

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 3<sup>rd</sup> July, 2018

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

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

### PRAYER

### COMMUNICATIONS FROM THE CHAIR

#### ASSENT TO THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 11 OF 2018)

**The Speaker** (Hon. Lusaka): Hon. Senators, as you may be aware, the County Allocation of Revenue Bill (Senate Bills No.11 of 2018) was published in the Kenya Gazette Supplement No.39 of 13<sup>th</sup> March, 2018. The Bill was passed with amendments by the Senate on 30<sup>th</sup> May, 2018, and was subsequently referred to the National Assembly. The Bill was read a First time in the National Assembly on 13<sup>th</sup> June, 2018, and passed without amendments on 19<sup>th</sup> June, 2018.

Hon. Senators, pursuant to Article 110(5) of the Constitution and Standing Order 157(1) of the Senate, which states:-

“When a Bill originating in the Senate is passed by the National Assembly, without amendments, the Speaker shall certify and refer the Bill to the President for assent within seven days of its passage by the National Assembly.”

Hon. Senators, in accordance to the above provisions, I referred the certified County Allocation of Revenue Bill (Senate Bills No.11 of 2018) to the President. I wish to report to the Senate that His Excellency the President assented to the Bill on Friday, 29<sup>th</sup> June, 2018.

I thank you.

*(Applause)*

THE BURIAL ARRANGEMENTS FOR THE LATE SENATOR  
FOR MIGORI COUNTY, SEN. BEN OLUOCH OKELLO

**The Speaker** (Hon. Lusaka): Hon. Senators, as you will recall, on Tuesday, 19<sup>th</sup> June, 2018, I made a Communication regarding the demise of the Late Senator for Migori County, Senator Ben Oluoch Okello. Thereafter, I appointed a Committee comprising the following Members drawn from both Houses of Parliament-

- (1) Sen. Moses Kajwang', MP; Chairperson
- (2) Hon. Paul Abuor, MP; Vice-Chairperson
- (3) Sen. (Prof.) Samson Ongeru, EGH, MP
- (4) Sen. Samson Cherargei, MP
- (5) Sen. Millicent Omanga, MP
- (6) Sen. Judith Pareno, MP
- (7) Sen. Nderitu John Kinyua, MP
- (8) Hon. Mathias Robi, MP
- (9) Hon. Mark Nyamita, MP

Hon. Senators, burial arrangements have been on-going and in this regard, I request that you take note of the following critical dates leading to the burial of the Late Senator.

(1) A funeral fundraising shall be held today, Tuesday 3<sup>rd</sup> July, 2018, at the Nairobi Central SDA Church, Maxwell, starting at 6:00 p.m.

(2) A funeral service shall be held on Friday, 6<sup>th</sup> July, 2018, at Lavington SDA Church, Nairobi, at 10:00 a.m.

(3) The Burial of the late Senator shall be held on Monday, 9<sup>th</sup> July, 2018, at his home in Rongo Constituency, Migori County.

Senators who wish to travel to Migori County for the Burial are requested to register with Mr. George Otieno, Clerk Assistant, by close of business today, Tuesday, 3<sup>rd</sup> July, 2017.

I thank you.

**PAPER LAID**

REPORT ON THE FINANCIAL STATEMENT OF PSC

**Sen. Dullo:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday 3<sup>rd</sup> July, 2018-

Report of the Auditor-General on the Financial Statements of the Parliamentary Service Commission for the year ended 30<sup>th</sup> June, 2017.

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

**The Speaker** (Hon. Lusaka): Where is Sen. (Dr.) Isaac Mwaura? He is not here?  
Next Order.

**PERSONAL STATEMENT****SEN. OUTA'S THANKS TO FELLOW SENATORS FOR  
THEIR SUPPORT FOLLOWING HIS HOSPITALIZATION**

**Sen. Outa:** Mr. Speaker, Sir, I rise under Standing Order 47 to give a Personal Statement to thank all my colleagues for the love that they showed me when I was admitted at the Nairobi Hospital.

Mr. Speaker, Sir, I extend my thanks to you and the Clerk of the Senate. You responded well when I was in need. I truly thank you, the Senate Minority Leader as well as all of you who came to visit me in hospital and for your prayers. I have never seen such love from my colleagues.

Mr. Speaker, Sir, in the one week that I was admitted, I was reminded that it is only God who is the custodian of the life that we have. I never had the time to mourn my friend, the Senator for Migori County. The day the Senator passed on, I thought I would be the next one and I wondered about it all night.

I sincerely thank all of you for the support, comfort and love that you gave me.  
Thank you, Mr. Speaker, Sir.

*(Applause)*

**BILLS***First Readings*

THE IMPEACHMENT PROCEDURE BILL  
(SENATE BILLS NO.15 OF 2018)

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

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

*Second Reading*

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

**The Senate Minority Leader** (Sen. Orenge): Thank you, Mr. Speaker, Sir. With your permission, I beg to move that the Public Participation Bill (Senate Bills No.4 of 2018) be read a Second Time.

*(Loud consultations)*

Mr. Speaker, Sir, this is a very important Bill for discussion, debate and possibly enactment, I hope, at the end. This Bill, as is evident from the preamble, is for purposes of provision of a general framework for effective public participation to give effect to the constitutional principles of democracy and participation of the people.

Mr. Speaker, Sir, in that preamble, there is reference to several provisions of the Constitution of Kenya, which are important. The theme of public participation is found throughout the Constitution. Article 1(2), which is the basis upon which the principle of public participation is founded upon, declares the sovereignty of the people and that all the institutions of governance – from the national to the county level – exercise functions and powers as delegated by the people of Kenya. That is a very important consideration for this Bill.

This Bill is essentially about a basic principle upon which the Constitution is founded. The Constitution is founded on the principle of a Republic founded on the sovereign power of the people. Indeed, as scholars have noted, generally, you would categorize democracies in various forms; and that in modern democracies, you tend to get represented democracies in nearly all the countries in the world, including the older democracies.

The old Greek cities of the years before Christ survived or were won on the principle of direct democracy. Happily, our Constitution embraces these two principles of representative democracy and direct democracy. That is found in Article 1 (2) where the Constitution is very clear that the people may exercise their powers directly or through their elected representatives. The mechanisms upon which the people can exercise their powers directly are essentially through democratic elections. That, again, is based on the constitutional principles, including those that are set out in the Bill of Rights.

Mr. Speaker, Sir, more importantly and with your permission, I wish to make references to the Constitution of Kenya. The Constitution of Kenya refers to the subject or the principle of public participation in many of its provisions, beginning with Article 10. Article 10 (2) (a) of the Constitution sets out the values and principles of governance upon which the Constitution is established. All the legislative arms of Government at the national and county levels are required to observe the principle of public participation, more so, in Article 118 of the Constitution of Kenya.

Allow me to read Article 118 (1) (b) which says:-

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees.”

Public participation is not just to facilitate participation, but also involvement. Those words are very important.

When it comes to the county governments, again---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Hon. Members, let us consult in low tones, so that we follow the proceedings.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, it is good for us to share some of these provisions because they come in quite handy. Under Article 196 of the Constitution, county assemblies are also supposed to embrace the principle of public participation not only in legislation, but also the running of county governments.

Even when it comes to the issue of protection of the environment, under Article 69, again there is the principle of public participation. In the values that affect the principle of public finance, again, you find the same theme running. That is set out in the words that, “there shall be openness and accountability, including public participation in financial matters.”

Luckily, for the legislatures there is a framework and mechanisms already, although it is not sufficient, as found in the Standing Orders. There are provisions in the Standing Orders that have been adopted both in the National Assembly and county assemblies on how to conduct public participation in matters legislation.

This Bill provides general guidelines for all institutions of Government, including Parliament and the Judiciary. It also designates offices upon which the authority to make provisions or enact guidelines for public participation shall vest. Those are found in Clause 5 of the Bill. I invite the Members to look at the Bill.

Mr. Speaker, Sir, again, of significance is that all these principles that are contained in our Constitution are also found in international instruments, more particularly, the International Covenant on Civil and Political Rights. These principles are found in the African Charter on Human and People’s Rights. There are other jurisdictions which have even stronger legislation on the question of public participation. I commend the law as it obtains in Portugal where public participation, as set out in the law, is more elaborate than in our Constitution.

For example, there is a provision in Portugal and Colombia, in the relevant legislation, that any citizen has a right to participate in the establishment exercise and control of political power. In those countries it goes beyond participation. This question also has a reason in our courts. The courts have given some guidance as to how this matter should be dealt with. There are several decisions of the High Court here in Kenya. This is a shared jurisprudence between our courts and, more particularly, the courts in South Africa. They have pointed out that the question of public participation should not be done for mere observance of the law. Public participation must be real and not illusory.

In enacting laws or making decisions, the governmental institutions must embrace the principle of public participation. Indeed, some of the courts have gone beyond that to state that public participation is not consultation or seeking advice; it is participation. The words that are used in respect of the legislature are ‘participation and involvement.’ It goes beyond just the mere principle of participation.

Mr. Speaker, Sir, this is an important Bill. I should have said right in the beginning that I am moving this Bill on behalf of the Senator for Busia County, Attorney-General *Emeritus*, Sen. Wako. He is probably the right person to have come up with this Bill because not only was he the Attorney-General during the discussions and debates around the new Constitution and piloted its enactment in the previous Parliament, but he

was also in the Committee of Experts. Therefore, he is very familiar with these provisions.

I want to persuade the House that this principle of public participation is to bring openness and transparency in governance. In Kenya today we are suffering because we do not observe the principle of transparency and openness in the way we conduct public affairs. Indeed, in the old authoritarian system, the imperial presidency that we had in the Kenya African National Union (KANU) days, the public would never be involved. So long as the authority at State House had required to be given a law that was useful to the Government of the day, Parliament would pass it. There would be objections in Parliament, but the public would never be given opportunity to determine what type of legislation was good for the country.

For that reason, we passed legislations during those dark days that, today, would never meet the light of the day. An example is the legislation that related to detention without trial. Those kinds of legislations - I can tell you - if we had this principle of public participation where the citizens were allowed to give their views as to whether or not that was good and in the public interest, many people at that time would have objected to any such legislation.

Similarly, when Kenya was turning into a one-party state, if the members of the public were given opportunity to participate and get involved in legislation, I am sure that Section 2(a) of the old Constitution would not have seen the light of day. Indeed, as soon as the then President formed a task force to find out from Kenyans whether they still wanted a one-party system, the answer was “no” all over the country when they went all over the country led by the late Vice-President, George Saitoti. May the Lord rest his soul in peace. Whereas the Government was so quick to pass that legislation, when it went to the people, the people were so quick to reject that kind of system of Government.

What I would say in regard to this legislation is that, at least, Parliament to some extent has done what it needs to do. We need to enrich the framework and the mechanism for public participation that is found in the Standing Orders. If this Bill is enacted, it will give further guidelines for effective public participation in the public interest so that the citizenry are not just involved in giving mere opinion, but they should also be involved in governance through public participation.

In fact, a lot of jurisprudence that has come out in courts in South Africa and all over the world is that public participation means that when a decision is made that requires public participation, they are not just legislation, but the imprint of that participation for the people who should be seen in that decision, process or legislation.

I commend this principle of public participation because a lot of things that are happening today including corrupt conduct and practice in the public service would not have taken place if these principles of public participation were allowed to take place. You would notice from this Bill that even the Judiciary is required to embrace these principles of public participation so that the Chief Justice, under Section 5(2), is the responsible authority to develop guidelines for public participation.

In fact, whenever you go to court and you sit there, not just as an officer of the court, but even as people sitting in a court to follow the proceedings, it is an element of

ensuring that what is happening in the courtroom is being done in an open and transparent manner.

Mr. Speaker, Sir, for example, on the issue of this misconduct involving public officers including the importation of industrial sugar or all forms of sugar that were contraband or had poison, there are things that we are not being told. Even the process of these investigations and arresting people at some level is still a camouflage of what really happened.

I am sure what the President is doing to ensure that even the procurement processes, its elements and dimensions are laid bare to the public is to try to resolve this problem about transparency and accountability.

Mr. Speaker, Sir, those who brought this illegal sugar to this country have a paper trail. For example, if you are importing sugar from Brazil, there should be some paper trail not only in terms of the poor retailer who is buying that sugar from the importer somewhere in Thika or Mandera, but also how this sugar was obtained, procured and shipped from Brazil. That paper trail is there. However, we cannot realise this because we are doing things in a very opaque manner.

In fact, I challenge the Government of the day that they should bring the real culprits in this sugar scam and the maize scandal before the law enforcement agencies. The people who are being brought before the courts are not really the initiators or the evil minds behind this fraud. If these papers were opened up and the public had access as to how the decisions were made and how the Gazette notice was framed and finally published, then we would be trying to get to the truth of the matter as to how all these happened.

Therefore, this is not an idle engagement. It is a matter that requires, as a people, we do things the way they should be done in order to serve the interests of the public and the people of Kenya as a whole.

On this legislation, the Standing Committee on Justice, Legal Affairs and Human Rights has done some work. The Chairperson of the Committee is here. He had a full House when the final Report was being made. They commended it as a good legislation. Although it could still be improved during the Committee stage, but being a Member of the Committee, as a guideline, it is the right thing for us to do in regard to public participation. This is because if we engage the public in all that we do, our commitment to achieving the promises of the Constitution, particularly the sovereignty of the people as laid out in Article 1(2) of the Constitution, would materialise.

