be, my learned friend, Sen. Faki, should bring a substantive Motion so that we can discuss this matter effectively. Otherwise, I was intending even to lay those letters before the Senate to show the level of concern that people have out there on this matter.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to comment on this important matter. We all know that losing someone you love so much, for you to move on with your life, you need closure. I wonder what goes on in the minds of the family members of those people who are disappearing in Mombasa. About four weeks ago, the son of the former Minister for Internal Security, Mr. Julius Sunkuli, disappeared on 8<sup>th</sup> May. He was found dead in another county twenty days later.

Everywhere you go in this country, you hear stories of people and grown men disappearing, women and young children being abducted yet there is nothing that we are doing to trace them. No wonder the police are being blamed daily. This is because they are the ones who are tasked with protecting human life that we consider so dear.

In the National Assembly, there was a Bill which was passed last year - the National Coroners Service Act. The Bill was establishing the office of a Coroner-General, and his job was to investigate the mysterious deaths which mostly occur as a result of disappearances. The problem is that it was never implemented.

People die in this country. When you go and find your loved ones who had disappeared, maybe in Chiromo Mortuary or another morgue somewhere, you just take the body and bury it. You do not even ask questions as to what happened.

We talk so much about coming up with legislations to investigate and find out what happened. It is very sad that we have Coroner-General whose job is to investigate these mysterious circumstances where someone is found to have been dumped somewhere and that person has died or even when someone has just died of a mysterious disease. We will never get to know what ails this country.

Mr. Speaker, Sir, this is why I say this with so much passion and with due trepidation. I request the Inspector General (IG) to take up this matter because this issue that Sen. Faki has raised is something important. It is happening in Mombasa. It is very unfortunate that we can deduce that it is targeting people from one faith. Just like Sen. Orengo has said, it is not your fault that you were born into, and prescribe to, a particular faith.

We need to be guaranteed that you can walk at any time in this country. We invest so much money in the security forces. I know the National Intelligence Service (NIS) probably has a lot of money that they do not even account for. If we cannot get these answers as to why people just disappear on a daily basis, then we will come to the conclusion that these are State-sponsored disappearances.

Mr. Speaker, Sir, when people disappear – and I want to repeat this again – when people disappear, if there is no closure, this thing will eat you for the rest of your life. Then you may also disappear or God just takes you naturally, then some people will have closure. I want to support this Statement and I hope that the Inspector-General (IG) of police is watching this. We talk about these issues because we care about the people of Mombasa; we also care about that young man, Salaton Sunkuli, who disappeared and nothing happened.

Mr. Speaker, Sir, it is about time that if, indeed, we have Coroner-General, then he should take up his job and begin investigating so that every county can either have a Coroner-General or an officer working for his office to investigate these matters. Otherwise, we will be talking about people disappearing without a trace every single year.

Mr. Speaker, Sir, with those few remarks, I beg to support.

**The Speaker** (Hon. Lusaka): Hon. Members, just like I gave direction in the other Statement, let the Committee concerned with the issues raised make a follow up of the matters that have been raised.

Next Order!

## BILLS

### *First Readings*

THE SALARIES AND REMUNERATION COMMISSION  
(AMENDMENT) BILL (SENATE BILLS NO. 12 OF 2018)

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

*(Orders for First Readings Read – Read the First Time and  
ordered to be referred to the relevant Senate committees)*

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

### *Second Reading*

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL  
(SENATE BILLS NO. 6 OF 2018)

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

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

*(The Temporary Speaker (Sen. Lelegwe)  
consulted the Clerk-at-the-Table)*

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, I direct that we proceed to Order No. 11; that is, the Committee of the Whole, then we will go back to Order No. 10 later.

### COMMITTEE OF THE WHOLE

*(Order for the Committee read)*

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

### IN THE COMMITTEE

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

THE DIVISION OF REVENUE (AMENDMENT) BILL  
(SENATE BILLS NO. 14 OF 2018)

*(Loud consultations)*

**The Temporary Chairperson** (Sen. Lelegwe): Order, hon. Members! We will now proceed to the Committee of the Whole.  
*Clause 2*

*(Question, that Clause 2 be part of the Bill proposed)*

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

*The Title and Clause 1*

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

**The Temporary Chairperson** (Sen. Lelegwe): The Division will be at the end. Hon. Senators it is evident that we cannot go to Divisions. I, therefore, call upon the Mover.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairman, Sir, pursuant to Standing Order 142, I beg to move that the Committee do report progress on its consideration of

the Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018), and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House Resumed)*

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

### **PROGRESS REPORTED**

THE DIVISION OF REVENUE (AMENDMENT) BILL  
(SENATE BILLS NO. 14 OF 2018)

*(Loud consultations)*

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

*(Laughter)*

Proceed, Mover.

**Sen. Lelegwe:** Mr. Deputy Speaker, Sir, I beg to report progress; that the Committee of the Whole has considered the Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Actually, that was the Chairperson. The Mover can now proceed.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee on the said report.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Who is Seconding?

**Sen. Mutula Kilonzo Jnr.:** Sen. James Orenge.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orenge): I second.

*(Question proposed)*

*(Question put and agreed to)*

**BILL***Second Reading*THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL  
(SENATE BILLS NO. 6 OF 2018)*(Sen. Sakaja on 5.6.2018)**(Resumption of Debate interrupted on 5.6.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Whoever was on the Floor had concluded, so anybody can request to talk. However, I see no request so far, Can I declare that this is the end of request? Yes, Sen. Cheragei.

**Sen. Cheragei:** Mr. Deputy Speaker, Sir, I rise to support, the County Governments Retirement Scheme Bill (Senate Bills No. 6 of 2018).

I agree largely that there has been a problem on how they see the transition time of the county governments from the previous defunct municipal councils. It is important to note that this Bill will provide in great detail, information on the schemes of people who are at the level of county governments. It ensures that it borrows heavily - because at the moment there is no appropriate or clear guideline on how the retirement scheme for the county governments is administered. I know that most of the employees have been either through (Local Authorities Pensions Trust) LAPTRUST and LAPSSET, madam speaker and most of them---

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

**Sen. M. Kajwang':** On a point of order, Mr. Deputy Speaker, Sir. There is a rule in the Standing Orders about relevance. We are talking about pension funds. How relevant is Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor on the ongoing discussions?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thought there was a greater tragedy. What is it Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** On point of order, Mr. Deputy Speaker, Sir. Is it in order for the distinguished Chairman of the Justice, Legal Affairs and Human Rights Committee of the Senate to refer to you as madam.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Cheragei, the question is whether it is in order. You have two points of orders to respond to by Sen. M. Kajwang' and Sen. Mutula Kilonzo Jnr.

**Sen. Cheragei:** Sen. M. Kajwang' did not understand; I was forming the basis and the foundation of one or two points that I will raise in this matter.

Secondly, I withdraw and apologise.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Cheragei! There is nothing like LAPPSET in pensions. Either you are talking of LAPTRUST or LAPPSET.

**Sen. Cheragei:** Thank you Mr. Deputy Speaker, Sir, for that information I stand corrected. I meant LAPPSET or LAPTRUST. I did not mean LAPSSET.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): LAPSSET is a corridor, Senator.

**Sen. Cheragei:** Mr. Deputy Speaker, Sir, with the new appointments in LAPSSET, it has been on my lips for some time now.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope the word 'madam' has also not been on your lips for some time.

**Sen. Cheragei:** I withdraw and apologise.

*(Laughter)*

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

**Sen. Cheragei:** Thank you, Mr. Deputy Speaker, Sir, for that correction. The Chair of Labour and Social Welfare Committee – of which I am also a Member - tried and exhausted the salient areas in the Bill. What we have been trying to do is to ensure that we have a County Government Service Retirement Scheme. This Bill is, therefore, timely.

Madam Speaker---. My apologies.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Cheragei, are you well?

*(Laughter)*

**Sen. Cheragei:** My apologies, Mr. Deputy Speaker, Sir.

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

**Sen. Cheragei:** Mr. Deputy Speaker, Sir, I do not know why I keep repeating Madam Speaker. The last time I contributed, possibly it was Madam Speaker on the Chair. Even as devolution takes shape, there are so many legislations that we need to put in place and one of them is this.

I agree that Clause 7 with regard to the Board of Trustees and County Government Retirement Scheme should be included in the Bill. However, there is no representation in line with the Constitution, where we should have a representative outlook in this board of trustees to ensure that the marginalized groups, interest groups and young people are captured.

At least they have taken care of gender balance and many other aspects, but we need to ensure that people or persons of interest that are envisaged in the Constitution are taken care of. We need to relook at this Clause to ensure that we cater for all shades of society where young people and many other groups are represented. The gender balance, the interest groups and the unions have been taken care of.

Mr. Deputy Speaker, Sir, Clause 8 has ensured that the people appointed to this trustee board are people who have relevant experience. When you look at the professional requirements, they should be people who have at least five years' experience in finance, law, economics and actuarial science. This will go a long way in ensuring that we have efficient, qualified and relevant people.

What is important in the formation of the trustee is adherence to Chapter 6 of the Constitution on leadership and integrity. As we struggle against the backdrop of

corruption in this country, it is very important that the people we have--- I can see the Senator for Narok does not trust what I saying.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You have no supernatural powers to know who trusts you or who does not, from where you are.

**Sen. Cheragei:** My apologies. The way he was looking at me was suspicious. He seemed not to be trusting what I was saying. I do not know why. We had a serious conversation on one television station last Sunday in the evening and I think he might still be---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The trust was lost.

**Sen. Cheragei:** It was not lost but he was shocked.

I agree that the board should be comprised of people with integrity and impeccable track record in terms of carrying out any public affairs, so that it does not become a cash cow. We have many boards and we have heard allegations of many parastatals which have become a cash cow for only few individuals.

