

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 27th November, 2018

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

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

PRAYER

PAPER LAID

REPORT OF THE *AD HOC* COMMITTEE ON THE MAIZE CRISIS

Sen. Wetangula: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 27th November, 2018:-

The Report of the *Ad Hoc* Committee on the Maize Crisis. I am doing so on behalf of our Chair, Sen. (Prof.) Kamar, who is out of the country.

(Sen. Wetangula laid the document on the Table)

Sen. (Eng.) Maina: Mr. Speaker, Sir, I wish to table the report relating to the activities of the Standing Committee on Energy, pursuant to Standing Order---

The Speaker (Hon. Lusaka): Senator for Kirinyaga, we are not yet there. I cannot see the Senate Majority Leader. Let us go to the next Order.

NOTICES OF MOTIONS

ADOPTION OF REPORT OF THE *AD HOC* COMMITTEE ON THE MAIZE CRISIS

Sen. Wetangula: Mr. Speaker, Sir, on behalf of the Chair of the Committee, I wish to give notice of the following Motion-

THAT this House adopts the Report of the *Ad Hoc* Committee on the Maize Crisis.

The Speaker (Hon. Lusaka): Next!

REVIVAL OF THE POSTAL CORPORATION OF KENYA

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

THAT AWARE THAT the Postal Corporation of Kenya is a state-owned corporation established by the Postal Corporation of Kenya Act, (CAP 411) and operates as a commercial public enterprise;

FURTHER AWARE that the corporation's mandate includes provision of accessible, affordable and reliable postal services to all parts of the country in line with its Mission to deliver innovative superior communication, distribution and financial solutions to its customers and create value to stakeholders;

NOTING THAT the corporation has remained the most accessible, affordable and effective communications platform in Kenya with a total of 623 outlets spread across the country;

CONCERNED THAT that the Corporation has very attractive and innovative services and a developed infrastructure that is underutilized, hampering efforts to carry out its mandate as enshrined in the Act;

ACKNOWLEDGING THAT the Corporation would see a much needed revival if included in the Government connectivity project through the National Optic Fibre Backbone project (NOFBI), aimed at ensuring connectivity in all the 47 counties of Kenya whose implementation aims to ease communication across counties as well as improve government service delivery to the citizens such as application of national identity cards, passports and registration of births and deaths;

NOW THEREFORE, the Senate calls upon the Ministry of Information, Communication and Technology in collaboration with the National Treasury to-

(a) ensure fair distribution of postal outlets throughout the country with at least ten (10) functional postal outlets in each of the 47 counties of Kenya;

(b) channel Government cash disbursements like the Women Fund, Youth Fund and the Fund for senior citizens through the corporation to enable the corporation earn revenue through commissions charged;

(c) channel Government mail delivery and clearing and forwarding services to the corporation; and,

(d) channel Government courier and logistical services through the corporation.

The Speaker (Hon. Lusaka): Let us go to the next Order.

STATEMENTS

The Speaker (Hon. Lusaka): Sen. Chebeni, are you ready? If Sen. Chebeni is not ready, the next one is by Sen. (Prof.) Ekal. Since Sen. (Prof.) Ekal is not here, let us have Sen. Cherargei to seek his statement.

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UNLAWFUL ESTABLISHMENT OF OFFICES
UNDER THE HEALTH DOCKET IN NANDI COUNTY

Sen. Cherargei: Mr. Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a Statement from the Chairperson of the Committee on Health on the unlawful establishment of various offices under the health docket in Nandi County. In the Statement, the Committee should explain:-

(1) why the Nandi County Government has resorted to unjustifiable and unlawful establishment of offices under the Health Act;

(2) clarify whether the offices established are constitutional or in line with the provisions of the Health Act and the County Governments Act;

(3) explain what policy, legal, and regulatory framework govern the duplication of jobs arising from the establishment of these offices; and,

(4) state whether the public participation, especially on financial matters which is mandatory under Article 201 of the Constitution on principles of public finance, was undertaken and whether the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU)---

(Loud consultations)

The Speaker (Hon. Lusaka): Order Members! Let us consult in low tones.

Sen. Cherargei: I think Members are having an extension of the discussions we had today in the morning about health matters. I know it was hot.

I will repeat the fourth concern.

(4) state whether the public participation, especially on financial matters which is mandatory under Article 201 of the Constitution on principles of public finance, was undertaken and whether the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) and other stakeholders and representatives of public interest groups participated in the deliberation before creation of these offices.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I do not see any interest on the Statement. Let us now have the Chairperson of the Standing Committee on Energy.

IMPLEMENTATION STATUS OF THE MINIMUM WAGE
GUIDELINES IN THE COUNTY

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. While we are still on statements under Standing Order No.48(1), I requested for a statement from the Standing Committee on Labour and Social Welfare, which was duly processed and you approved it. Actually I requested it on 3rd, October, 2018.

The Chairperson had promised to give a response in two weeks. It is now over eight weeks and we have not gotten the Statement on minimum wage guidelines. I would like to hear from the Chairperson when the Statement will be produced in this House.

The Speaker (Hon. Lusaka): Since the Chairperson, Committee on Labour and Social Welfare is not here with us, I wish to remind Sen. Khaniri that under Standing Order No.48, the Statement now belongs to the Committee and it is the Committee that is to determine whether they will bring it back to the House or whether they can address it to you later on.