Mr. Speaker, Sir, I also want to add that Sen. Wako would have wished to move this Bill himself. However, because he is engaged out there in Geneva with the International Law Commission, he was not been able to be here personally to move this Bill. Probably he would have said more because he took a lot of time in preparation for this Bill. He used to sit here in the House until 6.30 p.m., but this matter would not be reached. Therefore, he decided that it should be moved anyway, even if he was not there himself to move it.

I need not say more on this Bill and therefore, I would move the Bill and ask the distinguished Senator from Mombasa County, Sen. Faki, to second.

Thank you.

*(Interruption of debate on Bill)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KUNIKILA  
AIC SECONDARY SCHOOL

**The Speaker** (Hon. Lusaka): Maybe before you second, I have a brief communication to make.

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Kunikila AIC Secondary School, Machakos County.

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

I thank you.

*(Applause)*

Sen. (Dr.) Kabaka, you can proceed before we continue with the debate on the Bill.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to welcome Kunikila AIC Secondary School. Kunikila AIC Secondary School is located in Machakos County where I come from. It is located approximately near the place where my mother was born. It is in Mbiuni, Mwala, Sub-County. It is a school which has been doing very well. I would like to thank them for their sterling performance and I would wish them to continue doing so. I also urge them to continue being obedient to both their parents and teachers. In future, I would wish some of them to fill in my shoes when I exit from the Senate and join other professions in the country or internationally.

Once more, I would like to thank the school for this visit. These are the future leaders who will move this country to the next level.

*(Resumption of the debate on the Bill)*

**Sen. Faki:** Mr. Speaker, Sir, I rise to second the Public Participation Bill (Senate Bills No.4 of 2018).

As has been canvassed by the Mover of the Bill, public participation is the manifestation of various provisions of the Constitution that seek to ensure the right to participate in public affairs is respected and fulfilled.

As a starting point, I would like to point out that the preamble to the Constitution provides that the people of Kenya enacted this Constitution while:-

(1) Recognizing the aspirations of all Kenyans for a Government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.



(2) Exercising our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution.

(3) Public participation is, therefore, a manifestation of the recognition of principles of democracy and the right of each individual in society to determine the form of governance of the country.

Mr. Speaker, Sir, the Constitution in Article 38 provides for the right to free, fair and regular elections based on the universal suffrage and the free expression of the will of the electors. In exercising this right to universal suffrage, citizens elect representatives to elective bodies to represent their interests. This is one of the crucial elements of a democratic society. However, our Constitution is cognisant of the fact that citizen participation does not--

**Sen. M. Kajwang’:** On a point of order, Mr. Speaker, Sir. I did not wish to interrupt the flow of thought of my friend and elder brother Sen. Faki, but I rise under Standing Order No.84.

Mr. Speaker, Sir, is it in order for the distinguished Senator No.001 to read a speech to second this very important Bill?

**Mr. Speaker:** The Senator is out of order! You can only refer and make some references. You do not have to read the speech.

**Sen. Faki:** Thank you, Mr. Speaker, Sir. Article 38 of the Constitution provides for the right to free and fair regular elections.

Our Constitution has gone further to enshrine public participation during public participation fora that are normally conducted in the enforcement of the several laws of the country.

Mr. Speaker, Sir, the requirement for continued engagement is crucial to enrich the discussion or the legislation that is being brought to the House, or whatever decisions that will be made by the public bodies. By involving the public in various stages of public participation, the decision making in Government is normally demystified.

Mr. Speaker, Sir, another advantage of this Bill is that the public participation enriches the decisions that are being made so that they become more implementable, sustainable and likely to face minimal opposition, especially from the affected groups.

Public participation also ensures that the decision made has some form of legitimacy. The Mover of the Bill has alluded to the several enactments that were done prior to the repeal of Section 2(A) of the Constitution which would not have been enacted had public participation been conducted.

Mr. Speaker, Sir, public participation has now been enshrined in our Constitution and the courts will not hesitate to declare Acts that have been passed without public participation to be unconstitutional. Therefore, it is for this reason that the Bill comes at a crucial time when the country requires a legislation that can anchor public participation that has been done in a meaningful way.

Mr. Speaker, Sir, the Bill identifies three broad requirements for the fulfillment of this right. The first one is public access to information which is very crucial, so that they can contribute to the public participation.

As far as the right to access information is concerned, the Bill ensures further that all public bodies shall disseminate information through the traditional means of communication such as televisions and modern means of communication such as online platforms and social media.

The Bill further provides that information relating to public participation exercise shall be disseminated in the language that the recipients understand. The information that will be required to be published in public participation shall be published in a language that the participants understand.

Mr. Speaker, Sir, the Bill is also cognisant of the fact that in determining whether the duty to ensure public participation has been fulfilled or the test of reasonability has been discharged---. The test requires that the public body under a duty to undertake public participation has been carried out, must give members of the public reasonable opportunity to participate in the decision making. This is what we require to ensure that the decision made is acceptable to the members of the public.

Mr. Speaker, Sir, the third factor that the Bill identifies and provides for is the means of monitoring whether Members have discharged their duty to facilitate public participation. The Bill, therefore, requires that authorities within public participation institution develop appropriate feedback mechanisms to ensure that the public understand the role they play in the process of arriving at a decision.

Mr. Speaker, Sir, based on the foregoing, it is my firm conviction that this Bill is an important milestone in ensuring that there is a more accountable and transparent institution of governance based on the inclusive participation of the public in the process of Government.

I, therefore, beg to second.

*(Question proposed)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, thank you for the opportunity. This Bill is long overdue because public participation has been going on for a long time without a framework. Counties have been doing their own form of public participation and that is the reason we have challenges.

The Governor for Kericho, His Excellency Prof. Chepkwony, was impeached in this Senate by the assembly because of something that he did; a contract that he entered into without what was defined as public participation. The then Governor for Embu, Hon. Wambora, was saved by the court because of what was said that “the public in Embu was not involved in his impeachment”. The question has been what public participation is with regard to budgets, impeachment and projects. This Bill tries to have a uniform framework on public participation.

The Senator for Kericho said they have a problem with the budget. Many counties have problems with their budgets because governors want to construct houses for Kshs300 million, speakers’ houses for Kshs140 million and deputy governors’ houses for Kshs200 million. The question that has arisen is whether the public has been given adequate information with regard to such projects.

When a Bill or a finance document is drafted in English and it is taken to a ward somewhere in Isiolo or Mtito Andei in Makueni and then you proceed to do public participation, is that public participation, really? If you cannot communicate to the public on what you are doing, is that public participation? When we go to the communities, do we go with translators? and do we give them information?

Counties are spending billions of shillings conducting what they call public participation which in my view is public relations because they go and request for information. Members of the public are called and they give information but when assemblies go back to debate on the budgets, the public is never told the decisions made.

Why is Makueni doing well? Let me tell you the secret. We have 3,612 village committees which determine what projects will be done and they prepare documents. When the village meets, the documents cascade all the way to the ward, the constituency and finally to what we call Makueni People's Assembly. Those documents are presented to the Governor by the people of those committees. He signs against them and commits himself to those projects.

Counties have not formed village committees as we speak. The County of Nyamira was before the Committee on Justice, Legal Affairs and Human Rights and they do not have village administrators, forget about village councils. How then do you say that you have done public participation?

The Bill crafted by Sen. Kang'ata aroused a lot of emotion in Mombasa. The bulk of the content in that Bill is what proper public participation is. Who do you consult, how do you prioritise and how do you give the information? If the framework on public participation was in law today, the Bill by Sen. Kang'ata would not be necessary because wards would have the information and they would have determined what their priority projects would be and allocate in the budgets the amount of money required to ensure that every ward is developed.

So, this Bill is in simple terms a short Bill but what is not said is so much and voluminous because the framework we have in Makueni cannot be the same framework in Lamu. In Makueni, we can access every village. In Lamu, they use boats. In Isiolo they possibly use camels or donkeys or any other mode of transportation. They may be having any other form of communication. I would not be surprised if there are people who blow horns like they used to do in the olden times. So this framework is only giving general guidelines on what public participation is.

My dear colleague Senators, the most important part is not even the beginning but the Schedule which is about general public participation guidelines. When you call people for public participation, you must tell them the purpose and there must be the level required for public participation. When you call people and there are only 10 of them, is that public participation? Questions to be asked are; what is the urgency of the matter? What is the number of people who are affected? Who is targeted? How do you communicate? If you are targeting a village in my county Makueni, do you put adverts in the *Daily Nation*? That is the framework that we have under Section 90 in the County Governments Act.

I have suggested to this Senate that one of the things that we must do is to have notice boards. If the community where you come from speaks pure Maasai, why write a

document in English and use a word like “notwithstanding”? Public participation means the person who you are communicating with understands what you are saying. I do not think it is a contradiction although the law says that official languages in Kenya are English and Kiswahili. I do not think it is a contradiction to use, like I do when I can, *Musyi FM* to communicate something that people can understand in mother tongue.

Paragraph 4(2) of Schedule states that:-

“For purposes of paragraph (1), the responsible authority shall establish mechanism to enable the widest reach which may include-

- (a) television stations;
- (b) information communication technology centres;
- (c) websites;
- (d) community radio stations;
- (e) public meetings; and
- (f) traditional media.

There is no reason why the Kenya Government today should not issue 47 licences to community radio stations run by county governments, not for commercial purposes but for purposes of communicating in the language that a person in a certain village understands. We Senators and other leaders can use those platforms to explain some of the things in these Bills that are extremely difficult to understand. I have said I will not be surprised if people blow horns when they want to call people for a meeting. That is what we mean in Paragraph 4 under the Schedule.

Under Paragraph 6 in the Schedule, when you have public participation, there must be consultation. We in the Committee on Justice, Legal Affairs and Human Rights have amended that because we do not want consultation. In the case of the Kericho impeachment case, the governor had entered into a Kshs5.2 billion project with an international donor. They went for the meeting, they had a launch and they took pictures and left. The question was whether the public was consulted. They wrote minutes and said that was consultations.

We want to move away from consultation because public participation is not consultation. How do you collect your views, when do you collect your views, how long do you collect your views and up to what level do you do that are questions answered in the Bill.

If you can recall, there was a dispute just before the presidential election, when the IEBC awarded a tender to this famous company called *Al Ghurair*. The question was; did they conduct public participation in awarding a tender directly to this company? Was the information – that this was the best company to print ballot papers – in the public domain? That is why the drafter, in his wisdom, came up with this Bill. This gentleman is very wise, having been an Attorney-General.

We have specified the various units and the person who will be responsible for public participation. In Parliament, it will be the relevant Committees in each House while in the Judiciary, it will be the Chief Justice. In independent commissions or offices, boards, authorities or any other public body, the respective secretaries or chief executive officers of the public body. In Government Ministries, it will be the Cabinet Secretaries, while in the County Assemblies, it will be the County Assembly Committees responsible

for public participation. In the County Executives, it will be the County Secretaries. Clause 8 requires every person, by law, to give a report on their level of public participation.

Consequently, Mr. Speaker, Sir, when questions like the ones which arose during the last general elections on IEBC are raised, somebody will answer the question, who did you tell? There is a suggestion by Mr. Chebukati – the embattled Chair of the IEBC-- - It is actually not his suggestion, but the proposal was given by Dr. Roselyn Akombe in her exit report, where she says that there was infighting in the Commission when they were conducting their meetings leading up to the General Elections.

Mr. Chebukati proposed – and this is part of what this Bill envisions – that the general meetings of IEBC be open to the public. This is so that questions of determination of matters concerning the country can be held out there in the open. Even then, the issues raised by Dr. Roselyn Akombe – that some commissioners used to walk out and take instructions from politicians – are then done away with, because everything is done in the open.

Mr. Speaker, Sir, even this sitting is public participation, because prior to our proceedings being broadcasted live, nobody used to know what the Senate used to do. I would still want to know where this word *Sirikali* came from. However, I think that *Sirikali*, from where we derive the word *Serikali*, was because everything was a secret.

I was pleasantly surprised the other day during the Solai dam investigation when it turned out that this country does not have experts trained on disaster management. The only persons trained in this area are in the military. The Cabinet secretary told us that they are prepared to train counties, the police, the National Youth Service (NYS) and everybody on disaster response, recovery, *et cetera*.

However, when I inquired about how many of our soldiers are trained on this, she told me “I am sorry, Senator; it is a top secret.” Then I thought; wait a minute, this is the quote of the day! You spend public resources to train Kenyans to become experts and we do not know how many they are? That is what I am talking about. As far as I am concerned, the number of soldiers who are trained to deal with disasters in this country cannot be a top secret. Information on the ammunition we are keeping, the tankers or the F16 fighters that we have can be a secret. However, the number of Kenyans we have trained cannot be a secret.

Mr. Speaker, Sir, the Chairman of the Committee on Finance and Budget is here. How many counties have formed the Inter Budget Council, as stipulated under Section 37 of the Public Finance and Management Act, 2012? The last time we checked, they were 23. Most of you do not even know the budgets of these counties. I know that Makueni County has passed a budget of Kshs8.9 billion. However, if you ask me about the details of that budget, I will not tell you because we were excluded from that process. Therefore, this framework is important.

Mr. Speaker, Sir, we must revive the Bill by Sen. Sang that was defeated, but with less politics. We should have a platform where we should share information. We want to know how much kitty every Member of a Constituency has so that we do not have a duplication of funds and roles. This Bill was rejected at the time, but even now that we

have requested for funds, why have we requested for these funds? We are requesting for funds so that we can have an opportunity to interrogate issues.