Clause 8 provides that anybody who will be appointed to the Board of Trustees must be a person who meets the threshold on leadership and integrity. Last week, my Committee on Justice, Legal Affairs and Human Rights met with officers of the Ethics and Anti-Corruption Commission (EACC) in this Chamber. What came out is that we need to tighten the law and ensure that the provisions of Leadership and Integrity Act are fast-tracked, so that in future when somebody needs to be appointed to a board or any Government agency, there should be a proper database where before anyone is appointed, with a click of a button, we can know who the person is. Those are some of the areas we are working on to ensure that these things come into force.

Clauses 10 and 11 provide for tenure of office and the basis on which someone can be removed from office. These include bankruptcy, incompetence, misconduct and misbehavior, among others which we all understand.

We have set the threshold for appointment to boards of trustees very high so that in future if somebody does not adhere to the provisions of Chapter Six of the Constitution, they know what should happen.

In most boards that we have, there have been allegations of vicious boardroom wars because of either the CEOs or people who sit in those boards. This will assist because if you do not appoint the right person for the job, they will perpetuate corruption at the board level or even the management of some of the parastatals. Therefore, it is important to ensure that we bring that to focus.

I also agree with the provisions of Clause 14. At the moment we have Local Authorities Provident Fund (LAPFUND) and Local Authority Pension Trust (LAPTRUST). There should be a basis of ensuring that contributions are paid to the beneficiaries of these Funds. We would like to have LAPFUND and LAPTRUST merged, so that any Government employee can walk to any office and get their money, whether they contributed to LAPFUND or LAPTRUST. They should also include a multi-agency approach and involve the Treasury and other relevant Ministries such as the Ministry of Devolution and ASAL Areas among others.

There are so many policies and as we discuss this Bill, it is important that we assist counties to build capacity. As we talk, some of them do not remit statutory



deductions. Therefore, as we look at the functions of the board, we should consider building capacity of our county governments so that they know the importance of statutory deductions.

Regarding Clause 19, we need to broaden the approach and ensure that the person who becomes the CEO in charge of the scheme has the relevant experience. We should also consider their education background and knowledge, so that we get people who have the capacity and managerial skills. We have many allegations of mismanagement even at the National Social Security Fund (NSSF) and it is because of how we provide for people to be in office.

I agree that the board may determine, at the senior management level, the functions of the scheme. However, we should not move that way because the board can decide otherwise. In as much as it may give options, it is important to leave it open so that we just say that we should have a CEO with relevant experience in, for example, economics, law, finance or management. That will ensure that the CEO of the scheme is properly appointed. That is why I insisted that the board should have people with integrity.

To get a good CEO of the scheme, they should look for the correct person. It has been indicated that that person should meet the requirements of Chapter Six of the Constitution and I agree with that.

I have an issue with Clause 19(4). We should not allow members of the board to manipulate the CEO. We have seen instances where a board makes unfortunate decisions and the CEO goes ahead to implement. We would like to see a board---

*(Sen. Dullo consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Dullo! This is unusual, because you are not one of the people who are known to consult loudly.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, we need to ensure that the functions are precise, concise and clear. The board should not just add other directions. We have instances where a CEO mismanages a parastatal or a board and the allegations are that the board sanctioned some of the decisions being implemented by the CEO.

I now want to move to Clause 22 and I will rush through it because I only have two points, so that my colleagues can also have an opportunity to contribute. This is about appointment and functions of the Fund Manager. We should have a person with technical know-how because that is a person whose task will be to provide advice on investment or relevant strategies to be used and that person should have a background in investment. You cannot appoint a person from a background which is not relevant. It is important that we have somebody with technical know-how of how investments are done and how to deal with finances.

The person will be key in terms of advising on the issues of contributions and running of the retirement scheme. Although it has been highlighted, it is important that we have a person who will ensure good running of the scheme. I still insist that a fund

manager should be a person who knows about finance and investment because their work will be to give sound advice to the CEO and even the board.

I can see that my time is almost up. I think my time is far much spent but I support.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You still had time, Sen. Cherargai. Maybe, you should have said you have run out of points. The problem is not the time.

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I rise to contribute to the County Governments Retirement Scheme Bill. Allow me to thank the Committee led by Sen. Johnson Sakaja for the hard work in this Bill because it is not gainsaid that our colleagues have been fighting us on this Bill. What surprises me is the interest they have. The County Retirement Benefits Scheme Bill is a province of the Senate. As to how we have two Bills; one in the Senate and one in the National Assembly on the County Retirement Benefits Scheme is as baffling as anything that is happening in this country. You wake up and find you are in Addis Ababa.

Mr. Deputy Speaker, Sir, you are the Mover of the previous Bill in the Senate and you know the problems that you faced, then as the Majority Leader. Together with the Chairperson, Sen. Stewart Madzayo seated right behind me, there were interests and fights and most of them were about this Bill and its contents but now I realize what the issue was. The Deputy President mentioned Kshs32 billion assets that are at risk if we do not have a legal framework. Therefore, this matter is urgent and important.

People do not like retiring because of lack of a legal framework, the opaqueness of paying retirees. Every time, I travel to my county, there is a person, widow, family and people who have been left by their dependents and their pension has not been paid. This matter is absolutely serious. Why do we make pension at national level an opaque method that people have to queue at the Treasury and other offices in Nairobi? Widows are suffering for money people have been deducted. They have to go and bring certain documents. I know about five ladies who have given up because they are tired of coming to Nairobi.

Mr. Deputy Speaker, Sir, a scheme to provide for benefits for people who have served the counties and the nation faithfully and their money deducted should go to retirement happy and their money should be paid forthwith. That should be the intention of this Bill and that is why I am supporting it. Those people who are 60 years of age and above and have worked should not be subjected to the kind of problems I have seen in Makueni County regarding pensions.

As we do this at the county level, it is also important that the Committee led by Sen. Sakaja interrogates our pensions generally because there is a problem. It is an issue that we must interrogate because once people retire, it should be easy for them to get their pension.

Mr. Deputy Speaker, Sir, the Committee on Labour and Social Welfare tabled a Report showing the interest that the stakeholders have in this Bill. I am happy now that

the Stakeholders Retirement Authority, Council of Governors who had a lot of interest in this Bill, LAPTRUST, NSSF, county government workers, KNUT; everybody came and gave their views. The Committee will have, in my view, a lot of difficulties in moving a lot of the amendments.

The ultimate intention of this Bill is contained in Clause 54, the Saving and Transitional Provisions, LAPFUND, LAPTRUST, Local Authorities Pension Fund and Trust - what happens to all these pension schemes once this Bill comes into force.

Mr. Deputy Speaker, Sir, under Clause 55, the Committee has provided that an eligible employee of a sponsor, who immediately before the commencement of this Act was a member of the Local Authorities Provident Fund (LAPFUND) or the Local Authority Pensions Trust (LAPTRUST) Ambulatory Retirement Fund shall upon commencement of this Act be deemed to be a member. I have seen views to the extent that you cannot merge these two bodies; the LAPFUND and LAPTRUST. The Committee will persuade us during the Third Reading how we will transition these two bodies.

Mr. Deputy Speaker, Sir, there has been a problem about contribution that the two schemes and workers in the counties are contributing differently towards the pension scheme. This Bill attempts to synchronize although the stakeholders are of the view that since it is the province of county governments under Section 132 of the County Governments Act to set up county schemes of this nature, each county should be allowed its latitude to contribute between themselves and the employer what amounts they think best. The Bill seeks to reduce the benefits of members from 12 to 15 to 7.5 and 15.5 on employee contribution.

Mr. Deputy Speaker, Sir, the Bill also makes provisions to contribute to the NSSF, that is Clause 25 and many other clauses which, in my view, are still matters that are out for debate and the committee will persuade us on some of the amendments proposed by stakeholders.

The amendments to as to who should be included in the administration of the county government scheme are very important. Clause 27(2) is on the withdraw of membership from the fund. There is the proposal to do away with Clause 52 of the Bill. There were various contributions that were given to the Committee.

Most importantly, is to say this: most of the retired workers from corporations like KPLC and Kenya Telkom have ended up not benefiting from the investments done by the retirement schemes. This Bill attempts to find a method where the trustees can be put to task in terms of any investments they make toward the funds of their retirees.

Mr. Deputy Speaker, Sir, all over the world, people should look forward to retirement. The investments made by the bodies and the trustees must be of benefit to the retirement scheme.

I will put a specific clause banning gambling, pyramid schemes or any other schemes that would attempt to put the contributions of pensioners to risk because that is where these people end up losing their money.

With those few remarks, I will be very anxious to see the several amendments and to listen to the Committee on the more than 35 amendments proposed to all the clauses in this Bill by the Council of Governors, inclusion of a clause on trust, transitional and a

very interesting clause on sharia compliance. This was introduced by the Retirements Benefits Authority.

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

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I also stand to contribute in support of The County Governments Retirement Scheme Bill (Senate Bills No.6 of 2018). I have heard what the Mover of the Bill has said and want to add my voice on very key areas of concern, informed by the history of similar bodies like the National Social Security Fund (NSSF).

The NSSF has a very bad reputation in terms of loss of billions of the contributors' funds. This is informed by the fact that corruption in this country has affected the citizens enormously. The NSSF is known to have invested imprudently in projects whose rate of returns is extremely low. I have heard that the County Governments Retirement Scheme is also supposed to contribute to NSSF. This means that it is likely to lose its investments.

There is also the history of the Kenya Railways Retirement Benefits Scheme (KRRBS). I am speaking with authority because I have worked with Kenya Railways Corporation for nine years. People read from the newspapers that during the old days and even the current times, the former employees of Kenya Railways travel from as far as Kisumu County to the Kenya Railways Headquarters to get their benefits, whereas we have modern ways of transferring money. Therefore, we do not expect members of the county retirement benefits scheme to suffer a similar fate.

Mr. Deputy Speaker, Sir, my other concern is Clause 22 (2) (a) of this Bill, which deals with the implementation of public policy by the fund managers. It is always imperative to have a body or an organization which will give some guidance into where this scheme is supposed to invest prudently. We expect the said scheme to invest in reputable blue chip companies, government bonds, real estate and rates.