For example, the Senator for Isiolo has an issue with her Governor, but how does she get the opportunity to interrogate this issue if she cannot call for a meeting and request for statements? These Counties are doing reports every quarter. However, how many of you have seen, for the last one year that you have been in this Senate, a report prepared by your County Executive in charge of Finance? You do not know. While they construct houses for Governors, Speakers and Deputy Governors, even you should ask why you do not have a house.

The point is that, in terms of prudence of financial management, the best thing we can do to this country is to have this framework so that Governors do not hide. A part of the reason why the Governor for Busia County has been charged is for hiding information about public finance and public projects. Consequently, nobody knows what they are doing, yet Governors are planning and doing county projects. I have heard from the Senator for Samburu on the development of municipalities an allegation that the Governor has increased the boundaries of a town. How did he do that without consulting anybody? Those are the things that this Bill is addressing.

With those few remarks, I beg to support.

Thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir, for giving me this chance. I rise to support and give my thoughts on this extremely well thought out Bill by Sen. Wako. This Bill is about a very important and integral part of our democracy that we continue to ignore each and every day. This is done under the pretext that the people we lead are not educated, or they do not have the capacity to understand some of the things that we do, as leaders.

We do this without realising that this is a grave violation of the provisions of Article 10 of our Constitution, where public participation is one of the national values. The drafters of our Constitution envisioned this value and put it there so strongly for us to remember and think through, every time we get an opportunity to engage with the people we represent and who have placed the duty of leadership in our hands.

Mr. Speaker, Sir, this Bill is extremely timely, especially during this second cycle of devolution. County governments are beginning to come face to face with the stark realities of the difficulties and challenges when trying to execute projects considered to be for public good, but without considering and going out to seek information from the very people that they are going to lead and give the projects to.

Mr. Speaker, Sir, under the guiding principles that have been thought out by Sen. Wako, Clause 4(d) caught my attention and it is something that I have thought through keenly. One of the guiding principles and assurances you have to give to members of the public, upon the enactment and signing into law of this Bill, is the fact that their views have been taken into consideration and that they inform the final decision that has been made. I have seen this being done by many government agencies, where they start with the end already in mind and they do not intend to take the views of the public into consideration.

You will have government functionaries sitting down in a boardroom, drinking very expensive tea and saying, for example, that the people of Makueni, Kiambu or whichever part of the country deserve this project. Consequently, when they realise that they cannot execute it without taking it through public participation, they hurriedly organise a session to meet members of the public, where people give their views. However, these views are not taken into consideration.

Mr. Speaker, Sir, Clause 4(d) is very important, because it provides a safety net where, in future, you shall not just organise a public participation exercise and have it just like a talk shop. You will have to justify and show, in your report, that the views that members of the public raised with you, as an authority and as an institution, were taken into consideration. If they were disregarded, you should also explain why. That is extremely important, wise and well thought out.

Mr. Speaker, Sir, under the determination of the responsibilities of authority under Clause 5, the various institutions must consider, think and be properly guided when they are going about their duties and are listed; they must ensure that we are not left out, as Parliament.

The most pleasurable things that I have done this term, as a Senator, is to conduct public participation on a Motion that I had brought here regarding the challenges facing the tea sector. Going out to the counties and listening to the thoughts and ideas of the people that we lead have about what we do has been extremely interesting.

I am sure that you and many of my colleagues may have watched a video that has been circulating on WhatsApp, of a famous farmer called Kibet in Eldoret, who confronted a Committee of the National Assembly that had gone to seek the views of the public on the challenges that the farmers were facing at the National Cereals and Produce Board (NCPB). You will realize that despite the fact that the farmer has very little or limited education, he raised very valid questions. He asked the Committee: “You came here last year and gave us assurances; what are you coming here to do? Are you not just consuming our taxes?”

This Bill shall be a turning point for us as an institution. At the end we shall have a law that shall give the guiding principles of the ideas and thoughts that we need to think through before going to the members of the public. It will even help us know the questions that they have about a particular issue. We must justify and show them why we consider ourselves to be different from others who have visited before.

Going by the trend of the discussion in the video that was circulating, if the Members of that Committee did not have the correct answers, they could have been lynched. They were even told that they were driving cars fueled by the taxpayers’ money. With the passage of this Bill, such issues will cease because we will first have to refer to the reports that have been done before and do a comparison. We will then know the authority that had disregarded previously raised issues by members of the public before reaching a particular decision.

Part VI of this Bill speaks to the specific public participation guidelines and the various authorities that are required to conduct public participation. It goes on to say that each responsible authority shall develop guidelines for undertaking public participation in respective institution. I want to laud this as an extremely wise decision by the drafter of

this Bill. This is because from history we have learnt that centralization of power does not give solutions.

One of the reasons we have the challenge of contraband goods of all shapes and sizes that has made our country a dumping ground of all illegal and useless things of the world, is because we centralized the organisation where standardization of the goods that are being imported or exported out of the country is done. Had we thought this through properly, we could have said that a specific standardization body takes care of food matters or anything that is for human consumption. We could have another body to standardize agricultural inputs.

It has been proved that man, by his very nature, has the capacity to do good and evil in equal measure. You will always be tempting someone when you charge them with so much power to determine so much for another individual. You can imagine a country with an economy as diverse as Kenya, with only one institution and one individual upon whose signature goods come into the country or not. You are tempting that individual. Even if we were to appoint the Pope to be in charge of such an institution, surely, he will be tempted.

Therefore, it is extremely wise for Sen. Wako to think through and say that each institution should do its own regulations for public participation. Decentralization is the way to go and that is why we have devolution. For 50 years we tried to manage all our resources at the centre, but it was being finished by mandarins in Nairobi. That is why we asked to go to our county headquarters to plan and chart our way and future.

Therefore, this House must assert itself and ensure that devolution succeeds. We cannot consider the other option. What will we tell the members of the public? When we passed the new Constitution, we assured them that the challenges that they were facing in the previous governments will be no more. Instead of coming to Nairobi, they will have to visit their county headquarters, say, Kericho Town for those who come from the county that I represent and find all the solutions.

What will happen if we get to the third or fourth cycle of devolution and the residents have given up? What will happen if they say that they cannot trust the center and do not have faith and hope in the regional governments? That will be an extremely difficult decision. I remember that we had an interesting scenario when we went to the counties at the time when we were dealing with the issue of the cess that is being paid by tea farmers.

In certain counties members of the public told us that they trust the quality of the roads that are being done by their county governments. They wanted their cess deducted from their pay and given to the county governments. In certain counties, they told us that they have no problem with the Kenya Tea Development Agency (KTDA) and trust it. However, they do not trust their county governments.

The mother of it all was when we got into counties where people told us that they have no trust in KTDA and the county government. They asked to be given money to organize themselves and see how they could fix their roads. That is the tragedy that were are staring at should we not get to a phase where we are to consider and take into considerable action the views of the public and the people that we represent.



Under the general public participation guidelines, the right to proper information, where residents can understand what is going on, is properly brought out in this Bill, and I want to laud the drafter. Almost all counties are struggling with the issue of garbage collection. For example, if you visit Sen. Outa's Kisumu County, you will find that there is a huge heap before Moi Stadium. The same challenge is experienced in Kisii County and my own county.

Governors have been coming up with decisions in nice exclusive board rooms, saying that they will transfer garbage from one point to the other, without proper information to the residents. Therefore, they hit a snag. They are not able to succeed with that project because when they get to the point where they want to launch the project the residents ask them: "Governor, of all the things that you thought about bringing to our sub-county or village, you brought us garbage?" This is because the governors have not given them information for them to know that garbage is an industry, just like a shoe factory or any other business.

We should look at garbage in terms of employment. A well run functional waste disposal system has the ability to produce power, which can be appreciated by the residents if they are given proper education and information. They will be made to understand that the garbage disposed is a source of employment and business for them and that it will also give them a chance to earn a livelihood. This Bill has brought out the right to give this information in proper language where the residents will understand and give their views under the general public participation guidelines.

For purposes of Paragraph one, under Clause 4, they have thought about the old and new media and means of communication. What avenue or contribution is available for residents of a county who work, for example, in Nairobi or different parts of the world and do not get a chance to come to public participation fora yet they have relevant information, ideas and are keen to see matters of development in their home counties being infused? Unless we provide them a new media where they will get this information and share their views, we will be shooting ourselves in the foot.

Public participation should not only be limited to the people that are available during a particular meeting. People should be able to send memorandum even if they are not available at a particular meeting. For example, bankers in Nairobi or those who work outside the country and follow keenly the development and issues that happen in their homes should know what is going on in their villages. They should send a memorandum and be assured that it will be taken into consideration.

Therefore, having captured it as part of the information and the media that will be given, under responsibilities of the various authorities that have been thought out, one of the things that they shall be required to do is to publish and distribute the documents for consideration as widely as possible. I like that phrase because it ensures that each and every individual that is affected by the decisions that are made gets an opportunity to know the things that are being done.

Mr. Speaker, Sir, the County Integrated Development Plan (CIDP) which is perhaps the most useful tool that guides and gives the general views of the public on matters devolution in a specific county is not being properly considered. I dare say that very few, if any, of our Senators that are here were given the chance to give their views

and participate in the generation of their county's CIDP for 2018 to 2022, yet they are supposed to oversight. If governors decide to do things that are out of the plan, how will they know?

We are aware that there are some county assemblies that are not keen enough and are appendages of sub-departments of the county executives. Therefore, it is important for a Senator to get an opportunity to get this kind of information. For example, a particular governor can go out of the country and meet a flashy, good looking Asian who tells them that they can do a particular project and they sign a Memorandum of Understanding (MoU) and before you know it, the matter has been sneaked into the county budget.

If a Senator does not have a channel of receiving this information as it is being proposed in this particular Bill, then he or she cannot provide adequate oversight. Very few of us know the specific details of the budget timelines that have been provided and passed by our counties unless we keep a close eye. This is something that we may have to consider as Senators. There being no proper legal mechanism for receiving this information, we should request for it.

Mr. Speaker, Sir, one of the things that I have done is that at the beginning of this term, as the Senator for Kericho, I wrote to the Speaker of the County Assembly of Kericho and asked him to supply to my office a similar copy of every report that shall be passed by the county assembly so that I get to read and keep myself abreast. The beauty of it is that with the passage of this Bill, whether I write that letter or not, I will have access to that information. Therefore, this Bill is extremely important and well thought out. I congratulate our colleague, Sen. Wako for thinking it through.

With those many remarks, I beg to support.

*(Interruption of debate on Bill)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM OUR LADY OF FATIMA,  
CHINGA GIRLS SCHOOL

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery, this afternoon, of visiting students and teachers from Our Lady of Fatima, Chinga Girl's School from Nyeri County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

On behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

*(Resumption of debate on the Bill)*

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to contribute to this important Bill. It was unfortunate that we did four and a half years of devolution without this legislation in place.

I join my colleagues in congratulating Sen. Wako for this effort. I believe that we should have had this legislation in place like yesterday. I remember in the last Parliament, the former Senator who is now the current Governor for Nandi introduced the famous “Sang Bill” which did not see the light of day because governors really fought against it. However, I hope that this will replace what Governor Sang anticipated, then.

Mr. Speaker, Sir, looking at the Bill, it is a constitutional provision. The governor or a relevant Ministry will not decide whether to hold public participation or not. It is a must. Most of the counties and relevant departments were violating this particular provision of the Constitution. I believe that this particular legislation will address those who are violating that particular provision of the Act.

I must commend Makueni County. When we went through this particular Bill, we were informed by Sen. Mutula Kilonzo Jnr., that Makueni County has a public participation procedure up to the village level. I must commend Governor Kivutha Kibwana for this initiative. I hope that most of the counties will emulate this. This is a constitutional right and it is important for Kenyans to know their right and the decisions counties are making on their behalf.

Mr. Speaker, Sir, as Sen. Mutula Kilonzo Jnr., has said, I remember that in the last Parliament, the Governor for Kericho County was almost impeached because he thought that public participation is just going to a restaurant, taking sodas and photos then making a decision on behalf of his county. He was committing the county for 50 years without a decision from the people of Kericho County but he was lucky to have been saved by this House.

The same things are happening in most of our counties. Members of the public are not involved in decision making. Governors are rushing decisions in a restaurant corner somewhere with selected people who do not question. They take minutes, they are given Kshs100 or Kshs200 and a decision is made. This is wrong and it is also a great violation of the rights of the people of Kenya.

Mr. Speaker, Sir, we cannot maneuver our way and write to those relevant institutions in the county. For example, we write to the speaker or the County Executive Committee (CEC) Member for Finance of the county assemblies to provide information. However, because we do not have a mechanism in place to hold them accountable, some of them do not respond to our letters; which is wrong. I do not understand why Senators are overlooking those counties if the county governments are not responding to our letters. We need to do something about that.

Mr. Speaker, Sir, members of the public always complain to us. For example, in Isiolo County where I come from, the gate to the County Government is always locked the whole day. People have to book an appointment to access the public gallery or see the county governor. This is a great violation. I have spoken about this many times. Members of the public have complained, but nothing has been done about it. It is a high time that the Senate is serious on its mandate.

Mr. Speaker, Sir, the issue of capacity building is provided for within this Bill. Many Kenyans do not know their rights. Some of them only hear that the county governments have passed their budgets and do not know what is contained in it. They complain to us that they have presented this and that project, but it is not even captured in the budget read in the county assemblies. They have no recourse and that is why they complain to us.

The last time I addressed the Isiolo County Assembly, I presented a particular project in the County Integrated Development Plan (CIDP) plan, but it did not appear anywhere. Besides, the county assembly members are seated there passing that particular CIDP. Where are we heading? If a county assembly Member cannot influence his own decision, what about members of the public?

This particular Bill is addressing all those issues. For public participation to be deemed a success, a report has to be written. Guidelines must be drawn and if there are complaints, there should be mechanisms in place to make sure they are addressed. I believe most of the solutions to our problems as a Senate will be addressed in this Bill. There should be a mechanism in place for enforcement whenever there is such violation in this particular Bill. Let members of the public have recourse if they know that whatever they proposed is not taken care of without proper justification. So, we must have something in place.

Mr. Speaker, Sir, in addition, there should be accessibility of the venues and information. Last week people from Isiolo County called me complaining that they were unable to access the budget that was passed by the Isiolo County Assembly. This is a budget for a county. It contains matters affecting citizens of that particular county and yet they cannot access the information.

We thank God that this Bill is addressing that particular concern. It says the county assembly should give enough notice to public participation, allow members of the public to access public participation venues and ensure reports are written. Therefore, it is important for us to fast-track the process of passing this legislation because it will solve a lot of problems of our people.

The Bill also talks about of misrepresentation. In most cases, many reports at the county level are a misrepresentation of facts. Those reports do not capture what was proposed by members of the public, but decisions that were made on their behalf. This is really very wrong.

During the time of one party system in this country, the structures we had were totally different from what we have now. We have constitutional provisions in place which provide for all the citizens to know their rights, make their own decisions and be involved in whatever projects taking place in their own counties. Currently, decisions are made for members of the public in terms of projects that will be funded in the budget. In most cases, those projects are not required in those places. However, simply because somebody wants something out of it, they make a decision for members of the public. Those projects become irrelevant and do not serve the purpose of those particular counties. Once this particular Bill is passed, it will address these concerns.

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

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

Mr. Deputy Speaker, Sir, the CIDP is an important document. On the issue of public participation, I found out in my county last week that when the counties came into place, public participation was done at 6.00 p.m. in the evening. People were being lobbied to come and sit in that particular meeting. They were even calling me saying that they were told to pass some decisions and yet they do not know the benefits. Honestly, we are being taken for a ride and are being taken for granted as Senators and also as members of the public.

I know this Bill is addressing many issues, especially on regulations and guidelines. Therefore, I hope that when it comes to guidelines and regulations, they will have to be scrutinized because if we leave it to the county governments they will come up with regulations to suit their interests. We, as Senate, must know how the regulations will be developed as this would help us know how the legislation is going to be operationalized. If we do not follow up as a Senate, then we are doing an exercise in futility.

Mr. Deputy Speaker, Sir, finally, this Bill is timely and will address the concerns of this House that we have been crying for over the years. It will solve problems of members of the public who do not know their rights. I must comment Sen. Wako for coming up with this Bill. When we had the public hearing on this Bill, the Kenya Law Reform Commission (KLRC) was also coming up with similar legislation. However, we told them that since we have already started, we cannot wait for them to come up with their legislation.

I hope that it will not contradict what we have before this House. If anything, this particular legislation falls within the mandate of the Senate. Therefore, they should have listened to us as a legal committee of the Senate; once we make a decision on this legislation, it is final. If they are not careful, it will be shot down the same way as Sen. Sang's Bill, the current Governor for Nandi, which was thrown out the window in the courts.

I support this Bill. We hope it will assist our counties and solve most of the problems that are faced by the counties.

I thank you.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to add my voice in support of this very important Bill by Sen. Wako.

Mr. Deputy Speaker, Sir, from the very outset when I look at this Bill, I see three very important outcomes, if it is enacted into law. One of the outcomes is the empowerment of communities. Once enacted, this Bill will ensure that communities have access to critical information on projects and decisions that affect them and their livelihoods. Once armed with that information, communities will be able to hold leadership to account. That is exactly like the story told by the Senator for Kericho County of the farmer who spoke truth to the National Assembly Committee on Agriculture. The farmer had demanded accountability on delivery of pledges and promises made to farmers with regard to the price and delivery time of fertiliser.

Mr. Deputy Speaker, Sir, the second outcome that I think is very important in this Bill is that it seeks to give people a say in the management of public resources. There is a misconception that once money is devolved to the counties, then governors own that money and it is them who decide how it is going to be used or not. However, through public participation, the people will have a direct say on how their resources will be utilised. If those resources are not utilised in the way they want them to be utilized, they will have recourse in this Bill.

Mr. Deputy Speaker, Sir, the third outcome, which I find very important is that through this Bill, people in every village in this country will determine what projects they want for themselves. These will not be those projects that are conceived in boardrooms and implemented through dubious means. These will be projects that the people want and which will have an impact on their lives. In my view, those three outcomes will even make the oversight role of the Senate more effective and less acrimonious.

Mr. Deputy Speaker, Sir, as I join my colleagues in supporting this Bill, I want to specifically identify two or three parts in it. Clause 4 of the Schedule talks about giving sufficient notice to the people before they can participate in discussions and deliberations about projects and management of resources belonging to them. This is very important because the tradition in most counties has been that County governments would wake up one morning and decide that the same day, in the afternoon, there would be a public participation meeting on a road project in some village.

When officials from those county governments go for that public participation, they actually do not engage in any form of public participation. What they do is that they lecture communities and villagers on the importance of the projects that they have brought to them. They then require the public to approve the projects so that they can move on to the next meeting. However, this Bill makes it mandatory that sufficient notice must be given for the people to prepare and get ready to participate in making decisions about their projects and their resources.

Mr. Deputy Speaker, Sir, another Clause in the main body that is important to me is Clause 5. It identifies the officers who will be held to account for public participation or for breach of the same. It has been a tradition, again, that when people are found in breach of the requirements for public participation, a blame game of who is really responsible for it sets in. In this Bill, offices that must take responsibility have been identified for the proper conduct of public participation.

Mr. Deputy Speaker, Sir, as I conclude, once this Bill becomes law, there are some ugly public incidents that this country will be saved from, and I will begin from my own county. In a very well thought out, well-meaning and well-intentioned action to conserve the environment, the county government decided to ban the burning and sale of charcoal for commercial purposes. This was a very good idea which was supported by very many people. However, because of lack of proper public participation, a noble idea like this resulted in unnecessary damage to property and acrimony between communities.

If the county government had conducted proper public participation on this matter, then the people would have been able to differentiate and draw the line between environmental conservation and business ventures in which people have invested millions of shillings. The same applies to the current scenario in Turkana County, where the

community has decided to use their livestock wealth as a chip to bargain for the exploration and export of oil. I want to believe that if there was proper and effective public participation, the people of Turkana would know that this oil resource is of great benefit to them and to this country. Therefore, conditions cannot be put, tying it down to a return of cattle that have been stolen.

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

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators. I have a communication to make.

*(Interruption of debate on Bill)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM CUEA,  
NAIROBI CITY COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers of the Catholic University of Eastern Africa (CUEA) School, Nairobi City County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

What is it, Sen. Wambua?

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir. Allow me to take a minute to congratulate the visiting students from Catholic University of Eastern Africa (CUEA). This is to let this House know that Sen. Enoch Wambua of Kitui County went to CUEA.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wambua, we did not know that, but we are happy to note it.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, now the House knows. I congratulate students from CUEA and encourage them to work hard and be determined as I was. They need to be focused, and one day, a good number of them will be in this Chamber, other chambers or serve this country in different capacities. The Catholic University of Eastern Africa is an institution that is founded on strong Christian and family values. I encourage the students to keep up its good name.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Sen. Wambua. Sen. (Dr.) Kabaka, you did not go to CUEA.

*(Sen. (Dr.) Kabaka spoke off record)*

Okay, Sen. (Dr.) Kabaka. You have two minutes.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I hope it will not interfere with my other request to contribute to the Public Participation Bill.

I wish to join my neighbour, Sen. Wambua, in congratulating the CUEA. I must have joined the CUEA earlier than Sen. Wambua. I joined CUEA where I pursued Masters of Arts in Philosophy. I was taught by some of the gallant lecturers. Some have left and gone back to Italy. Others have demised, like Fr. Klinka, who taught me Philosophy of religion, ethics and so forth. Later on, I became a lecturer at the same university under the deanship of my former dean at the University of Nairobi, Prof. Nderitu, who was your dean. I taught there for about two or three years and joined the world of politics.

Once again, I congratulate the students for their visit and hard work. It has been proved that the School of Law at the CUEA is one of the best when it comes to students who join the Kenya School of Law before being admitted as the advocates of the High Court of Kenya. Their performance has been sterling, and we get that from the lecturers. That shows that the Christian Catholic beliefs, upon which the university is built, are important. Once again, I thank them and may God bless them.

*(Resumption of the debate on the Bill)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Dr.) Kabaka. We now proceed with the debate on the Public Participation Bill.

Proceed, Sen. (Dr.) Milgo.

*(Sen. Mwaaura consulted while standing)*

Order, Sen. Mwaaura! Kindly resume your seat.

Given the nature of interest, I recommend we take the shortest time possible, without curtailing the freedom of debate.

Proceed, Sen. Milgo.

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir. I also rise to support this Bill based on the following issues. First of all, I wish to congratulate Sen. Amos Wako for coming up with such a great Bill. If this Bill is passed and becomes law, the counties will be run better.

The issue of corruption and contraband goods, such as sugar and maize, has elicited a lot of debate. People want to know who is importing this sugar. It has degenerated into some people even naming others. Some even imagine that their communities are being targeted. I am sure that if this Bill was in place, such issues would have been sorted out. Right now we would know who the importers of sugar are.

I am quite pleased particularly with Clause 4 of this Bill. This is because it gives a clear guideline as to how public participation is supposed to be conducted. In the counties, governors normally speak of what we call County Integrated Development Plan (CIDP), which is a clear plan. However, a closer look at this particular plan shows that



there is little public participation. At times you would have very few people participating in it, and then all of sudden, we see roads and buildings coming up. In other cases, very huge projects are started.

As I speak right now, in a certain county there is a huge project that is coming up, which is already a source of conflict. Instead of bringing blessings to that particular county, we already have the residents complaining and imagining that maybe the leadership wants to take that project to their own area. This has come as a result of lack of public participation. I am sure that if the public was involved, they would have embraced the project and known why it is being put up in that area.

Many of my colleagues have even mentioned the issue of garbage collection. In the county where I come from, we had a tug of war in terms of garbage collection. Residents have complained about garbage being dumped in their sub-county. Again, that was as a result of lack of public participation. We have problems in terms of public expenditure because, in most cases, we have projects coming up just from decision that have been made in boardrooms, hotels and sometimes through trips. After a short while, most of the finances are spent in inappropriate projects.

Mr. Deputy Speaker, Sir, if you do a close analysis, you will find that there are areas where we have projects like buses, schools and factories of various nature coming up, and yet they are not the priorities of the particular residents. As I said earlier, this has been a bone of contention. Normally, the residents conduct various demonstrations because of lack of information.

Clause 6 is clear in terms of giving guidelines. I am pleased to note that, once this Bill is in place, before any project commences in future, there will be display of what will be taking place for a period of three months. That is enough for the participants to have an understanding of what will take place. Otherwise, in most cases, we start projects without informing the actual beneficiaries of their targets, the cost of the projects, the procurement procedure and the beneficiaries of the projects.

Mr. Deputy Speaker, Sir, at this particular point, I wish to thank the Makueni County Government for what they are doing. While we were in Mombasa during the Legislative Summit, the Governor for Makueni explained to us at length what he has done in terms of putting in place a very clear structure that includes even the village elders; it is right from the county government to the village level. That structure was able to tone down what was happening in Makueni County in the past.

Maybe out of that formation, it was why Makueni County Government was almost being dissolved earlier on. However, right now, you will realise that Makueni County Government is what we are going to emulate and it is my prayer that many of our governors will visit Makueni County to borrow a leaf in terms of participation.

Mr. Deputy Speaker, Sir, looking at this Bill, it is very short, however, once it is through, our cry of wanting to know what the governors are doing as a Senate will come to an end. I am sure we shall also be very clear as to what is happening in our counties.

As one of my colleagues had already put it, when we go to our counties, we are not even sure of what is going on there. We normally just appeal that they send money to the counties. However, we are blind when we go to those counties. If somebody stops us

one day and asks us what is going on in our counties, as the oversight people, we will be the same as those systems that are very ignorant of what is going on.

I support this Bill, for it is long overdue. I thank the person who came up with this Bill because it is going to assist the counties to ensure that devolution becomes effective.

Thank you.

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

*(Sen. Shiyonga spoke off record)*

Order, Senator! You know what to do. In future, if your microphone is not working, you can try the Dispatch Box.

You can proceed.

**Sen. Shiyonga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this Bill. I applaud the Senator of Busia County, Sen. Amos Wako, for coming up with this Bill; a bill that is long awaited.

I support this Bill because it realises the importance of values of our people and what is needed during this devolution era. The Bill comes when most of our people in different constituencies or counties are really struggling with how to implement various projects and programmes that are defined with millions of money.

This Bill will enable our people in counties to standardise how well public participation is important to the people that are in need of knowing what is happening within their counties and constituencies.