They also need some prudential guidelines which are to be issued by the county treasuries, in the same manner in which a financial institution, more so a bank, under the Banking Act or the Central Bank of Kenya Act, is supposed to operate. There are always prudential guidelines. There is what we call Basel I, which has been overtaken by events. Now we have Basel II, which deals with prudential management of financial institutions where there are investments. This should also apply if, indeed, we will make headway.

The other aspect is the humanistic part of it, which is not defined by this Bill. The way retirees are treated is important because this is their money. Once managers are put in positions, just like directors in a company, they are trustees and should take care of the investments of their contributors. Therefore, anytime they deal with former employees they should demonstrate a human face. It is also important that they decentralize the offices instead of parties walking all the way to the county offices. They could be moved to sub-counties and this would enormously help.

I stand to support.

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! I do not know who to hold responsible. I hope it is not Sen. Dullo again who is now leading the Isiolo County caucus. You do not do it in the Chamber; you caucus outside there in restaurants.

Sen. Madzayo.

**Sen. Madzayo:** Asante, Bwana Naibu Spika, kwa kunipa nafasi hii ili niweze kuchangia Mswada huu. Hususan Mswada huu unahusu pesa za uzeeni wakati mtu amestaafu. Ni jambo la muhimu kuwa na Shirika ambalo muajiriwa anaweza kuchanga pesa za kustaafu. Vile vile muajiri anafaa kulipa kiwango fulani kwa hazina hiyo.

Katika muhula wa Seneti uliopita, nilikuwa Mwenyekiti wa Kamati ya kuangalia maswala ya wafanyikazi. Hata hivyo, kwa sababu mara nyingi sisi tuliegemea upande moja au mwingine, hatukupitisha Mswada huu katika muhula huo. Iisikitisha kuona Wabunge wakiegemea pande mbali mbali. Sasa Mswada huu uko hapa na vile vile katika Bunge la Kitaifa.

Mswada huu unahusu wafanyikazi wa serikali za kaunti. Bunge la Seneti liko na mamlaka ya kujadili Mswada huu. Kwa hivyo, kuna mvutano ambao ningepata Spika wetu aongee na Spika wa Bunge la Kitaifa ili kuona kwamba Mswada huu umeachiwa Bunge la Senate ili tuweze kuujadili na kupitisha.

Watu wengi hupata shida sana wanapostaafu. Wengine wanasafiri kutoka Mombasa, Kilifi, Kwale, Taita-Taveta na Busia hadi ofisi zilizoko Nairobi ili wapate pesa zao za kustaafu. Wao walichanga pesa hizo ili waweze kupata manufaa wakistaafu. Kadri tunavyo jadiliana, tunaimani kwamba Mswada huu ukipita, kutakuwa na shirika moja peke yake litakalo angalia mambo ya wafanyikaz ikatika kaunti zote 47 nchini.

Kukiwa na shida ya kupitisha Mswada huu, kama vile nilivyo ona katika muhula uliokwisha, inafaa tujue kwamba wanaopata taabu ni wafanyikazi wanaofanya kazi katika zile kaunti. Hao ndio wanaokuwa na wasiwasi kwa sababu hawajui pesa zao zitakuwa namna gani, ama iwapo watazipata wakistaafu. Ni aibu kuona mtu mzima aliyefanya kazi kwa zaidi ya miaka 20, 30 ama 40 akihangaishwa kupata haki yake akistaafu.

Kwa hivyo, nikiwa mmoja wa wanakamati wa Kamati ya Wafanyi kazi, niko na imani kwamba Mswada huu utapitishwa ili kuhakikisha kwamba hawa wafanyi kazi wameshugulikiwa. Madhumuni ya Mswada huu ni kuwasaidia wafanyi kazi wa serikali za mashinani waweze kupata pesa zao watakapo staafu wakifika miaka 60 au wakati wanapofika miaka 50 ama 55 wanapotaka kuacha kazi wenyewe ama wanapopata kazi mahali pengine. Wanafaa kupata pesa zao ili waweze kupata haki zao na kuishi vizuri, sio kama wanavyoishi sasa wakistaafu.

Bw. Naibu Spika, sijui kama kuna watu kama hao upande wa Meru, lakini ukienda Kilifi, utapata wamejaa. Mtu anaweza kushindwa kujua kama huyu mtu alifanya kazi ama alikuwa anatangatanga huku mjini peke yake, kwa sababu utamuona anapata shida. Hii ni kwa sababu hana cha kufanya wala hana malipo au maendeleo yoyote.

Huyu mtu huwa amezeeka, ugonjwa na mateso yamempata mpaka utashindwa kujua kama huyu ndiye yule aliyekuwa akifanya kazi mjini na kuishi vizuri hapo awali. Haya yote hutokea kwa sababu ya kuchelewesha kupata malipo yake mtu anapostaafu. Utamwona mtu aliyestaafu akiwa na miaka 60 akianza kutafuta pesa zake mpaka afike miaka 70; anatafuta pesa zake kwa miaka mitano. Hii sio haki.

Bw. Naibu Spika, niko na matumaini kwamba Mswada huu, tulivyo utengeneza, utaweza kumsaidia mfanyikazi wa serikali za mashinani kupata pesa zake akistaafu haraka iwezekanavyo ili aweze kujikimu kimaisha pamoja na familia yake ama bibi yake. Mara nyingi, watoto wanaondoka nyumbani na munabaki wawili, kama mulivyoanza. Kwa hiyo, niko na hakika kwamba Mswada huu utawasaidia wafanyikazi wakistaafu.

Bw. Naibu Spika, nataka kuwashukuru washikadau. Kile kilicho tufanya tukose kupitisha Mswada huu muhula uliopita nikwamba washikadau wenyewe walikuwa na *interest* ama maono yao wenyewe. Hivi sasa, watu wameweza kukubaliana kuhusu mwelekeo wa hizi pesa mtu anapostaafu. Washikadau kama shirika la *National Social Security Fund (NSSF)*, *Retirement Benefits Authority (RBA)*, *Ministry of Finance* – ama tunaiita Wizara ya Pesa – *Trade Unions*, ambayo ni mashirika ya kuwatetea wafanyikazi, na vile vile yale mashirika mawili yaliyo kuwa yakigombana zaidi ya *County Pension Fund (CPF)* na *Local Authority Pension Fund (LAPFUND)*.

Washikadau wote hawa wameweza kukubaliana kuhusu mwelekeo wa pesa hizi ili mtu ajue kwamba akistaafu, atazipata namna gani. Niko na imani kwamba hawa wataweza kuangalia hizi pesa na kujua jinsi ya kuziweka.

Jambo la mwisho, Bw. Naibu Spika, ningependa kuzungumzia juu ya wale watu ambao watajukumika kuangalia pesa hizi. Ni lazima tuangalie hawa ni watu wa aina gani. Hii ni kwa sababu tunaweza kuwaweka watu pale ndani, wawe wafisadi na wachukue pesa za wafanyi kazi, halafu wafanyi kazi washindwe kupata malipo yao. Kwa hivyo, natumaini kwamba jinsi Mswada huu ulivyoandikwa, lazima wale watu ambao watakaongoza shirika hili wawe wamesoma na wako na uzoefu wa kuweka hizi pesa, ndipo mtu aweze kupata pesa zake anapostaafu. Nafikiria kwamba Mswada huu ukija wakati tutakapo usoma katika *Third Reading*, utaweza kuwa na manufaa zaidi na utaweza kuwasaidia wafanyi kazi.

Asante, Bw. Naibu Spika.

**Sen. (Dr.) Zani:** Thank you, Mr. Deputy Speaker, Sir. I also stand to contribute and support this Bill because the matter of pension has become a critical issue in this country. I know for sure that when we were in the Committee of Education and members of the Universities Academic Staff Union (UASU) came before the Committee, they gave us insights about monies that have been collected for pension but are not remitted to the pensioners' fund. There are problems in other sectors as well, but the notion of somebody working so hard, for so long and then finding themselves in a situation where they cannot be paid what is rightfully theirs, it is a matter of pain.

Mr. Deputy Speaker, Sir, his Bill tends to address exactly that, by bringing it back to the county level, so as to have each county come up with the county retirement scheme. This will ensure that the people who have worked so hard in the counties are finally paid their money. Another form of this Bill was in this House in the 11<sup>th</sup> Parliament, and it did not go through. We hope that the problems of Article 110(3) will not catch up with us again so that we can sort out this issue of County Bill and money Bill from the word go, so that this Bill can go through.

Mr. Deputy Speaker, Sir, I will start with the notion of CPF and LAPFUND. I was once in a function where the two groups attended and there seemed to have been a lot of disharmony on how these Funds are operating. In fact, what I learnt then is that

there seemed to be a certain proportion of people in a particular county taking their contributions to CPF, while the others took theirs to LAPFUND. This creates disharmony within the counties and, therefore, is an issue that has to be addressed.

It seems not to be a straightforward issue because each of these institutions has put in place a proper structure about how they are going to disburse their funds. However, some sort of arbitration, probably, has to take place and these are some of the considerations we should have, as we debate this Bill. Some sort of synergy can be put in place so that we can have something that is common across all the counties. I know that it is difficult, because these are independent entities; they are actually both entrepreneurs who are out to make some money out of their practice through the pension fund. However, once there is that disorder and there is no clear direction, then it makes it difficult. We do not want to have a situation where we have differences in the payments that are made to the various workers.

Mr. Deputy Speaker, Sir, Clause 3 is very clear; that this Act applies to all eligible employees. This is good news to them and the associated organizations so that they can actually have their money paid back to them. The object and objective of the fund is to provide for the establishment of the scheme for payment of retirement benefits to members of this scheme; and that should be very systematic.

Mr. Deputy Speaker, Sir, one of the things that harms and hurts people is that after they have contributed that money for such a long time, they are not sure whether that money will be available to them when they need it the most. Not many people are patient, as you have heard from the other Senators who have spoken before me. There are people who might be able to wait, keep asking and keep going back and you just get tired. In fact, if anything, if people knew that it was not going to work for them from the word go, then they would not bother themselves.

I think that this was the idea of devolution; that we now go into smaller units that are more manageable, more operational and easier to ensure that we can get to the end goal. Therefore, if the right mechanism is put in place, such as the board, then it can work in harmony. The county governments can then take this as something serious; that money can be put out for some sort of investment even before it is recouped back into the pension fund.

These are issues that will help in terms of managing that particular Fund. It is also meant to improve the social security of members of the scheme by ensuring that they save for their retirement even though saving is not a problem. In fact, it is automatic.

Most of the organizations will take that money straightaway from someone's pay slip. Whether it will be put to good use is another question altogether. That is why at Clause 5(d) which talks of establishing a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the scheme becomes critical. It is important that this is followed to the latter. That means that a lot of participation needs to take place within the counties, as these drills are set either uniformly across all the counties or at least within the county.

The basis of this Bill is to establish a level of uniformity to ensure that there is a clear set of rules and regulations that are being followed. It is also to establish transitional

provisions for existing schemes that are in place so that there is no disharmony in transitioning from one scheme to another.

The Bill also proposes the establishment of a board. Clarity is given about the board. The membership of the board is straightforward and inclusive. It includes a representative of the Council of County Governors; two elected representatives of the county public service boards who shall not be of the same gender; an elected representative of the County Assembly Service boards; two trustees nominated by trade union umbrellas representing public servants; three other persons nominated by employees of county governments of whom at least two shall not be of the same gender, the chief executive officer who shall be an ex officio member and the secretary to the board. This is a representative board that will manage the affairs of that particular scheme in a manner that will be worthy of the scheme.

Clause 10(2) is also important. It says:

“The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner separated by six months.”

This is for transitional purposes and to ensure that whoever is coming on board is not having a direct disjoint from the one who was previously there.

Clause 11 gives the specifications for the removal from office. This is standard.

Clause 14 is important because it formulates how the board will operate. It suggests formulation of policies which are instrumental in any organization; it talks about collection and income payable to the Fund under this Act; protection of the Fund’s assets and to ensure long term viability of the scheme and negotiation for competitive annuity rates on behalf of members. If the board follows the specifications of Clause 14, it will be strong and it will make this possible.

An overseer of the board will be important. Clause 15(2) says that-

“The board shall have all powers necessary for the proper performance of its functions under this Act.”

Sometimes we have boards that are put in place and they do not have enough power to execute their mandate. So, this clause gives an element of authority and subsequent power that is necessary for the board to run the scheme and ensure that there is protection of the assets across the board and the remittance of the outstanding contributions by the sponsor.

Clause 16(1) establishes sub-committees to make the work of the board more efficient; that is key.

In Part IV on Administration of the County Governments’ Retirement Scheme, the board shall appoint the Fund Manager who will be the day to day Chief Executive Officer (CEO) for running this particular scheme with key responsibilities that are given under Clause 22(2)(c) in terms of how he or she is going to maintain the books, run the event mails, provide regular information and do other standard things. This means that this Bill has been well thought-out in terms of operation. The Bill has the penalty clauses to ensure that any person who does not follow the requirements will receive some level of punishment.



Finally, as this Bill is discussed and Members prepare to vote, when passed, it will change the fortunes of the people who have put in hard work and effort into the counties. They can reap what they have sowed.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, let us have Sen. Were.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to contribute to this Bill. I am a Member of the Standing Committee on Labour and Social Welfare that is responsible for this Bill. There has been a lot of confusion and disharmony in the operationalisation of the Local Authorities Provident Fund (LAPFUND) and the Local Authorities Pensions Trust (LAPTRUST). This Bill is an answer to the problems that are in those two arrangements.

If you look at Clause 7 in Part III on the Board of Trustees and the County Governments' Retirement Scheme Fund, the composition of that board has a representation of all the concerned stakeholders. So, this Bill is an inclusive piece of legislation that will help us deal with county government employees' retirement issues.

The Bill has a number of checks and balances. It has a board of trustee, a CEO and a Fund manager who will be dealing with the investments that will be established by this scheme. It also has a custodian appointed by the board and an administrator. So, all these checks and balances point to the fact that this will be a solution to the many issues that retired employees of the county governments and the former local authorities encounter from day to day.

With those few remarks, I support the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Pareno, please take the Floor.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill. This is an assurance of comfort to our employees in the counties as they work for us. I want to imagine that you cannot have better comfort than knowing that in your sunset years when you retire, you have something to fall back to after saving for a long time. So, this makes them more comfortable and productive. When you are assured of a good retirement package, you will become more comfortable and productive as an employee of the county.

As a Committee on Delegated Legislation, we visited Busia, Bungoma, West Pokot and Trans Nzoia counties. One of the issues that came out during our visits was that these counties cannot attract qualified personnel, especially when it comes to expertise like lawyers. We were told that lawyers do not want to be employed in the counties because of such things. There is no assurance of anything. When an employee comes in, they find no retirement package and there is instability because of change of regimes with every election cycle. This is becoming costly for the counties.

So, this Bill helps to assure workers that as they work, there will be something for them in future when they will retire. We should create more of such employee benefits so that employees are guaranteed that when they go to work in the counties, their benefits are secured. This will attract more employees.

When you have a package like the retirement package, it is an additional to the safety of the beneficiary and more attractive. This is unlike when you do not have a

package at all. It is some sort of strength when we have such law to help run counties. Of course, a good retirement package also attracts qualified people.

Mr. Deputy Speaker, Sir, this Bill also seeks to harmonise different laws. We had the transitional laws when we transitioned from the local governments to now the county governments, the LAPFUND and the LAPTRUST. This law comes to try and harmonise all those into a good scheme. This way, we will not have conflicts with one law saying one thing and another saying a different thing. In fact, the proposed scheme will transition the former local authorities and national Government employees under a national retirement scheme and retirement arrangement into one universal scheme. Of course, that is much better than us running from one scheme to another and also having conflict within schemes. It is like a one stop shop for retirement issues in the counties. This should help us run counties smoothly.

The other issue is the kind of management of the fund that is provided for in this Bill. I feel that it has more checks and balances for purposes of proper management. We know the kind of scandals that we have had with already existing retirement schemes. We have heard of the bad investments that some have engaged in that have resulted in all manner of issues.

Section 48 of the Bill states-

“A person who-

- (a) willfully fails to remit contributions to the scheme as required;
- (b) knowingly gives false information to the scheme or being a trustee  
or
- (c) Being a Trustee or employee of the scheme, willfully misappropriates the assets of the scheme,  
commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment to a term not exceeding two years or both.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! It is Clause 48 and not Section 48.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I stand corrected. Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It becomes Section 48 after it is an Act of Parliament.

**Sen. Pareno:** Yes, Mr. Deputy Speaker, Sir. So, it is Clause 48. It provides for some severe punishment. You cannot just misuse money in this country anymore and get away with it. This will ensure that this Fund is properly run and that there will be no misappropriation that we normally see or what is happening in this country where we have so much corruption that we do not know whether we have the might and will to fight it. To me, these provisions ensure that we become more accountable. In fact, it does not even absorb one who would try to hide and say: “It was not me.” If you willfully misappropriate, then you will be held accountable individually. You will not run away and say: “It was not me, but the company.”

I support this Bill. It will ensure smooth running of counties when it comes to retirement of workers.

**Sen. Faki:** Asante Bw. Naibu Wa Spika, kwa kunipa fursa hii kuchangia Mswada huu wa malipo ya uzeeni kwa wafanyikazi wa kaunti nchini. Mswada huu umekuja

wakati mwafaka kwa sababu awamu ya kwanza ya serikali za kaunti imekuwa na matatizo mengi hasa kwa wale wanaostaafu. Wafanyikazi walichukuliwa kutoka mabaraza ya miji iliyokuwepo hapo awali na wengi waliondoka bila malipo yoyote ya kustaafu kwa sababu kulikuwa hakuna mipango mwafaka ya kuwalipa wakati wanapoondoka.

Niafurahi kwamba Mswada huu umewaleta pamoja washikadau wote wa sekta ya serikali za kaunti kuhakikisha kwamba wanana bodi ya kusimamia malipo ya uzeeni ya wafanyikazi wa serikali za kaunti. Vile vile, Mswada huu unatoa fursa ya kuchagua bodi huru ambayo haina ushawishi wa upande wowote. Ni kwa sababu ina wawakilishi kutoka kwa magavana, wafanyikazi, bodi ya wafanyikazi na wahusika wengine katika sekta ya serikali za kaunti. Bodi hii itakuwa na watu wenye tajriba kama vile shahada ya sheria, uhasibu, fedha na zinginezo ili kuhakikisha fedha zinalindwa bila kuporwa.

Tatizo ni kwamba sheria inaweza kuwa nzuri lakini utekelezaji wake unakumbwa na misukosuko kadha wa kadha. Kwa mfano, lazima ufiisadi uangaliwe kwa makini kwa sababu bodi nyingi kama hizi zina penyezwa na ufiisadi kama tulivyooona Shirika la Malipo ya Kitaifa ya Uzeeni (NSSF) ambalo linasimamia wafanyikazi wengi nchini. Kwa hivyo, tungependa kuona kwamba sheria inayotungwa lazima ipewe fursa kutekelezwa na kuhakikisha kwamba wafanyikazi wanapata malimbikizi yao ya kustaafu bila matatizo yoyote. Tumeshuhudia wafanyikazi wa awamu ya kwanza ya Jumuiya ya Afrika Mashariki ambao walistaafu miaka ya nyuma, hadi sasa hawaja lipwa ilhali wenzao katika nchini ya Tanzania na Uganda walilipwa mapato yao ya uzeeni na hawasumbuki wakitaifuta mapato.

Bw. Naibu wa Spika, sheria nyingi zinazotungwa katika Bunge zetu ni nzuri kwa ustawi wa nchi yetu. Hata hivyo, matatizo ni katika kutekeleza sheria hizo kuhakikisha wananchi wanapata usawa kutokana na vile ambavyo Bunge imeamua kutumikiwa.