Mr. Deputy Speaker, Sir, there are so many projects, as I evaluated, that have been implemented haphazardly in a way that they are done in boardrooms. They even take trips abroad just to decide on what needs to be done in various counties.

These standardised guidelines of public participation will allow our people in various counties to take part to decide through their views on the priority of what they want to do, at what time and who takes the lead. This has been so much, in the various years that we have lived, denied from our citizens. This Bill is going to enable our people participate lawfully and rightfully on what is meant for them.

There is a medium of communication that has been elaborated in this Bill. The medium of communication is very important. These people will be enabled to follow this medium when they want to communicate. How best can they communicate and in which language? It will address how best they can participate especially for those people who want to participate but they do not know how best to communicate with the people who are implementing this Public Participation Bill.

Mr. Deputy Speaker, Sir, devolution is a success. When this Bill is passed, it is going to enable our residents in various counties to give priority to what is of essence to them. Many a times, corruption has taken root in our counties because the truth has been hidden from the people to whom these projects are implemented. It is the right time whereby the circuit of corruption can be disbanded when people take part in what is right for them.

I fully support this Bill with the hope that it is going to change what people have been thinking about public participation; that they are policies that are put into paper and onto shelves. People need to be told the truth so that they can discuss and agree.

It is important that this Bill elaborates a lot about feedback. Feedback has been omitted in most public participation fora that have been taking place in various counties. When feedback is given to the people who have given their views, then it becomes a complete circuit of what people are informed of.

So, I support this Bill because it will ensure the right to information which is provided for in the Constitution to the people of Kenya is safeguarded.

I support the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

*(Interruption of debate on the Bill)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM THUITA PRIMARY  
SCHOOL, MURANG'A COUNTY

Order, Senators! I have another communication to make relating to the visiting students and teachers from Thuita Primary School, Murang'a County.

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Thuita Primary School, Murang'a County.

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

Thank you.

*(Applause)*

*(Resumption of debate on the Bill)*

Let us continue with debate on the Public Participation Bill (Senate Bills No.4 of 2018), Second Reading.

Proceed, Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise to join my colleagues in supporting this Bill. This is a Bill which would have actually come at the beginning of the first term of the Senate. Nonetheless, we can rescue a lot of things.

Mr. Deputy Speaker, Sir, public participation is a right of the people of Kenya according to the Constitution. In the last four and a half years, public participation for those of us who were outside this House was handled in a manner that its benefits did not help its executors or participants. This is because there was no clear guideline to guide public participation.

In some instances, we heard of public participation being a session in a hall. People attending it were paid transport and it was very difficult for them not to agree with the organizers. We know of instances where people were locked out because the room was full to capacity and in others, people were locked out because they were not invited for public participation exercise. That was not public participation. Public participation should allow access by any Kenyan who wants to participate and contribute.

Mr. Deputy Speaker, Sir, I want to thank Sen. Wako for this Bill and for articulating it very well. When you look at the objects, he has given us an opportunity to allow the public to demonstrate their intellect because the Kenyan public is a very intelligent public. They know exactly what they want, how to organize themselves and prioritize their programmes.

The major problem in terms of development in this country is prioritizing programmes. For example, when people are interested in provision of clean water, a road is prioritized for them. Others are interested in a road, but they are given a maternity hospital instead. This is because the decision is imposed on the people. Public participation will enable Kenyans to decide and prioritize their programmes.

The other thing that will come out very well is transparency. It is only through public participation that our people will know how much money is actually available for them in the budget.

Mr. Deputy Speaker, Sir, with devolution, we cannot continue to make Kenyans believe money given to them belongs to somebody. For example, the CDF does not belong to a Member of Parliament, just the way the funds that have been devolved, do not belong to a governor or a Senator. They belong to the people. Therefore, they are the ones that should participate in deciding what projects should be prioritized.

I personally appreciate the way the articulation of this law has come out because we now have a mechanism to get feedback. It is very important to involve people in decisions making so that they prioritize their projects. If that project is not contained in the CIDP, it will never see the light of day. A feedback mechanism will ensure that the public get to know what went in and what did not go in, after the Annual Development Plans have been released.

The public will, therefore, be the first level of oversight as far as we are concerned. They will be able to do the monitoring and evaluation themselves. They know the projects that have been approved for a certain location. They know projects that are within their wards. By so doing, they will receive a feedback. This feedback mechanism will enable this Senate to receive reports so that we know how the money we allocate to counties is spent. As an institution that is supposed to be taking care of the interests of the county governments, it is very important that we know from the onset, how much money has been allocated and then periodically receive a report.

Currently, the County Public Accounts and Investment Committee (CPAIC) does postmortem. They do it several years later. If we continue doing so, we will never be able to contain any corruption which takes place. It is so good that this Bill will provide for a reporting mechanism, not only for the public, but to all of us. We will know exactly how we are progressing.

This Public participation law will also allow us to provide guiding principles. When you walk across this country, you will see white elephant projects all over. These projects were abandoned because of changes from one leader to the other. When a Member of Parliament leaves office, a new Member of Parliament wants to do their own projects and yet we know the money does not belong to them. When governors change hands, they initiate their own projects for the public to see.

That distorts development completely. If you have 10 incomplete projects, you will waste everybody's time. The money is wasted and the buildings also become dilapidated. The only way we can have sustainable development is to have sustainable decisions. These projects must be completed and sustained even whether there is change of guard or not.

Mr. Deputy Speaker, Sir, this Bill provides for very important mechanisms through which we can check the development in our constituencies. Counties must allow for equitable public participation. In this Bill, public access to information is being promoted. We know that we have a law on the right to information. How many people have looked for that information, leave alone being given the information when they have requested for it?

It is very important that public participation exposes to Kenyans their rights, the fact that this money is theirs and that they should plan for it themselves. It ensures that when they have planned for the money they have a right to demand to know how much has been spent, how much has been left and so forth. So, this law will completely transform how devolution will take place.

Mr. Deputy Speaker, Sir, personally, I have no doubt that this Bill will re-energize the development that will arise out of devolution. People will get to know the difference between that time when there was no devolution. There is devolution now. Kenyans participating in decision making will create that synergy. They will be able to monitor and evaluate projects in their counties. This will make life easier for us.

Transparency and accountability will be 100 per cent promoted. This is because when you have declared what will be developed and when the public do their monitoring and evaluation, they will feel that they are respected through this kind of a law. This law brings in the issue of respecting the users of the funding. We will be more transparent and accountable in our deeds and this will benefit many people.

Mr. Deputy Speaker, Sir, I truly believe the non-accountability and the corruption cases reported year in, year out, by the Controller and Auditor-General will be minimized when members of the public are involved in decision making and prioritizing of programmes .

As I said, the issue of County Integrated Development Plan (CIDP) is important. It is a long term programme for every county for five years. However, there is another one called the Annual Development Plan (ADP) which must also find its way to this House so that we discuss.

When we talk of public participation, as part of the public and leadership that oversights and represents the people, we need to ask ourselves at what stage we will demand for accountability in terms of the ADP of any county. We need to look for ways in which the ADP and all the other programmes are tagged through the public

participation so that we make accountability and transparency part of our lifestyle. This is the Kenya we want for the future.

With those remarks, I support.

*(Sen. (Rev.) Waqo consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Kamar.

Before I give the Floor to the next Senator to speak, Senator for Isiolo County and your delegation, I would like to draw your attention to Standing Order No.107. For your benefit and for the benefit of the other colleague Senators, it says as follows:-

“Except when passing to and from his or her seat or when speaking, every Senator when in the Chamber shall be seated, and shall not at any time stand in any of the passages and gangways.”

Especially, Sen. (Rev.) Naomi Waqo, I had reason to interrupt what you were doing. However, I indulged you because the leader of your delegation, being the Deputy Majority Leader, should have known where to conduct a caucus. I am sure she is not here. It is not in the passages and gangways.

Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to add my voice to this important Bill. First, public participation is an integral part in leadership. We cannot avoid public participation because it is the centre that holds the leaders and their constituents. The Bill is coming at the right time when we have been told many times and even when the President talked about commitment to serve and therefore public participation comes in.

When we went to Kakamega to meet the governors, the core issue was that Senators work with governors for the purposes of helping the people in our counties. We cannot help people in the counties without public participation.

This Bill is quite timely and it has a strong backing of the Constitution. Our Constitution reminds us clearly in Article 1(1) that sovereign power belongs to the people of this country. When we allow people to participate in the projects that we want to do for them, we will be taking leadership to them and we will be doing as the Constitution demands; that power belongs to the people. When we allow them to participate, in essence we will be acknowledging that they are the owners of this country and we will be giving them the strength that they deserve constitutionally.

The Constitution says clearly that in exercising their power, the people can do it through their leaders as we represent them here and they can also do it directly through public participation. Public participation allows us to do what the Constitution demands by allowing people to participate in the things that involve them.

In essence, public participation acts as a contract. As leaders, we are telling people we are ready to listen to them. When we allow them to participate, we will be giving them an ear and that is what our people want. As we lead people in this country, they want to see us listening to them. They only need to tell us what they need and the problems they have. They want to be part of solving the problem. Once we give them an ear, we keep them informed on pertinent issues that they may not know.

Sometimes the people we lead do not know some things that may affect them. However, when we engage and talk to them and inform them, then it becomes constitutional that we are giving them right to information. Sometimes people act out of ignorance. When we give information to our people, they listen to and critique it and give their input. When they give their input, they feel that we care about them.

In this Bill, there is room for feedback. After listening to issues that people have and giving them feedback, they feel that we are keen and care about them as leaders. When it comes to advice, public participation acts as a contract that we need to go to the people and ask them for advice. Once we enter into the contract with our people through public participation, it is our mandate to engage in a two-way communication. When there is a two-way communication between leaders and the constituents, there is not going to be a problem.

There are instances when there is a red flag. When we communicate with people and they raise issues, it is usually a red flag. For example, they may tell you that a project to be started could be having a problem. We get feedback from the people so that we know how to use their information to help us lead them. If you start a project, there is no way people will turn against the project because you would have involved them from the beginning.

Public participation is important because it will minimize disputes and solve issues before they become polarized. For instance, as a leader, you may want to come up with a factory in a community. When you involve people in the intentions and desires you have of building a factory, they will tell you the thoughts they have about the factory and you will listen to them. When you incorporate their thoughts and come up with the factory, it will not raise an issue because it will have the blessings of the residents and they will make sure that it works for them.

Devolution has to do with people. When people accept the projects that we start as leaders, they own them. When they own the projects, the projects succeed. In a situation where people are not involved, when you start a project, it will collapse. They will ensure that it collapses so that they show you that you did not involve them from the start, you did not listen to them and you did not care about them. So, there is need to engage people and give them the strength that they need, so that they help us as leaders as we also lead them.

Mr. Deputy Speaker, Sir, I commend Sen. Wako for coming up with this Bill, because it is enshrined in Article 33 of the Constitution, which talks explicitly about the freedom of expression. When we involve people in talking about the projects they want and in decision making, we give them a chance to express themselves, to tell us what they think and to be part of the development projects that we want to do. Public participation also helps the people to seek for information that they are not sure about; where they will seek for clarifications and receive information.

Once this is done, it will be good because it is constitutional that the people have a right to seek, receive and impart ideas and information. It is important that this Bill becomes law so that the people of this country get to know that power belongs to them. They also need to know that they need to express themselves. They also need to know

that we, as their leaders, want to listen to them and to incorporate their thoughts in making decisions, which will eventually affect them.

Mr. Deputy Speaker, Sir, public participation has a number of benefits that we cannot ignore. One, it helps us sensitize the common man. I want us to go back to the time when we were coming up with the Constitution 2010. People were not really sensitized about the Constitution. There was a referendum and a lot of public participation concerning the Constitution and we got the blessings of the people. They are now happy because we are using the Constitution to help us to lead our people. Public participation is good because it gives the people enough time to put meaningful information into the decisions that will eventually be used upon them.

Mr. Deputy Speaker, Sir, the buck of decision making stops with the people. Why? This is because in this Bill, we are supposed to involve them. After which we should use the ideas they give us in order to see how we are going to govern them. Therefore, when it comes to decision making, the buck stops with the people themselves. This country belongs to the people of Kenya and they are the ones who need to be at the centre stage of driving this Republic. Therefore, we, as leaders, cannot ignore this Bill because it seeks to help us to know what direction to take as we lead the people of this country.

Mr. Deputy Speaker, Sir, I also like this Bill because it talks about the principles of public participation. The Bill states clearly that the public should have a say, for example, when you are coming up with a school, as a leader. Yes, you could be well-meaning, but if the people are not involved in the process of coming up with a school from the beginning, it will be unconstitutional. If they wake up one morning or after three months and they just find a school in their community, they will question it because you have not involved them. As a leader, the thought you had was probably well-meaning. However, when you forget the public, it will then raise eyebrows. Therefore, that principle is core and it is good to ensure that the public has a say in whatever project that leaders do.

Mr. Deputy Speaker, Sir, another thing I like about this Bill is that it has a principle of a promise. Yes, you meet the people and you promise them that you are going to incorporate their thoughts in decision making. That promise is very important because it becomes an anchor where people will say, we met our leader, this is what we agreed on and he has actually walked his talk. Public participation will help us, as leaders, to walk our talk. This is what the citizens of Kenya want to see; they want us to say and work.