Hivyo basi, ninaunga mkono Mswada huu kwa sababu utasaidia pakubwa kuhakikisha wafanyikazi wa serikali za kaunti wanapata haki zao wanapostaafu.

**Sen. M. Kajwang'**: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Bill that is before the House on the County Governments' Retirement Scheme.

Even before I contribute further, I hope that this Bill is not being introduced in the two Houses of Parliament at the same time because it will be interesting to see how that will work out. The information that we had was that a similar Bill could have been brought before the National Assembly. If the same Bill is coming from both Houses at the same time, it might pose some constitutional challenges.

However, because the Bill is here and I am a Member of this House, allow me to say one or two things about it. In the last Parliament, a similar Bill came before the House. It was sponsored by the Chairperson of the Senate Committee on Labour and Social Welfare. Along the way, I think the sponsorship of the Bill changed from the Chair of the Committee to the Senate Majority Leader. When we retreated to the Boma Hotel with the Council of Governors (CoG), at some point when we held almost a *kamukunji* with them, they were up in arms. They felt that the Bill that we were attempting to push through at that point in time would hand over the control of county pensions to the national Government. I recall that the then Senate Majority Leader in the

House made a promise to the CoGs that the Bill shall be withdrawn and any subsequent debate on it would capture negotiations between the CoG and the Senate.

Mr. Deputy Speaker, Sir, even though this Bill is in the Second Reading, we will have to look at it keenly to ensure that the control that the National Treasury had in the original Bill has not been reintroduced. It was a matter of contention and if it comes back in a similar way, it will remain contentious and we will not proceed.

Mr. Deputy Speaker, Sir, again, just to capture some of the background to this Bill, in 2014, the CoG set up a Committee to advise on how to manage pensions and retirement benefits for county employees. The Committee that was established by the CoG came up with a number of recommendations. One, they resolved to establish an umbrella pensions fund for county employees. Two, they proposed that the two main players in that space, that is, the Local Authorities Provident Fund (LAPFUND) and the Local Authorities Provident Trust (LAPTRUST) would be wound up and their assets transferred to the new umbrella body. Three, the Committee recommended that the umbrella pensions fund be established under an Act of Parliament to avoid arbitrary changes, give it a national outlook and prevent a situation where people would be coming up with specific regulations for the 47 county governments.

Mr. Deputy Speaker, Sir, I am glad that, today, in discussing this Bill, we are giving effect to the recommendations that the governors came up with. Today, in the County Public Accounts and Investment Committee (CPAIC), we were with the Governor for Meru County. He made an appeal to the Senate that it is not enough to oversight; we must always remember to play the role of representing the interests of counties and their governments.

In looking at this particular Bill, we will be looking out for the interests of counties, their governments and, more importantly, their employees who render a lot of sacrifice and dedicate themselves to ensure that county governments operate the way they should. The question would be: Before this Bill becomes a law, what happens to those people who work in counties? We know, and it has been said before, that there are two funds; LAPFUND and LAPTRUST. LAPFUND was established for the lower cadre employees in the local authorities, whereas LAPTRUST was established for the senior employees. Over the years, these two organisations have choked up or accumulated huge amounts of Kenya shillings in terms of assets and liabilities.

Mr. Deputy Speaker, Sir, last week, we were looking into the accounts of Isiolo County and in the list of pending bills were pensions deductions from employees that had not been remitted to either LAPFUND or LAPTRUST. This raises a serious issue because with pensions, it is all about a person's accumulated contributions or savings. When we have a situation where since 2013 certain counties are not remitting pensions deductions to the relevant funds, it means that the employees are missing out on an opportunity to accumulate their savings and earn interest. This is not only in Isiolo County. LAPFUND is owed close to Kshs13 billion by Nairobi City County. This is because since 2013 Nairobi City County has been deducting, but not remitting the contributions to the relevant funds.

Even before we enact this legislation, we need to remind governors and counties that they must find a mechanism for securing the interests, welfare and future of the

people who work in those counties. If that is the situation in the two counties that I have used as an example, we would question. If an employee of Isiolo County or Nairobi County was to retire today, how will his or her accumulated benefits or send-home package be computed? There is a problem there. Even the governors accept that it will be difficult to compute an accurate pension for a county employee who used to work for the defunct local authorities and now wants to retire. We should not let employees of counties suffer when the 'big boys,' - the medium and top dogs in counties - are running around with billions of shillings through shady deals. It is that sweeper, revenue collector, clerk, secretary and driver that are the true drivers of devolution. They are the ones who do the heavy lifting and take on the greater burden to ensure that county governments function. So, we must always remember and put them on top of mind.

If you look at the state of retirement benefits, the Retirement Benefits Authority (RBA) has tried to bring in sanity in the sector. Kenya's RBA has been emulated. At some point in my life, I worked in the neighbouring country of Uganda, which did not have any legislation that set up an authority on retirement benefits. Every time they were setting up occupational retirement schemes, they would benchmark on the Kenyan example. Kenya has many things that neighbouring countries can learn from.

Earlier on, I heard Sen. Pareno say that Zambians or Malawians have come to Kenya to benchmark on corruption. I hope that they are benchmarking on anti-corruption rather than engaging in the act of corruption. When it comes to retirement benefits, there is a lot that Kenya can teach neighbouring countries and Uganda is one of them. Right now, they have done their Retirement Benefits Act, which I am not sure whether it has been enacted. They borrowed heavily on the Kenyan experience.

One of the earlier contributors, the Senator for Machakos, talked about ensuring that there are guidelines on how to invest the funds that will be held on behalf of employees. The RBA has done a great job by trying to define portfolio balance and guide some of the retirement benefits schemes on how to use the money that they are keeping for employees. However, there are problems still abound. Some of the retirement benefits schemes are still investing money in banks that collapse. When they put money in banks that subsequently collapse, for example, the Chase Bank and Imperial Banks of this world, employees or beneficiaries are left thoroughly exposed.

Kenya Railways has one of the richest retirement schemes in this country. It is estimated that the Kenya Railways Staff Pensions Fund is worth more than Kshs30 billion in terms of asset base. Most of it is in form of land in Nairobi, and in almost every other town where the railway passes, there is some land that was set aside for employees of Kenya Railways. However, there has been so much theft, mismanagement and corruption. Wrangles are the order of the day when it comes to management of pension benefits for Kenya Railways staff to an extent that it is only the trustees and the managers of these funds who are doing well, yet the hundreds or thousands of people who sacrificed their lives to ensure that we have a functional railway are wallowing in poverty.

Mr. Deputy Speaker, Sir, just the other day, we heard that Mariakani Estate, which is a prime piece of property in Nairobi County, was transferred to LAPTRUST or LAPFUND to offset a debt incurred over the years. Some of the debts, assets and liability

swaps that are going on as far as county pensions are concerned are illegal for the reason that the Transition Authority (TA) has given directions for counties to establish county assets and liability verification committees. Before a county verifies its assets and liabilities, it will be premature for that county to purport to assume or transfer some assets and liabilities.

Almost all the 47 county governments owe their retirees and workers a lot of money, which should have been remitted to LAPFUND and LAPTRUST. However, before the assets and liabilities verification exercise is concluded, it becomes very difficult to tell whether the assets or liabilities are accurate.

Mr. Deputy Speaker, Sir, in the last two weeks, we have been looking at pending bills coming out of counties and we have seen that part of the pending bills arise from statutory deductions with respect to pensions. For example, Isiolo County inherited pending bills totaling Kshs900 million. However, upon verification, they established that only Kshs97 million of that amount is payable. We are talking of 11 per cent of Kshs97 million. Today, we were looking at Meru County, which inherited Kshs1.1 billion in terms of pending bills. However, upon verification, only Kshs200 million was considered to be payable.

Mr. Deputy Speaker, Sir, I am bringing this up because a part of that Kshs1.1 billion from Meru County or a part of that Kshs900 million from Isiolo County are deductions owed to employees and their pension schemes. I, therefore, call upon counties to fast track the process of verification of assets and liabilities. There was a gazette notice that was issued recently for 14 counties, including Homabay County that had not established the Assets and Liabilities Verification Committees. Let them fast track this and conclude this exercise so that we can remit all the backdated or outstanding contributions of county government workers. That will enable the Funds to do their actuarial valuations so that each member of those funds can be given a statement, whenever they ask for one, showing what they will take home when they retire.

Mr. Deputy Speaker, Sir, I finalise by urging for diligence from the Senate Committee on Labour and Social Welfare to ensure that the provisions that brought conflict in the past are weeded out of this Bill. I request that even as we go through the next step of the Committee of the Whole, where we can effect amendments to this Bill, Senators should not be shy from proposing amendments. This is because this Bill will be a game-changer for Kenyan workers, particularly those who are based in the counties.

With those remarks, Mr. Deputy Speaker, Sir, I beg to support with the necessary amendments in future.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Last, but not least, proceed, Senate Majority Leader.

**The Senate Majority leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I acknowledge that this Bill –the County Governments’ Retirement Scheme Bill (Senate Bills No. 6 of 2018) –is well known to you, having been the Senate Majority Leader for five years in this House.

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

*[The Temporary Speaker (Sen. Lelegwe) In the Chair]*

This Bill has undergone tremendous transformation at different stages. It is true to acknowledge that it has caused a lot controversy, competition and fights, especially between the current institutions, what previously was called LAPTRUST and the LAPFUND.

Mr. Temporary Speaker, Sir, an attempt has been made in this House, led by the then Chairperson of the Committee in the last Parliament, Sen. Madzayo, to try to harmonise the legal framework that is governing pension in the county governments. However, there are historical issues that inhibit that kind of consensus being sought between the County Pension Fund (CPF) as it is now, and LAPFUND as it were, regulated by the National Treasury.