They do not want to just listen to us and then there is no work done afterwards. Feedback in public participation will make people know that we, as leaders, are walking our talk. Public participation is important because people will be given the information they need; and that is another principle that is very important. The people need to be given the information that they need. At one point, I said that it is a Constitutional principle that the people have a right to information.

Therefore, Mr. Deputy Speaker, Sir, I support this Bill that Sen. Wako has come up with. It is my desire that it becomes law, because leaders are going to be transparent



and the people of Kenya are going to be happy. This is because they are going to track us and see whether we are doing what we are mandated to do.

I beg to support this Bill.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you Sen. (Dr.) Musuruve. Next is Sen. (Eng.) Hargura.

**Sen. (Eng.) Hargura:** Thank you, Mr. Deputy Speaker, Sir. I join my colleagues in commending Sen. Wako for coming up with this Bill. If you look at the Constitution of Kenya 2010, one of the main clear benefits we got, as country, is devolution. If you look at Article 174 on devolution, which is also quoted in this Bill, it states that one of the objects of devolution is:-

“to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;”

That is one reason why Kenyans came up with the new Constitution. This is to ensure that the resources which have been distributed from the centre are decentralized to the counties, where the citizens will make decisions on how those resources will be used to their benefit. For that to happen, you must have the necessary structures.

Mr. Deputy Speaker, Sir, the County Governments Act clearly states the levels of service delivery where you have the sub-county, the wards even up to the village. That will set up the structures which the county government will use to engage the public in coming up with the necessary modes of engagement. In doing so, the public can get information early enough, digest it and consult at their own level. When the authority – in this case the County Government, the County Executive or County Assembly – will be going round conducting public participation, the public already knows what is there and they would have sat at their level, even if it is in the village.

Unfortunately five years down the line, there are some counties – mine included – who have not established the village units. That already disadvantages the residents at that level, because they will not have access to government services in terms of having government representatives like the ward or village administrators and councils. It is through these representatives that they can deliberate, beforehand, what their priorities are. By the time they are required to participate, they would already have discussed their priorities and, that way, they will make meaningful contribution, even if it is the preparation of the County Integrated Development Plan (CIDP), which is a document that the county government has to adhere to during its five year term. This will help counties not to implement projects outside the CIDP. However, if the CIDPs are not developed through consultation, then we have a situation where we are forcing the public to take projects which are developed elsewhere.

It is very important to have an Act or legislation on this, so that the public servants are given direction and a framework under which they should operate. They should understand what public participation is. This Bill defines the objects which are very clear and noble. It also has the guiding principle. It has not limited it to a particular institution, but given the institution room to make its own regulations. This is a law that we need to pass so that the county governments can adopt and come up with their specific

regulations. Any other Government institution can come up with regulations based on the objects, principles and guidelines which are given in the Schedule for us to operate as a country that has similar levels of public participation, but each institution depending on its own environment.

When we, as leaders, at times go out to the field, people tell us that they would like to have water projects or roads. When we tell them that there must be a process followed by the county government, we get to realize that the process was not inclusive and did not go down to the people. Therefore, there is need for the public to understand the roles and responsibilities of different levels of government and different offices of leadership for them to know where to take their issues. They also need to be engaged in time for them to give their priorities.

If you look at what we have put in the Constitution as Kenyans, this Bill cites about 10 different provisions in the Constitution which talk about public participation. That shows how the aspect of public participation is very key when it comes to Kenyans governing themselves. When there is anything to do with the environment, Kenyans need to be consulted and we have that in Article 69. That includes the way Parliament works; the Constitution requires us to be open. That also includes the county assemblies, which are required to be open to the public in order for the public to know what they are doing on their behalf. It is a requirement and we are not doing them a favour. We need to implement that.

Even when the public service comes up with policies, the Constitution requires them to do public participation. There must be guidelines for the public to know whether or not public participation was done. People should not be left guessing. We have instances where someone will call a *baraza* somewhere and give people information on what they intend to do and there is no room for feedback. They will then leave feeling that they have done their work. However, if there is a very clear law like this one, the authorities will know that they have to give information in advance by publishing their public participation programme for the public to know when there will be a public participation exercise. That will help them discuss issues in advance for them to have very clear ideas by the time the relevant body comes around.

We have the case of the annual development plan for the counties. When we send the money to the counties, the executive will sit down and look at how much goes to the recurrent and development expenditures. They will also look at how much of that development will go to the wards. Therefore, the time the residents of that ward will know what their estimated budget for that year is by the time they go for public participation. The residents will then be asked what they need done for them. Once they have given their priorities, there must be a mechanism from the county executive, where they will be told: "Yes, we have incorporated your views in the draft development plan and we are going to submit it to the county assembly."

When that is done, they will be sure that their views have been captured, as opposed to the process of going and collecting information, without giving feedback before implementation. In this case, implementation would mean that the document is submitted before the budget. Public participation is not complete if the public will not have been informed. If there will be any change, they should be told that there was a

change along the way and this is what they are submitting. That way, they will be comfortable.

On the issue of sustainable decision making, we have a problem at the county level. For example, you will find a water project somewhere in a particular year with funds assigned for drilling of a borehole. The following year, you will find that the borehole has been sunk, but there are no funds to equip the borehole and do the civil works. That project will, therefore, not be useful to the people until the necessary equipment is installed and the necessary civil works done for people to access the water. If there was sustainable decision making, it would have ensured that such projects are implemented.

There are cases of classrooms being built without taking into account the issue of furniture. That classroom cannot be used because the issue of furniture or the other facilities was not factored. Therefore, sustainable development will ensure that there is completion of projects and follow up, which needs to be done by the authority or the institution. The county government can also alert the residents of that ward that it cannot start a new project because a previous project needs to be given priority and completed. Otherwise, we will have hanging projects and those are the questions that we will always be asked. The residents will keep on asking when the projects will be completed and we will keep asking them: "Did you not put them in this year's budget?" They will then say that they were not reminded or consulted. This Bill, therefore, puts a responsibility on the implementing authority to make sure that the projects they start are actually done to a level where it is functional and can be used by the public. That principle is good.

The Bill also assigns responsibility on who does what. It even specifies that public participation guidelines need to be developed by each organization. I want to bring your attention to Clause 8(4) (b) which says that the implementing authority has to give reports. In the report, it will have a description of any complaints made against the institution in respect of public participation. It must be very clear where these complaints will be directed to. This is because we cannot complain to the same authority and expect it to report on itself negatively when there are some questions on public participation. There should be another authority or institution where they will be reporting to.

In this case, if it is the county government, the complaint should be directed to the relevant committee of the county assembly. This is because it is the one that is overlooking them. Otherwise, if we complain to the county government we should not expect it to report on itself by writing that they received complaints from so and so. The complaints should be addressed to the county assembly committee dealing with public participation. They are the ones who will then ask the county government to address those issues. That is an area that needs to be clarified.

I would like to thank the Mover of the Bill for clearly coming up with a Schedule of what needs to be done where, especially in making sure that this information is available before any public participation is done. It should not be an ambush. The public should be informed in advance so that they concretize their ideas on what should be done for them. So, there should be a clear notice. For example, when we normally have the budget cycle, we usually know that in April we need to finalize our budgets allocations before we move to June.

If there is public participation for the annual development plan, there should be a timeframe and time table for public participation, for people to know when they are meeting at the village level and when to expect the county executive team to come around to discuss and submit their proposals. That is why it is necessary to make sure that there is sufficient communication by all means possible.

Where I come from, community radios in vernacular languages are essential. In this case, if we have the village units, the village administrator will easily conduct a *baraza* before time and inform the public that there will be public participation on a particular date. This will sensitize them to make meaningful contributions to the process. It is clear that information should be as accessible as possible.

Lastly, in the Schedule, there is also the issue of building trust with the public which can only be done through engagement and implementing what is agreeable to them. If the public is called to decision making, they are supposed to be engaged in advance so that they have enough time to prepare at their own level then their views are picked and they are given feedback on what will be implemented, which then goes to the budget. If for one reason or another it is not implemented, they will give the process one or two chances and after that, they will not take it seriously because it will not be useful to them. So, trust needs to be developed. Whatever is agreed with them must be implemented. That way, they will trust the process and know the time table. At that particular period of the year, they will come together and discuss what needs to be done for them. That way, they will develop the trust, be part of the system and their priority will be delivered and not the capability of a friend or the contractor who was to be given the contract.

Unfortunately, if the public is not involved, we have to find out how the project came about and who proposed it. It must have been proposed by somebody who had interest. If it is a road contractor, they will propose that a road be constructed which will be captured in the budget. However, if it is the public, they will develop the trust and be part of the process. That way, we would have attained the reason we captured public participation ten times in our Constitution. Kenyans will believe that whatever little resources are available will be used prudently and according to their needs. This is the most effective way of making sure that we develop using the resources that we have.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this important Bill. This Bill is derived from the provisions of our own Constitution. To allow people to participate in the decision making processes of Government is to actualize the supremacy of the people of Kenya as envisaged in the Constitution. The Constitution has given them a right to say what they want, how the budgets are to be used and in what areas and priorities. I believe that this Bill will bring out the aspect of the public coming out to say "no" to one thing and "yes" to another. Sometimes, we end up having upcoming projects which are dictated and imposed upon the people, funds being misused and the people are not aware.

Mr. Speaker, Sir, this Bill will bring out the actualization of these provisions to ensure that we involve them in democratic processes of choosing what they want and how they want it done. This Constitution realizes that people have a say in what is happening through their elected representatives in Parliament and in county assemblies.

However, it still brought an important aspect of the people having a direct say. It is only through public participation that people have a say in what happens in governance and in the projects that are run. I believe that this was cleverly crafted to ensure that people have a direct say other than that of the leaders who sometimes propose projects to reward their people and supporters which is done in a discriminatory manner.

Public participation also ensures that there is transparency and accountability. For example, when people participate in the budget making process and they propose where their funds should be directed, they own that process. They will be interested in how the money will be used because they know how it has come about, how the budget has been allocated and the projects that are involved. They will also understand the laws that have been passed and how they can be properly enforced because they would have participated.

Mr. Speaker, Sir, on public participation, the name speaks for itself. There was a time that as a Committee of Parliament, we got reports that the way public participation has been designed is not public participation *per se*. We were left wondering how public, public participation is. I say this because we had an instance where there was public participation on some regulations that touched on land matters. When we looked at the body that was conducting public participation, it did not represent the public. I talked about it earlier on in the House and indicated that this body had 18 members from one ethnic composition out of a total of 24. When we inquired how public participation was being done and asked for the attendance register, we ended up noting issues that should be improved. The kind of design of public participation that we have right now is one where the authorities call people to some hotel or boardroom they sit and make their submissions. According to me, this did not reflect public participation that is anticipated by our Constitution. In our provision, we did not anticipate a situation where a boardroom or a hotel meeting is public participation. In this instance, we went ahead to count how many people came from different Ministries.

We found out that they were five or ten people in the whole county allegedly coming to give their views. To me, that is not a public participation. Therefore, the regulations that will flow from this particular Bill today should be done in such a way that we have real public participation. What is it that there cannot be public *barazas* to hear from the people? How do we call people to hotels and then call it public participation?

We went further and inquired whether we have enough funding for these bodies to reach out to the people. Further, when we were speaking to the National Land Commission (NLC), they told us that they do not have money to go round to every county and do a proper public participation. They needed money to hire halls and do advertisements. Therefore, we cannot be talking of public participation if we do not allocate money for these bodies to conduct public participation. How do we call the people to participate? Do we advertise on *Ramogi FM*, *Kass FM International* or *Nosim FM* or newspapers? Is it effective? This Bill gives general principles that will guide us to perfect public participation to be what was anticipated in our Constitution. Currently, we do not have public participation in most our activities.

Mr. Deputy Speaker, Sir, members of the public have a problem of understanding what public participation entails. So, I would suggest that as we go down to actualize the Public Participation Bill (Senate Bill No.4 of 2018) and as we formulate the regulations and the guidelines, we should consider sensitization of the people so that they do not say they did not participate because they were not facilitated or given bus fare yet, the public participation is about them. It is about their rights given by the Constitution. It is like you are coming to a table where there is food for you, but you are asking: "How do I come to eat that food?" That is too much for the public to ask of public participation. Therefore, there should be some sensitization for them to sit round the table where these budgets are being done and give their views.

It is for them to sit on these committees of Parliament when we call for public participation for their views to be heard on how to improve on the very laws that touch on their lives. I would suggest that as we formulate these guidelines let us look at the bit of sensitization of the people, so that they know that this is a right given to them by the Constitution. Further, they also have a right to speak directly without necessarily being facilitated to public participation.

In addition, there is the issue of people not attending public participation meetings even when they are called to these *barazas*. Personally, I have attended some activities where we expected the public to come, but no one came to give their views. So, there must be a way we have to guide against abuse of people coming to say that there was no public participation and, therefore, holding committees or bodies at ransom and shutting down their businesses. Therefore, by laying out these guidelines, it would help us to show that we called for public participation and laid out the necessary the structures. When you do not turn up for public participation, you cannot turn around and say: This committee did not do its work because there was no public participation as long we are able to show that there was that infrastructure for people to turn out for public participation.

Mr. Deputy Speaker, Sir, the principles as laid out by this Act will ensure that all these issues that we are raising can be addressed. Further, even as we debate on this Bill, we would want to hear what the public is saying about this Bill. How do they improve it so that it serves the intended intentions of public participation?