Mr. Temporary Speaker, Sir, even with this beautiful Bill at the moment, it is not a coincidence that this issue is so controversial. I am still asking myself why it is that there is so much interest and controversy around pensions. This is because we have this Bill now in the Senate, as introduced by the Chairperson of the Senate Committee on Labour and Social Welfare –Hon. Sakaja –the County Government Retirement Scheme Bill, 2018. At the same time, we have two Bills at the National Assembly; one which is similar to this one and another providing a framework for management of pension in the county executive. I am still asking myself why, but I have found that pension and its management is controversial. Even when we think of the National Social Security Fund (NSSF), you will find that there is a lot of controversy in its management. This is because there is a lot of money in pension. Questions of control of money have always been controversial since time immemorial.

Mr. Temporary Speaker, Sir, as the Leader of the Majority in this House, I have a duty and responsibility to find ways of harmonising these three legislations. We agreed in the Senate Business Committee that we shall proceed with this Bill in the Second Reading, awaiting the process that is also in the National Assembly. Seeing that we will have an opportunity in the Committee of the Whole to make amendments and there is a report of the Committee, I will still suggest that we seek for a harmonious resolution of the contentious issues that are affecting this process.

I have heard and been told that, on one hand, we should have one scheme that manages all pensions in counties for county executive members, elected county assembly members and members of staff under the County Assembly Service Board. That means that we should collapse all previous managers of pensions – both CPF and LAPFUND– and create one entity that will oversee the management of pensions. That will require looking at the loans, liabilities and assets of each institution and to see how to offset them in a way that will ensure that the new entity that will be created will not carry liabilities from the previous entities at the expense of any part of the staff that were in different a pension scheme.

Secondly, Mr. Temporary Speaker, Sir, there is a proposal that we maintain the same pension schemes but we create one umbrella body that will manage both of them; but the assets and liabilities are dealt with separately. There is also a proposal that says

that we create two entities, which is what is happening in the National Assembly. Of course, we are not supposed to debate a Bill that is not yet in our place, but the National Assembly has two Bills. One is saying that we have one entity – similar to the Bill in this House –but the other says that we need to create two entities –a fund that is managing the country assembly resources plus the county assembly staff; and the pensions scheme that manages the county executive, which includes the governor and the staff within the county executive department.

Mr. Temporary Speaker, Sir, these are not easy issues. I have had conversation with a number of Senators here and I agree with Sen. M. Kajwang, when he said that there are contentious issues to be dealt with. I am sure that this is the position held by many Senators. You will find that if you converse, even in a *Kamukunji*, with all Senators here, we have issues that are related to the management of pension. I suggest – and we will discuss in the Senate Business Committee – that we might need to have a *Kamukunji* on the way forward.

Mr. Temporary Speaker, Sir, there needs to be consultation between the leadership of this House, led by myself and the National Assembly. I am attempting to do so because I have already talked to the Majority Leader at the National Assembly to see how to harmonize these issues. There is no point in passing a Bill here and then sending it to the National Assembly only for it to be shelved; or for the National Assembly to pass the two Bills they have, send them here and we shelve them. Since both Houses have to deal with these two Bills, I am pursuing a harmonious way of doing this by ensuring that we discuss with the Majority Leader at the National Assembly to see how the two Bills will move between the two Houses. This is something that we must move carefully because it almost divided this House in the last Parliament.

It became impossible to pass any Bill because the House was divided in the middle. If you do not have 24 Senators pushing for the Bill then it becomes difficult to pass it.

Mr. Temporary Speaker, Sir, pensions management is important. As a country, it is important that we have a system that is working well and manages the retirement benefits of all people who are in the county. I know many Members of the County Assembly (MCAs) who were defeated in the last election who are now struggling. Even the councilors who were defeated in elections are struggling. They even brought a Petition to this House to see how their welfare will be protected. As you continue aging, there must be a system that appreciates and rewards your effort and service to the public when you had the strength to serve.

That is something that I believe that this House will carefully go through. I am even told that there were some people who were protesting outside Parliament today. They had a Petition on how they want this Bill to be dealt with. All these voices must be listened to before we come to the amendment stage. Before we get to Committee Stage, I believe the Senate Business Committee will adopt my proposal that we have a *Kamukunji* and agree on one way forward, as a Senate, so that we do not come and embarrass ourselves when we are voting for the amendments that are going to end soon.

Mr. Temporary Speaker, Sir, since I have said all those things, I do not want to delve into the contents of this Bill, suffice to say that this is a very important Bill. I



support an initiative like this. I support the Bill to the extent that it is going to provide a framework for management of pension of county officers and leaders. My only note is that we have an opportunity at the Committee Stage to make the necessary amendments to accommodate all the views that we are talking about. Pending the consultations that we will have, this Bill is important. It provides the structure and framework that can enable us to go through it as we find a solution to the question of pension in the country. To that extent and to the extent that we shall have an opportunity to relook and accommodate the various views, I beg to support.

I pray that as a House, we rise to the occasion to solve the intricate issues that are making pensions laws become very contentious issues.

Thank you.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. Murkomen. I see no request from you, hon. Senators. I, therefore, call upon the Mover to reply.

Proceed, Sen. Were.

**Sen. Were:** Thank you Mr. Temporary Speaker, Sir. On behalf of the Committee on Labor and Social Welfare, I thank all the Senators who have contributed immensely to this Bill. All the opinions and suggestions that have been put forward will be incorporated in the Bill as it moves to the next stage.

Pursuant to Standing Order 55 (3) I request that you defer the putting of the question on this Bill to a later date.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. Were. I, therefore, defer putting of the question on the Bill to tomorrow.

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

Let us move on to the next Order.

*Second Reading*

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

**The Temporary Speaker** (Sen. Lelegwe): Sen. Cherargei, are you ready to proceed with this Order? I defer this Order to tomorrow.

*(Bill deferred)*

Let us move on to the next Order.

*Second Reading*THE PUBLIC PARTICIPATION BILL  
(SENATE BILLS NO.4 OF 2018)

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, this Order is deferred to tomorrow.

*(Bill deferred)*

Next Order.

*Second Reading*THE DISASTER RISK MANAGEMENT BILL  
(SENATE BILLS NO. 8 OF 2018)

**The Temporary Speaker** (Sen. Lelegwe): This Order is also deferred to tomorrow.

*(Bill deferred)*

Next Order.

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

**The Temporary Speaker** (Sen. Lelegwe): Proceed, Sen. Were.

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir. I beg to move that the Office of the County Printer (Senate Bills No.7 of 2018) be now read a second time.

The purpose of the Bill is to establish the Office of the County Printer in each of the 47 counties in order to enable counties to independently publish Bills, laws and all other important documents that require publication as I will show.

It is also important to point out from the onset that pursuant to Article 185 (1) of the Constitution, the legislative authority of a county is vested in the County Assembly. Article 199 (1) and (2) of the Constitution on the other hand provides for publication of county legislation. Article 199 (1) states as follows:

“County legislation does not take effect unless published in the *Gazette*.”

Article 199 (2) says-

“National and county legislation may prescribe additional requirements in respect of the publication of county legislation.”

Hence this Bill.

Section 23 of the County Government Act requires that-

“A Bill shall be published by including the Bill as a supplement in the County Gazette and *Kenya Gazette*.”

This particular Section of the County Governments Act envisaged that there will be a County Printer. Only the Senate, therefore, can operationalize and institutionalize counties. That is why we have this Bill. On coming into force of a county legislation, Section 25 (1) and (2) of the County Governments Act states as follows - Section 25 (1) says-

“A legislation passed by the county assembly and assented to by the governor shall be published in the County Gazette and *Kenya Gazette* within seven days after assent.”

Section 25 (2) says

“Subject to Subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the County Gazette and *Kenya Gazette*, whichever comes earlier, unless the legislation stipulates a different date on or time at which it shall come into force.”

In addition, Section 32 (1) of the County Governments Act again requires a governor to publish in the County Gazette, the assignment of responsibilities to County Executive Committee Members and all other important decisions made by the governor or the County Executive Committee.

Section 30 (2) (i) says:

“By a decision notified in the County *Gazette*, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;”

Section 30 (2) (1) further says that the governor shall:

“Subject to the Constitution, the governor shall sign and cause to be published in the County *Gazette*, notice of all important formal decisions made by the governor or by the county executive committee.”

Mr. Temporary Speaker, Sir, therefore, pursuant to provisions of these Sections 23 and 25 of the County Governments Act, it is mandatory that a county Bill be published in both the *Kenya Gazette* and the County *Gazette*. Also, important decisions made by the county executive must be published in the County *Gazette*. Note the stress I am putting on the words “County *Gazette*.”

Whereas the County Governments Act provides for publications of county legislation and other important decisions made by the county executive, there is no legal framework for the establishment of the Office of the County Printer.

Presently, the 47 county governments rely on the office of the Government Printer at the national level which is located next to the former Kenya Polytechnic, for publication of county legislation and any other matter that a county government is required to publish.

This presents a problem given the fact that the office is based in Nairobi and it is required to cater for all the 47 counties. It has brought certain challenges to that office. There are a lot of delays. There is delay in policy implementation and the budget making process yet we know from the Public Finance Management (PFM) Act that the budget making process has timelines. Counties cannot meet those timelines because they still

have to publish the budget in the *Gazette* either the *Kenya Gazette* or the *County Gazette* before they move to the next process.

We have seen counties taking shortcuts in the publications which they are required to do. You know with shortcuts, there will be corruption, favouritism and it is not an interesting thing. We have heard counties start implementing laws that were never published, which is against the Constitution. There is a lot of frustration in the county assemblies and county governments.

Mr. Temporary Speaker, Sir, this Bill has been divided into three parts. Part I of the Bill sets out preliminary issues including definitions of the various terms used and most importantly, the object and purpose of the Bill.

Clause 3 of the Bill sets out the objects and purpose of the Bill which is to provide for the establishment of the Office of the County Printer in each of the 47 counties. It also provides for the printing and publication of a *County Gazette* in each county.

Part II of the Bill establishes the Office of the County Printer. It is important to note that the Office of the County Printer is intended to be an office in the county executive member office. The main functions of this office as stated out under Clause 5 of the Bill will be to-

“(a) publish in the county *Gazette* such documents as are approved by an authorized officer within seven days of such authorization;

(b) advise the county executive and the county assembly on all matters pertaining to printing and publication of documents;

(c) enter into such partnerships and collaborations with other public sector or private sector printing offices as are necessary for the proper execution of its functions under this Act; and

(d) perform any other function as may be necessary for the proper execution of its mandate under this Act.”