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

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

Finally, a week ago, I saw some comments from my Mashuru/Maroro Ward, where people were saying that they were so disappointed. It is a forum for discussions for that ward. They were disappointed because the views or proposals they gave during the budget making process of Kajiado County were not taken into account. I was alarmed because we do not do a public participation for the sake of it. The Constitution demands of public participation so that the views that people give are taken into account. So, it is not enough for us to call people for public participation and we do not take their views on board. When they participate they want to see particular programmes and

projects funded. However, you go and misrepresent the views of the people. As a Member of County Assembly (MCA), you cannot reward your own cronies against what the people of that ward or county want. Therefore, I would recommend that we put stringent measures in this law that will help people's views be taken into account.

Madam Temporary Speaker, let us develop guidelines that will protect misrepresentation of facts. I have seen such a provision there. This will ensure public participation is worth what it is so that we do not have people making their own proposals – whether an MCA or Member of Parliament (MP) or a Senator, changing what the people want. The essence of public participation is for the people to have their say, transparency and their democratic right be respected. If you change what the people have agreed – you as a MCA, Senator, governor or deputy Governor or as an MP – then you have misrepresented the people and their wishes. You should be answerable for it.

Can you find a way to caution this public participation right that is given by the Constitution? In this law, let us caution it so that it is not abused. Let us caution it so that when you go and change the wish of the people, then there should be recourse for them to an extent that they can say no. To an extent that they can say: “This is what we said and not what you have represented.” Personally, I have seen that happening in my particular ward. There were complaints and we are yet to know whether that is actually true or not.

The efforts of those people who come and sit a whole day to give their views on a budget or on the laws we are making, the development of the county or on the CIDP should not be in vain and should not be circumvented by an elected or nominated leader. For us to have put this in the Constitution, as a right, it means the people are supreme. The people who are sovereign should speak and their wishes respected. This is an important Bill that we should all support. We should follow up to see how it is implemented so that the wishes of people are not in vain and be abused as we watch.

Madam Temporary Speaker, I submit. I beg to support.

**Sen. Seneta:** Thank you, Madam Temporary Speaker, for giving me a chance to also contribute to this very important Bill. From the outset, I commend the Mover for his brilliant thoughts about the community and the importance of bringing the Constitution, which many Kenyans passed, to life. There was a time when projects were designed and monitored by the central Government and some sections of this country were given projects that were not benefitting them. Therefore, the Constitution brought the new perspective of how citizens can contribute to the decision making on what projects benefitted them. This is, therefore, a very important Bill to ensure that the principle of public participation in the Constitution is implemented.

Madam Temporary Speaker, this Bill also empowers citizens to own, audit and appreciate the monies that are allocated to these projects. There was a time when citizens were just given projects. However, when one looked at those projects, they were not for the benefit of the majority in that community, ward or county and, therefore, not a priority. One would, therefore, get citizens not using those projects, and that is what normally happens even in many of these big projects that are done by international organisations, Non-Governmental Organisations (NGOs) and also some by the Government. They are then baptised as “an AMREF toilet” or “an AMREF bathroom” or “this is a government school.” This is because they are not benefitting the people, since

they are not the ones who designed or prioritised the projects or wished for them to be built there.

Therefore, public participation will give a chance to the citizens of this country to say what exactly will benefit them, how much should be allocated and, once allocated and whether it is adding value to them as a county. This is therefore a very important Bill in terms of making the counties to own the projects. The Bill will empower citizens to chart the way forward for their lives in terms of what benefits them. That is why we have a Constitution that has given us county governments and we can now chart our way forward as county governments in terms of what we need in each ward. For example, is a tarmac road or a school a priority? If it is, how many students are benefitting from the Early Childhood Development and Education (ECDE) centre?

Madam Temporary Speaker, in some of our wards, we see the county government just allocating money for a very beautiful ECDE classroom, where an estate has so many rich people who are taking their children to private academies and schools. Therefore, the public ECDE project, which is well-built and on which a lot of money has been used, ends up not benefitting the estate because that is not their priority. Possibly, the priority of that estate would be a police station and security, whereas we are putting up a well-built ECDE classroom with no teachers. Therefore, they ask why the Government should build a classroom or an ECDE center which has no teachers. They find it better to go to a private school, which has already employed an ECDE trained teacher.

Madam Temporary Speaker, this Bill also enables citizens to contribute to policies, regulations and Bills that are very important to them, and not only to projects. Today, as a country, we suffer because of the enforcement of some Bills and policies that are not friendly to us, because people did not think about them; they did not go through them and they did not contribute to them. This Bill, therefore, promotes public participation in terms of contributing to these very important regulations that govern the people.

Today, we have several Government institutions that are enforcing regulations that mostly affect communities. You will hear people in these communities asking when a particular Bill was passed. They also ask whether there is such a Bill that is affecting them; or why they are being forced to do this or that. They then realise that there is a regulation or policy that is being used to govern them, to which they did not contribute. This Bill, therefore, promotes the contribution and participation of citizens towards making policies and regulations which can be used to govern them in a friendly way.

Madam Temporary Speaker, I want to congratulate the people of Busia County for being aware of their rights and for being concerned about the unplanned projects that were being done using their monies without their participation. I congratulate them, not because I wish their Governor to appear in court, but because I see an aspect of them being aware and protecting their monies, property and projects. They wish that projects be completed where money has been allocated. This is unlike in many parts of the country, where many of our people do not know that they have a right to participate in saying, “this is what we want; this is what we do not want and for these reasons.”

Madam Temporary Speaker, as I support this Bill, I wish that the authorities that have been mentioned therein and which are going to be coming up with regulations and



guidelines would consider the issue of penalties. What is supposed to be done if an authority, organisation or a level of Government has refused to implement the views of the people or to take the citizens' contributions? This Bill should have a component of penalties to the leadership, authorities and institutions that are supposed to carry out public participation.

Madam Temporary Speaker, another aspect that is missing, and I would wish it is reflected in the regulations, is the issue of the trained personnel who would carry out this public participation. In many counties, people are called for a public participation exercise and some illiterate people just go there to sit. They are then told that they have been called for a meeting because a certain county officer is visiting some projects. Some of our people do not know what their contribution should be and why they are called. They do not know whether they have been called for a capacity building meeting, a cup of tea or a security *baraza*. The advertisements should clearly indicate and inform people that they are going for a public participation exercise on a certain project, so that they go there prepared, aware and informed. These kinds of public participation should be looked into.

I agree with my colleague, Sen. Pareno, who said that the public should also be sensitized to know that when they go for public participation meetings, they should contribute on a project that will end up helping them, their children and future generations. They should not go there to be sponsored. I am very sorry for what happened a week ago to the Women Representative for Nairobi County. She was harassed by *boda boda* riders because she went for either a capacity building or public participation meeting. Everyone was requesting for money from her. Kenyans should be made aware that a public participation meeting is supposed to be attended by everyone. They are not supposed to be fed, paid or hired to go and speak for certain politicians. They are supposed to go and speak for themselves as Kenyans.

The other issue on public participation is about who are supposed to attend the public participation meetings. Are they stakeholders of the project that is being referred to? In many of the county projects, like a ward where a technical institution or university is supposed to be established, there are important education stakeholders that must be involved in a public participation *baraza*. However, you will find that a politician – I am very sorry that I am one – or a government or county official just calls his or her friends, supporters and people he or she has hired to contribute towards a project, yet it is supposed to be looked into by every important stakeholder in that ward or county.

Madam Temporary Speaker, in these regulations, we need to identify the people who are supposed to be called. Are they people who come from that project area or target groups? How do we identify them? There must also be a department in every Ministry that works on the programmes of public participation, so that we know which department handles public participation meetings and whether they are trained or have the capacity. Even if they come from different Ministries, you can request them to conduct public participation for you. We need a department that will handle public participation, so that they prepare and announce the programme properly.

I agree with one of my colleagues that, if possible, the announcement or advertisement for this public participation must be put in different languages. Not

everyone understands English or Kiswahili. It can also be announced in a vernacular radio programme so that all other people who cannot read *Taifa Leo*, *The Star*, *The County Press*, or *The Daily Nation* newspapers can also hear it. Therefore, I support this Bill.

However, I feel that there are gaps which we shall probably amend because we need to have a Clause that strictly talks about penalties. What is supposed to be done if you refuse to commit any project into public participation?

**Sen. Were:** Thank you, Madam Temporary Speaker, for the opportunity to contribute to this Bill sponsored by the Busia County Senator, Attorney-General *Emeritus*, Sen. Amos Wako. This Bill is timely. It is actually long overdue and it is something that we need to pass very fast so that the contents of this Bill can start being implemented. It addresses one of the basic principles of democracy which is governance with the people.

Through this public participation, every governance programme will be in the interest of the people. Public participation is also one of the national values as indicated in the Constitution. This Bill sponsored by Sen. Amos Wako provides guiding principles for public participation. It is not just walking into the local social hall with any interested market people and deciding that this is what we are going to discuss. Whatever is going to be discussed is presented at the meeting. People do not come to those meetings aware of what they are going to participate in.

This Bill also determines the authority responsible. There have been many questions asked, for example, who is responsible for public participation? Is it the governor, donor partners, county assembly or the Senator for the County? Who is in charge of oversight? Who exactly has the authority to convene these public participation meetings? With this Bill, it is clear on who should be responsible for convening these public participation sessions.

The authority that will be put in place will also follow certain guidelines. I am sure there will be rules and regulations that will follow from this Bill. This Bill also tells us about management of feedback from the people. From the information the people have given us at public participation, what follows next? How do we compile all these contributions from people and incorporate them in the final document? How do they get back the information that we have compiled? As the people responsible for governance, how do we report back on the issues that the people raised so that they are aware that whatever they have raised has been included?

There are various forms of relaying this feedback. We can relay this feedback electronically through various digital media. We can also relay this feedback through the various county government structures from the constituency to the village level. This Bill is timely, and it also gives us the public participation programme so that we are aware. As we walk into these public participation sessions, what is going to be discussed? Do we need to consult on the issues that are going to be brought to us by the concerned parties?

The reports that will emanate from these public participation exercises will also act as legal instruments. Therefore, if you are an aggrieved party or any member of the public, through those reports from the public participation process, you can go to court and use them as legal instruments to argue your case. This will hold governors, the

President and anybody in the governance structure at all levels including us, as the legislature, accountable by the public.

Madam Temporary Speaker, as we move to the next level, I would also like the sponsor of this Bill to include the issue of public inquiry so that it becomes part and parcel of public participation. Once included, we will not need to prepare any other legislative proposal to deal with the issues of public inquiry.

With those many remarks, I beg to support this Bill.

Thank you, Madam Temporary Speaker.

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

Proceed, Sen. Halake.

**Sen. Halake:** Thank you, Madam Temporary Speaker. I rise to support this Bill, but before I do so, kindly allow me to send my message of condolence to the families of the people that perished in the Gikomba Market inferno. I know that we lost 17 people this week while we were on recess. I also know that many Senators have sent messages of condolence through different formats and media, including talking directly to the bereaved families. However, on behalf of my family, the people of Isiolo County, the people of the Kenya African National Union (KANU) Party and on my own behalf, I would like to send my heartfelt condolences to the bereaved families. We stand with them in prayers as well as in rebuilding their lives.

Madam Temporary Speaker, I know that whenever we have had these kinds of tragedies, we have discussed this issue a lot of times in this House. I came in a little late and I am not sure whether this was the case today. However, with that said, as we mourn, I would like to say that these are lives that were lost and livelihoods that were wiped out. Therefore, I send them my heartfelt condolences. We stand with them as they rebuild their lives and we will look at different ways in which these recurrent and perennial fires in Gikomba Market can be dealt with, going forward.

Going back to the Bill, please allow me to congratulate senior Senator Amos Wako, our former Attorney-General *Emeritus*, who has come up with this very timely Bill. I am not going to talk about the merits of public participation and this Bill, because they have been enumerated over and over again very ably and articulately by all the Senators who have spoken. Once again, as a law maker, the Senator has done justice to this Bill because it ticks every box; from giving effect to about ten constitutional articles, to making sure that different authorities come up with regulations that are specific and relevant to them.

That said, Madam Temporary Speaker, this country – I do not want to say is “notorious” – but it is very well known for its articulation of issues and for its beautiful documentation and legislation. However, the devil is in the implementation of these provisions of our legislation. This country has the best laws on earth of any country, but the issue is not necessarily how beautiful these laws are; it is how we will implement them. I am just looking at some of the provisions within this Bill. Of course, the Bill lends itself and gives effect to Articles 1, 10, 35 and so on of the Constitution; they are many provisions. However, the issue of implementation is still a big question.

The Bill in its objects says that Parliament is to provide a general framework for effective public participation and to give effect to the Constitution. Have we defined what

effective public participation is? What would constitute an effective public participation? What would guide these authorities that will come up with regulations that will be effective? At the heart of any public participation are three things: It is accountability to the citizens. I do not think we have been accountable as a country to our citizens, not in law, not in practice nor in spirit. This law is not an end in itself. It is meant to ensure that we are accountable to the citizens of this country.

Madam Temporary Speaker, another thing at the heart of public participation is effecting or having an input into the decisions that are made; be they decisions to spend our resources or taxes or decisions to decide what projects come to our counties. There is accountability that must really be an outcome of this Bill.

There must be stewardship and effect on the decisions that are made that must be an outcome of this Bill. There must be innovation that must be an outcome of this Bill because of the many ideas that the public participants will offer so that our governance is innovative, better, cheaper and on time because people have given us great ideas.