Mr. Temporary Speaker, Sir, in order to ensure that county legislations are published in a coordinated manner in both the *Kenya Gazette* and the *County Gazette* as required under the County Governments Act, Clause 6 of the Bill requires the Office of the County Printer to liaise and coordinate its activities with the Office of the Government Printer. It should also ensure that the Office of the County Printer confines its operations within its core mandate which is to inform the public.

Clause 7 of the Bill prohibits publication of information in the nature of advertisement by private persons.

Regarding the filling of the office of the County Printer and staff of the office, Clauses 9 and 10 of the Bill provide for the filling of such offices. Clause 9 requires that the Office of the County Printer is occupied by a person who has knowledge and experience in matters touching on printing and publication. This is to ensure that the office is occupied by a professional person who is able to deliver on that mandate.

The last part of the Bill, Part III, gives power to the county executive committee member to make regulations for better carrying out, into effect, the provisions of this Bill when passed.

Once this Bill is passed publication of Bills, appointments, policies like the County Integrated Development Plans (CIDPs) and budgets will allow for effective public participation.

This Bill also allows us to relook at the interpretation of the word “Kenya Gazette”. We expect that the Office of the County Attorney will work closely with the Office of the County Printer to ensure constitutionality of some of the Bills that will be published. We have seen instances where a widow in a county like Wajir comes with letters of administration to be published in the Kenya Gazette in Nairobi.

We find that there are a lot of things pending in the counties because for counties to publish everything they do in the Kenya Gazette, they have to come to Nairobi. With this Bill, the people in the counties will have access to the County Gazette. If you need to change your names, it will be easy for that change to be published in the County Gazette. You do not have to come all the way to the Government Printer. If you lose your title deed, you do not have to come all the way to Nairobi for that publication to be done; you can do that in the county printer. People will feel these services which is the essence of devolution.

There is no legislation on how the Kenya Gazette works. If you have been to that office, it operates like a secret organisation. You even wonder why those printers have never crashed due to the amount of work load that is expected of them. Counties also spend a lot of money putting up advertisements in newspapers which is very expensive. With a county printer, that cost will be mitigated. We will have Busia County printer, Baringo County Printer, Nyeri County Printer, *et cetera* and they will be recognised in law, as such, with this Bill.

When *wananchi* are able to publish legal publications in this County Gazette, it will also act as a source of revenue for these counties. Even presidential speeches that are normally delayed because of printing can also be printed at the county printer and earn some revenue for the county. The County Printer, as envisaged in this Bill, will be handling matters purely related to the proper functioning of the county governments.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move.

I would like to invite Sen. Cherargei to second this Bill.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. From the outset, I support this Bill. We are doing everything possible to instill and actualise the principles and objects of Article 174 of the Constitution. It is very important that we actualise the dream because when you look at Section 23 of the County Governments Act, it is very clear that any publication can be done through the Kenya Gazette or the county gazettes. So, the County Printer will give actualisation to what is talked about in the Office of the County Printer Bill (Senate Bills No. 7 of 2018).

To ensure that there is also proper dissemination of information as provide for under Article 35 of the Constitution, this is one of the laws that will enrich in ensuring that we create timely access to information which is held by the state. As you have heard, one needs to come all way to Nairobi to access some of the documents. Some of them do not need to take much time, for example, letters of administration when you are doing succession matters and yet you have to rely on the Government Printer. Therefore, I agree that we need to devolve the functions of the Government Printer.

In the spirit of Article 174, on the objects of devolution, we must devolve all these functions to avoid crowding. Now that we have 47 county assemblies sitting daily; passing Bills, regulations, rules and by-laws, we do not need to wait until we come to the level of the national Printer. It is important that we put this into perspective by giving our county assemblies an opportunity to increase their efficiency. We devolved some of these functions to ensure that we give county assemblies an opportunity and capacity to work efficiently.

Mr. Temporary Speaker, Sir, I agree with what the Senate Deputy Minority Whip, has said. We need to ensure that they liaise with the national Printer. Therefore, under Clause 6, to avoid not only duplication in the printing and publication of documents with the Government Printer, we should also give necessary capacity building to the county printers. The county printers should be liaising and ensuring that we publish at any given time.

I would not want to dwell so much on Clause 7; this is a straightforward Bill. Our counties have a habit of misusing and abusing the privileges that this Constitution has created. The danger across the 47 county governments is that we have given them money and functions without proper structures. Therefore, it is important that under Clause 7 we ensure that we put direct instructions by stating that: 'You cannot put up a private advert.' We have seen so much drama since devolution started. We saw some governors printing their own images everywhere. There was even a hot debate as to why pictures of governors were being displayed at the Fifth Annual Devolution Conference. It seemed like the Conference was about governors. Therefore, this Bill will prevent a situation where governors put their own images in the County *Gazette* or advertise their own issues that are not in line with the provisions of this law.

Mr. Temporary Speaker, Sir, thirdly, is to caution against privatisation or commercialisation of the same, since this is a document that should protect the interest of the public. Where I come from, we have a lot of challenges especially on letters of administration and succession that need to be put in the *Gazette*. You will find that most of the beneficiaries of an estate take longer than anticipated because they have not been published in the Kenya *Gazette*.

To ensure efficiency and avoid backlog, just like the Kenya *Gazette*, the county printer shall publish at least once in a week. This will go a long way in ensuring that we become timely and efficient. I agree with this Bill that an opportunity should be given to somebody who has the relevant qualifications in that area. I thank the Senate Deputy Minority Whip for insisting that any person who is in charge the Office of the County Printer should meet the highest threshold set in Chapter Six of the Constitution on Leadership and Integrity, as provided for by the Leadership and Integrity Act. This is somebody who will be in charge of a very critical office. It will involve publishing issues that affect the lives of *wananchi*. Therefore, we should have somebody of high integrity, so that we protect the information and confidence of the *mwananchi*. Therefore, we need to have somebody who has experience in the relevant field and meets the threshold that has been set by Leadership and Integrity Act.

For the information of the House, last week the Committee on the Justice, Legal Affairs and Human Rights met with the Ethics and Anti-Corruption Commission (EACC)

in this Chamber. They said we need to strengthen the Ethics and Anti-Corruption Commission Act and the Leadership and Integrity Act. This is because sometimes people are appointed not because they have met the necessary integrity threshold, but because there is some weakness that is within the law. We need to fast-track some of these issues.

Under Clause 9 of the Bill, the person in charge of the Office of County Printer should be vetted by the County Public Service Board (CSPB). This will ensure that the person is appointed to that office on merit and that the CSPB undertakes the necessary rigours of ensuring that we get the best. Most of the counties lack the necessary capacity in terms of human resource. Therefore, by using the CPSB to hire, it will go a long way to ensure the people appointed have integrity. They will also set their remuneration and ensure that the best candidate wins because they will give the structure. This will ensure that we do not give uncontrolled powers to the governors to be the singular appointing authority. The appointing authority should come in when all the processes have been done. The standard procedure has been that you submit three names. By the time one person is selected, the CSPB will have ensured that, that person will adhere to the necessary code of conduct and ethics within the CPSB and in line with the human resource policy and the standard practice.

Mr. Temporary Speaker, Sir, finally on the functions, since most counties are struggling – and I hope the Mover will factor this in - we should not give a leeway to the CPSB to determine the number of staff. Most counties are bloated and are on the red light in terms of the human resource they have. They spend too much on salaries, recurrent expenditures through salaries and emoluments. Therefore, if we allow unlimited hiring of staff it means we will also be allowing counties to cross the red light. I stand corrected but most counties are doing beyond 35 per cent, which is very dangerous, in terms of it spending on salaries and other benefits to their county staff. We should be precise on the number of people who should work at the county printer, so that we do not continue to burden our counties with extra and bloated county staff. Most of the governors in office who took over from their predecessors have hired beyond the approved numbers.

You will find that they hire a tea girl, a cleaner, somebody to remove the dishes after eating, somebody to give them pudding and somebody to give them a pen when they want. Instead of hiring one person who can do cleaning and make tea, you will find that they have different people doing that.

These are the things we need to streamline in the human resource departments of county governments. When we go to the Committee of the Whole, these are some of the things we need to factor so that we do not give them a free---You know governors will also want to excite their supporters. They will want people they have interest in hired. I can see Senators smiling and that means they know the specific interests that governors have in terms of clanism, religion and taking care of their spouses, girlfriends and “slay queens”. Therefore---

**Sen. M. Kajwang':** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Lelegwe): Continue Sen. M. Kajwang'.

**Sen. M. Kajwang':** Mr. Temporary Speaker, Sir, is the Senator in order to say that “slay queens” should not be employed by counties? What wrong have they done and

particularly in Nandi County where he has been loudly saying that “slay queens” should not be hired?

Could the Senator tell us what he has against “slay queens” in the Republic of Kenya and why they should not work in the devolved units of government?

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, you can see that most Senators are in agreement with me. I should be given time to define “slay queens”. These are people who do not work hard to earn their pay. Therefore, they are more of flower girls and pageboys. We do not just have “slay queens”, we also have “slay kings”.

I am not against any person perceived to be a “slay queen”. To clarify to Sen. M. Kajwang', my good friend, no one is against them but the definition and their *modus operandi* does not ensure maximum productivity in our counties. That is why some of us have been cautious because they represent some specific interests like sexual favours among other things. That is why I said that when we give a blank cheque to governors, they will hire everybody based on their specific interest. That does not only concern their spouses but also their girlfriends, “slay queens”, “slay kings” and the whole issue of nepotism.

I urge my good friend, Sen. M. Kajwang', who is the Chair of County Public Accounts and Investments Committee (CPAIC) that when they go to do audit of human resource, they should also be careful. They need to know that we have many ghost workers because “slay queens” are ghost workers. It is high time we supported any legislative framework that will ensure that devolution works.