What are the mechanisms of these effective ways of accountability, affecting decision-making and innovation around how we do business? The number one driver of corruption or even of below optimal stewardship is decision-making. That is why public participation must influence the decisions that we make at every level. At the parliamentary level, in our Governments and executives, decision-making must be why we have public participation. People must then be part of the decisions that we take. In fact, if we were to curb corruption, I think this Bill should be used as a tool.

We speak of procurement and things like that, what if public participation is part of the evaluation of public procurement? It does not have to take so long. It can be one day, electronic or digital. What if the evaluations that are made by the public procurement entities become scrutinized in a public participation forum? That is something for us to ponder upon.

Madam Temporary Speaker, I look at different provisions. I know we, as the Senate, have complained sometimes that we do not have effective public participation. I have certain suggestions for us because we are one of the public authorities who have been mentioned in this Bill. I have read in this Bill that public authorities that will come up with regulations, including Parliament, must come up with a clearly defined feedback mechanism. This is something that other Senators who have spoken alluded to, clearly defined feedback mechanisms.

I know it has been said that some of the suggestions have not been captured in budgets. It is well and good. Even if you do not capture that, you should give us feedback so that we know why. I do not think communities insist that everything they said must be included in the budgets but feedback is what is lacking. They need to be told if a cut is made and what other priorities were ahead of the whims that certain people have given.

There is also need to have clearly defined mechanisms to ensure online access to what people have submitted. Sometimes you do not even know what people have said about certain things during public participation.

We should also upload some of the reports as well to different websites even if we do not want very expensive ways of getting feedback. How do we popularize public

hearings? I know Sen. Pareno and even Sen. Were have spoken to this. Do people even know that there is public hearing happening somewhere?

As part of amendments to this Bill, I hope we will have robust ways of ensuring public hearings are advertised so that the right people get involved. That should definitely be one of the requirements.

Somebody has spoken on the need to have a specific office in charge of tracking progress on public participation outcomes. I do not wish to go to the provisions within this Bill because we have all read and internalised them. They provide credence to many Articles in our Constitution and give teeth to some of our institutions to institute specific regulations and they concern counties. However, the devil is in the details of implementation, tracking progress and providing feedback to the participants and citizens of this country. We need to look at public participation and measure whether it influenced decisions that we made and whether it provided feedback to the citizens whose money we used in the first place. If we do that, then we will get it right.

I do not wish to speak too much. Everybody has spoken to how good public participation is and I do not wish to belabour that. We must ensure we hold ourselves and others accountable in the implementation of this Bill.

With those few remarks, I support the Bill but with the fact that we need to figure out mechanisms of ensuring implementation and tracking of outcomes of public participation. I thank you.

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Speaker, for according me this opportunity to make my contribution on this important Bill on public participation. The importance of public participation is well highlighted in this particular Bill and I do not want to repeat. However, the greatest challenge comes in the process of implementation and evaluation of the processes and so forth.

I would like to say something, though it was touched on by Sen. Halake, on Clause 5(1) which states that-

“The entities specified under subsection (2) shall in the carrying out of its mandate under this Act, develop guidelines for the conduct of public participation.”

Many authorities have been mentioned including Parliament and the Judiciary but I did not get well the specific department that will develop particular guidelines and take the responsibility of formulating or coming up with policies, do research and establish gaps. My suggestion is that when we look at county governments, for example, to make this particular activity important, there should be a well-established department within the mandate of a particular County Executive Committee (CEC) member in the county that is fully responsible for carrying out the public participation process and the department should have personnel with specific qualifications on the issues concerning public participation.

This department should have specified personnel with communication skills, effective research and analysis techniques to monitor, report back and take the responsibility for the success of the public participation. Otherwise, anybody can be asked within any Government agency to conduct public participation. What is happening in our counties is that we pick on anybody. It should be so structured that when we have

an issue, for example, when we had the *Ad hoc* Committee on tea issues, there is a public participation department in the counties that we visit. The department will alert and educate the public on the information required and set instruments, for example, for collecting information and design data collecting instruments. This will ensure that when we get there, they have already structured the meeting to be conducive and well informed, to provide effective information. Otherwise, public information will end up becoming public *barazas* where everybody stands and says anything that they want. It becomes competition, confusion and everything else.

There should be a particular department that has specialised personnel that will go further and analyse the information, process and prioritise according to the funding available. They will then give the public feedback, explaining to them that, for example, a particular project might not be done at a particular time because of financial implications. It can then be undertaken at a particular date in the future or whatever the case it may be.

We must add in this Bill the responsible department that will employ people with skills effective in collecting information and preparing the public on effective public participation. After collecting the information, department should be able to analyse the information, provide monitoring and evaluation procedures and report back to the public and be responsible for everything. If this Public Participation Bill is to be effective, we should have a clause with clear qualifications of people who will carry out public participation or run a public participation office.

Madam Temporary Speaker, I beg to support with those amendments.

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

Sen. Cherargei.

**Sen. Cherargei:** Thank you Madam Temporary Speaker. From the outset, I know that this is a Bill that has been proposed by one of my Committee Members on Justice, Legal Affairs and Human Rights. I wish to congratulate the Attorney General *Emeritus*, the great Senator for Busia County, Sen. Amos Wako. This Bill is very important because the greatest gift that the Constitution has given to this country is public participation.

In the spirit of Article 10 of the Constitution, on national values and principles of good governance, it is very important to note that public participation and exercise of democratic principles within any governance institutions or private organisations has been given a breath of life by the Public Participation Bill, 2018.

Kenyans should know from now onwards that public participation is not a privilege but a constitutional right and it should not be given like medicine or measured. In future, public participation should be a basic right for any citizen in this country because this is one of the gains of this Constitution. I have seen many counties conducting public participation as if it is an afterthought or any other business but when this Bill is enacted into law, it will assist the citizens to have a right of recourse whenever they are engaging both the public and private institutions concerning matters that are of public interest.

I agree and thank the mover, Sen. Wako, and also tell him that as a Committee, we are proudly associated with this Bill for we know that it will change the way we do things in this country. The demonstrations in Turkana over the issue of oil arose because people felt that they were never involved. They want to know how the oil is going to

work and how they are going to benefit from it which boils to one thing; public participation.

I know that the county governments are taking advantage for there has never been legislation in place and that is why they are conducting public participation as a public relations exercise. This law will enable many citizens to resist public participation exercises in pre-determined cases where the public attends a meeting just to be given a bottle of soda and a loaf of bread. This law tries to bring into focus the ways in which people will be involved in formulation of policy, legislation or any other issue of public interest as from the ward level, county level up to the national level.

One of the challenges that we face in our counties is that we have people who attend public participation hearings with predetermined positions. In fact, they do not engage the public properly when calling for those public participation hearings and when the meetings take place, they give people a bottle of soda and a loaf of bread then inform them of what the county government is going to do without necessarily engaging them on the way forward.

We hope that this law will change this and that it will ensure that we change the way things are done at the county level. One of the objects of devolution according to Article 174 of the Constitution is public participation. As we realize the gains of devolution in this country, it is very important to note that one of the strongest pillars of devolution in this country is public participation which has been given breath by this Bill.

This Bill has not only involved Articles 10 and Article 174 of the Constitution but it also brings into focus the aspect of public participation so as to ensure that we put democracy and participation of the people into focus. When you walk around this country, you will see public projects which affect lives of our people and yet members of the public were not involved in decision making.

This Bill will ensure that we promote accountability and transparency on how we deal with these things. It is twofold. The reason we are having many issues in Turkana County over oil is because people want to be involved. The same applies in Kilifi over Titanium and Nandi County over the issues of gold at the Karebe Gold Mine where people complain that they were never involved.

The county assemblies are concluding on the budget-making process and people are complaining that the way it was done, it did not meet the threshold, standards and expectations of public participation. Therefore, I agree that the Bill will give an opportunity to the people because, at the moment, it is chosen and picked for the county governments. They can decide to either advertise information in a national radio, on billboards or in notices across our townships and small centres. At the end of the day, it will assist in public awareness to ensure that we remain focused. It will also assist and give a framework for people to discuss important issues of public interest. I believe that the Schedule has provided how it should be done such that it becomes mandatory.

Madam Temporary Speaker, at the moment, county governments can decide to do public participation without using the necessary medium. At least, we have now given an opportunity to use traditional medium, mainstream medium, social medium and any other form of medium so that we enhance the quality of public awareness. By the time decision on allocation of resources are made, all and sundry that are affected, for example,

families, organisations or communities at any given level should be given the necessary awareness.

Madam Temporary Speaker, public participation will ensure that we promote open governance. For example, as the Senator of Uasin Gishu County, you can have an opportunity for a legal framework on how to engage public participation. In September, the Senate will sit in your great county of Uasin Gishu. Therefore, Kenyans will realize that public participation is no longer a privilege; it is a right that cannot be taken away.

We have seen judicial decisions that have been pronounced. For example, in the previous case of Kiambu, the court overturned some of the executive decisions and legislations that were passed for simply avoiding public participation. We thank our courts for the decisions they have made because they have ensured the growth of respect for public participation.

The Inter-Governmental Relations Technical Committee (IGRTC) and the Auditor-General have given a model and guidelines on how to do public participation between Government agencies and county governments. However, they need to give it a legal aspect. We do not need to use guidelines which are a prerogative of the Cabinet Secretary. Since they have realized that they have made a mistake, they can decide to change the guidelines. Therefore, when the IGRTC brings the guidelines, they need to know that it is an important right.

Madam Temporary Speaker, when this aspect of this Bill comes into full realization of being law, it will give impedance to the right to freedom of information under Articles 34 and 35 of the Constitution which is important.

Sen. Petronila Were has introduced The County Printer Bill which will ensure that information is disseminated and the public participate in open governance and democratic principles in the country. This law will also ensure that everybody has equitable access to information.

Madam Temporary Speaker, when this Constitution came into place, I happened, at some point, to be the Chairperson of the Nandi “Team Transparency” Group. At that time, even to get a budget proposal, the Auditor-General’s report or legislation, which should be disseminated for free from the County Assembly of Nandi, was very hard. Further, even to be involved in a public participation exercise was very hard. Alternatively, these people would use some sort of ambush, where they would go, round up a few idlers in some township centers and tell them: “Come and sit here; we are giving you Kshs200, a soda and a loaf of bread.” They would then read to them some funny things. Since, of course, not everybody has had the privilege of going to school or having a formal education, they would read out big English words about demand and supply, the economy and the Gross Domestic Product (GDP). These people would think GDP is a nickname of the Governor and, at the end of the day they would just endorse some of these things without realizing it.

Therefore, Madam Temporary Speaker, it is good that now, the people have a recourse to ensure that they have a right to access to information. In the spirit of this law, we should ensure that if you are going to Bungoma County, where there are different tribes, you make sure you break it down to the level of the dialect which they understand. Do not go and tell us about demand and supply, the GDP, the infrastructure, what is



called “kinetics” or even other funny terms like the Millennium Development Goals (MDGs). When the Governors and County Executive Committee (CEC) Members go there, they talk about Sustainable Development Goals (SDGs) and MDGs and by the time they finish talking, people would think this is the best of all and they would endorse it. By the time you realize it, the people have approved the wrong things because they are using the ignorance of people at that level.

Madam Temporary Speaker, I realize that my county and so many other counties have implemented the County Integrated Development Plan (CIDP) using what we call “as provided by the law.” However, for your information and the information of the Senators, many counties have passed the budget without the input of the CIDP. Therefore, with this Bill, the law will ensure there is a feedback mechanism. How do you go and sit somewhere in Eldoret Town, Soi, Bungoma, Kakamega, Vihiga or Mombasa and tell people: “Can you say all your points of public interest” and then you ignore their contributions during the budget process? Maybe these people wanted water, shades for their *boda bodas*, drugs in hospitals or internship opportunities that the President has requested counties to avail. However, you will find that the vote heads we have in the budget are very interesting. You will find allocations for building mansions and governors’ residences. I know that God has given us mansions in heaven; which are better mansions. However, why should we not take people as a priority at that level? Building mansions in heaven would not be as expensive as building the same for our governors, like they are doing now.

Madam Temporary Speaker, counties have introduced taxes such that even to slaughter a chicken, you need to be taxed; even the *boda bodas* are being taxed Kshs200 daily. However, the CIDP, which is supposed to include the aspirations, contributions, ideas and visions of the people, is nowhere when we are undertaking the budgetary process. That is why the CECs have realized that the only impediment to the success of the county budgeting process or the budgetary allocations is the Members of County Assemblies (MCAs). This is the reason why governors and MCAs are so much in love that some of them have retreated to exclusive places to go and discuss how the law could be passed for their own interests.

Madam Temporary Speaker, I agree that the appropriate feedback should be developed to ensure that the CIDP is adhered to during the budgeting process. The people of Uasin Gishu, Narok, Kajiado or Kakamega counties are talking about issues of sugar – I know the sugar is bitter nowadays – and how we can revive Chemelil, Miwani and West Sugar companies in Kakamega County. This is the best thing about this law, because it will give us feedback. Kenyans must get value for their money. By the time we are allocating money for public participation---

**The Temporary Speaker** (Sen. (Prof.) Kamar: Order, Hon. Cherargei. You will have a balance of four minutes when the debate on this Bill resumes tomorrow.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Prof.) Kamar: Hon. Senators, it is now 6.30 p.m., the time to interrupt the business of the Senate. The House, therefore, stands adjourned until Wednesday 4<sup>th</sup> July, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.