Finally, County Public Service Boards (CPSBs) should be given opportunity to carry out their functions. I know they are in charge of the human resource in the counties. Apart from the functions that have been given, I wish we put it that any other functions can be assigned to the Office of the County Printer based on the assessment. If you need to reassign duties, you do not need to come and amend this law. I hope we will consider that when we go to the Committee of the Whole.

Thank you, Mr. Temporary Speaker, Sir, I beg to second.

*(Question proposed)*

**Sen. Mwaruma:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Bill. First and foremost, I would like to say that this Bill is rightfully here because it concerns counties.

Secondly, we know that the mandate of the Government Printer is to print and publish all official documents. The current status is that all official documents are printed by the national Government Printer and seeking to devolve the Office of the Government Printer is in law and the Constitution. The law provides that there shall be an Office of the Government Printer at the national level and at the county level. So, in the spirit of devolution, one of the things that comes out very clearly on principles of devolution is enhancing service delivery and accountability.

As it is now, most of the documents in use at the county level are not gazetted because the Office of the Government Printer at the national level is overwhelmed by work. It is supposed to publish all the documents for the national Government and the 47



county governments. So, this Bill has come at the right time. In fact, if the Deputy Senate Minority Whip had not brought it, this is one of the Bills I would have brought in the balance of my time in this Senate of the Twelfth Parliament.

It is important to devolve the work of the Government Printer because we can publish very important documents like the County Integrated Development Plans (CIDPs), budgets and several other regulations that are developed at the county level.

When I was campaigning, I really talked about gazetting important documents like the CIDPs. If you go to most counties, you will realise that the first CIDPs were not gazetted. So, there are many versions of the first CIDP and, therefore, it will be difficult to find the first CIDP that was in use.

If we do not devolve functions of the Government Printer, we are likely to run into the same problem, where you find that we are using a document that is not gazetted. Most budgets were not gazetted during the 2013-2017 period. You could find an original budget, the first version of the supplementary budget and then a supplementary budget of a supplementary budget. No budget was gazetted.

It is very difficult for us, as Senators, to oversight county governments if we do not know the CIDP or the budget that is in use at any particular time because there is no specific place where we can go and demand for a particular document. The same way, if you wanted to find the size of one metre, you only need to go to a place called Sèvres in Paris, France, and you will find a metal rod one metre long placed at zero degrees centigrade. That is the size of one metre. If you wanted to know the version of CIDP that is in use, for example, in Makueni County at any particular time, it is very difficult to know because that document did not go through the Office of the Government Printer. I support this Bill because it will safeguard the interests of counties in terms of oversight.

The people who are supposed to authorize publication of documents are well stated in this Bill, for example, the governor, the CEC, the speaker of the assembly, the secretary of a board within a county so that if there is any document that is to be gazetted, it must pass through authorized hands.

I imagine if you want to put an advert in the national dailies, then you have to come to the national office for that advert to be gazetted. It would be easier now if we had a devolved Government Printer to have that document gazetted first before the advert is put in the daily newspapers. Otherwise, it simply means that most adverts that have been put before in the national dailies have been advertised illegally.

Mr. Temporary Deputy Speaker, Sir, we need to have a provision that the county secretary is supposed to put the regulations in place for operationalization of this Bill.

This is a straightforward Bill and I beg to support the formation, decentralization or the devolution of the Office of the Government Printer.

I beg to support.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill with *déjà vu* because I seconded this Bill after a lot of rancor and fights. I hope that this time round, this Bill will see the light of day. For purposes of record, I just want to bring to the attention of my colleagues the law which supports this Bill. Article 199 (1) and (2) of the Constitution reads as follows-

“(1) County legislation does not come into effect unless published in the *Gazette*.

(2) National and county legislation may prescribe additional requirements in respect of publication of any county legislation.”

The Office of County Printer Bill, 2018 is pegged on all those in Article 199. For those who did not know or the ones who objected to this Bill, Section 25(1) of the County Governments Act; the drafters of this Act, including our Leader of Majority, Sen. Kipchumba Murkomen, in their wisdom because they followed the Constitution, which says-

“A legislation passed by the county assembly assented to by the governor shall be published in the County *Gazette* and the Kenya *Gazette* within seven days after assent.”

This is the law. It is simple and straightforward.

What is it that we are worried about? Assuming that every week the 47 counties pass one legislation, those are 47 pieces of legislation that must be brought to Nairobi for publication including the ones that the Kenya *Gazette* is doing.

Senator Petronila Were is right when she says that we are researching on this, the Kenya *Gazette* which has no legal framework, the Government Printer operates like a warlord. He has no rules; he decides when to shoot and when not to shoot. This came into play when we were doing the referendum in 2005, when the publication of the Constitution, what was referred to as the Wako Bill that ended up having Orange and Banana had an amendment which was not originally passed because of the interests and the lack of legal framework. It operates under the Office of the President and is, therefore, subject to directions. There was a time we had issues about publication of Bills. When it goes there, he refuses to publish. But you have no way of asking him why he has not published because it is a secret.

What is the problem about having 47 printers in all the counties? You provide employment, you speed up the work of legislation and you also get to publish things that are happening in the county that are not necessarily legislation. It could be what Sen. Petronila Were was saying about customary marriages, it could be loss of identity cards or title deeds, *et cetera*.

Any change including change of name in Marsabit, people must come to the Government Printer in Nairobi. We are living as if we are in the 1950s when Kenyatta Avenue was called Mackinon Street. This is one of those impediments of the devolution.

If you read the Act, that assuming a governor refuses to assent to a Bill within a specific period, it becomes law. How does it become law yet it has not been published, it has to come to Nairobi, the time has lapsed, he passes a special gazette when he feels like? We realized that the amount of money involved, that is being held at national Government level by the Government Printer who at times disappears--- Like he disappeared when we were doing the famous Windsor Retreat for election laws, the Government Printer disappeared. He did not want to publish it because there were interests.

This is one of those things that we must fight for. The reason for this is that the people who we represent must know what the county assembly is doing.

I remember there was a time I visited Sen. Mwaruma’s county assembly to address a boundary dispute between the two counties. There was a Castration Bill being discussed. If we want to truly have public participation, it is important that these

publications are done somewhere out there so that we can fast-track the idea of legislation.

I want to say this with absolute conviction that the current unstructured publication of the *Kenya Gazette* is an impediment to Article 185 in terms of legislation making by county assemblies because they have to wait and the Controller says: “No I am not giving you any money, your law has not been published by the *Kenya Gazette*.”

The purpose of Article 199(1) and (2) was to ensure that the work of publication is not restricted. The Deputy Minority Whip is absolutely right in proposing this very important Bill because this is the only way we can get county governments in place. We had proposed *Kenya Gazette, Coast Edition, Mombasa Kenya Gazette, Makueni Edition* in the worst-case scenario because they opposed and they will oppose.

Therefore, the leadership of this House must look into the eye of the leadership of the National Assembly when we finalize this Bill and tell them that it is time that we walk the talk. Devolution can only work if the county assemblies are working. In fact, sometimes we wonder, because we never get to know what sort of Bills our county assemblies are passing.

Mr. Temporary Speaker, Sir, it would be very nice if you wanted to communicate to your county to have a publication; something that you can publish in an official gazette in your county. That is the purpose of this Bill. We are not going to take away the resources or something from the *Kenya Gazette* in Nairobi; they will still do the work that they are required to do. However, if we have a High Court in Makueni because the Judiciary has devolved the court; if we are planning to devolve the Office of the Ombudsman; if the Office of the Auditor-General has a representative and an office in our county, then this is not negotiable at any level. This is the true meaning of Article 185 and 199; to ensure that county legislation gets breath of life.

Mr. Temporary Speaker, Sir, the things that would ideally be in the publication include the National Environment Management Authority (NEMA) reports on projects that they are doing; the issues that are going on in Kitui concerning mining; the issues that are going on in Kajiado about the Kenya Electricity Transmission Company (KETRACO) and the issues that are going on in Narok about the Standard Gauge Railway (SGR). All these issues would find their way in a publication at the county level.

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

Thank you.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute to this Bill. I stand to vehemently support the Office of the County Printer Bill, Senate Bills No. 7 of 2018. This is great day, considering the kinds of Bills that have been brought forth by other Senators to this House. Today we are debating the Office of the County Printer Bill, Senate Bills No. 7 of 2018, which was crafted by Sen. Were. This is a very nice Bill. I have gone through it clause by clause and I have given it some jurisprudential interpretation.

Mr. Temporary Speaker, Sir, whereas this Bill is very important, I went through some of the provisions in the Constitution, together with the Interpretation and General Provisions Act (Cap 2), Laws of Kenya. I was looking for certain definitions that are missing in this Bill, especially in Clause 2 in the interpretation area. I heard Sen. Mutula

Kilonzo Jnr., mention that, at a certain point, the Government Printer was held under the behest of the Executive.

If you look at the definition of the word ‘Gazette’ in Clause 2 under the Interpretation and General Provisions Act (Cap 2), it states that-

“the Gazette” means the Kenya Gazette published by authority of the Government of Kenya, and includes any supplement thereto;”

Of course, the Government is therein also defined to mean the Government of Kenya. For our own purposes, we know that there are two tiers of the government with the new constitutional dispensation of 2010. Therefore, there is no doubt that this Bill is within the purview of the county government functions.

Mr. Temporary Speaker, Sir, once again, I refer to a very interesting section – Section 2 of the Interpretation and General Provisions Act (Cap 2), where the Government Printer is defined, but it is not defined in this Bill by Sen. Were. The Government Printer is defined to mean-

“the Government Printer of Kenya, and any other printer authorized by or on behalf of the President to print any written law or other documents of the Government;”

If you look at that, this is the elephant in the room, because the Executive’s permission was required before any publication was done.

**The Temporary Speaker** (Sen. Lelegwe): Order, Sen. (Dr.) Kabaka! You will have a balance of 16 minutes when debate on this Bill resumes tomorrow.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Wednesday, 13<sup>th</sup> June, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.