Let us hear from the Chairperson of the Standing Committee on Energy.

ACTIVITIES OF THE STANDING COMMITTEE ON ENERGY

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I wish to table the Report relating to the activities of the Standing Committee on Energy, pursuant to Standing Order No. 51 for the period from 9th August to 9th November, 2018.

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

Mr. Speaker, Sir, the Senate Standing Committee on Energy was constituted in December, 2017 during the First Session of the Twelfth Parliament, pursuant to the provisions of Senate Standing Order No.218. The Committee is mandated to consider all matters relating to fossil fuels exploration, development, production, maintenance and regulation of energy.

As outlined in Standing Order No.215(2), the activities of the Committee entail the following-

- (1) Bills considered by the Committee;
- (2) Statements considered by the Committee;
- (3) Petitions considered by the Committee;
- (4) Inquiries undertaken by the Committee and progress of any such inquiry;
- (5) Any county visits undertaken by the Committee and the outcome of such visits; and,
- (6) The manner and the extent to which the Committee met its public participation obligations in respect of the business of the Committee.

Under Standing Order No.218 (4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the National Executive, including adopted committee reports.

Mr. Speaker, Sir, during the period under review the Committee has held a total of 12 sittings, one retreat and engaged with several stakeholders.

Mr. Speaker, Sir, on reporting on the activities of the Committee, I wish to provide the details of each activity as follows-

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members. Let us consult in low tones. You are distracting the Member.

Proceed, Sen. (Eng.) Maina.

Sen. (Eng.) Maina: Mr. Speaker, Sir, the details are as follows-

1. BILLS CONSIDERED BY THE COMMITTEE

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
1.	The Local Content Bill (Sen. Bills No. 10 of 2018)	10/5/18	Public hearing- 21 st June, 2018 Report Tabled – 9 th August, 2018	Bill awaiting Committee of the whole	
2.	The Energy Bill (National Assembly Bills No. 50 of 2017)	4/7/18	Public hearing- 23 rd August, 2018 Report Tabled – 16 th October, 2018	Bill awaiting Committee of the whole	
3.	The Petroleum Bill (National Assembly Bills No. 48 of 2017)	10/7/18	Public hearing- 22 nd August, 2018 Report Tabled- 27 th September, 2018	Bill awaiting Committee of the whole	

2. LEGISLATIVE PROPOSALS PROCESSED BY THE COMMITTEE

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
1.	The Energy (Amendment) Bill, 2018	4 th June, 2018	The Committee met with the sponsor of the legislative proposal who is a member of the Committee. The proposal was deferred in light of the ongoing legislative review through the Energy Bill, 2018	The provisions of the legislative proposal have been proposed as amendments to the Energy Bill, 2018	-

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3. STATEMENTS CONSIDERED BY THE COMMITTEE

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
1.	Statement on the constant power rationing and power black outs in Wajir County.	11/10/18	The Committee has written to the Ministry of energy and will soon invite the Senator for Wajir County to consider the matter	Stakeholder consultation ongoing	To be completed before recess on 7 th December, 2018

4. PETITIONS CONSIDERED BY THE COMMITTEE

Mr. Speaker, Sir, the Committee has not received any Petitions but remains committed to addressing any petitions committed to it in a timely manner.

5. INQUIRIES UNDERTAKEN BY THE COMMITTEE

Mr. Speaker, Sir, the Senate Committee on Energy has not conducted any inquiries but has extensively engaged with stakeholders on emerging issues in the energy sector that has borne great results from such engagement as illustrated.

6. COUNTY VISITS UNDERTAKEN BY THE COMMITTEE

Mr. Speaker, Sir, the Committee is yet to conduct county visits but has planned to engage more with counties in the Third Session of this House.

7. SCRUTINY OF RESOLUTIONS OF THE SENATE - STANDING ORDER No.218(4)

Mr. Speaker, Sir, whereas the Committee has tabled reports before the House; the House is yet to debate the Report and make resolutions. The Committee continues to closely follow the processing of business relating to the Committee on the Floor of the House.

(Loud Consultations)

Mr. Speaker, Sir, on public participation, the Committee has held 30---

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Sen. Musuruve: On a point of order, Mr. Speaker, Sir. I am really straining to get the points the Senator is presenting. He is addressing a very important issue on energy, but there is a lot of distraction.

The Speaker (Hon. Lusaka): Order, Members. Let us consult in low tones so that the Member can communicate.

Sen. (Eng.) Maina: I thank my dear sister.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Mutula Kilonzo?

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, even the Members who are struggling cannot hear the Chairman well. I am proposing that first he increases the decibel and secondly, for posterity, is it possible that the Committee circulates the Report so that Members can follow? Other than reading his lips, we can also read the report for ourselves.

Thank you.

(Laughter)

Sen. (Eng.) Maina: Mr. Speaker, Sir, I believe that he is asking whether your office may---

The Speaker (Hon. Lusaka): Let me give a direction on that.

The Report is just being tabled so it cannot be availed until it is tabled in the House. It is only after that, that it can be circulated. However, I think you need to be audible, Sen. (Eng.) Maina.

Sen. (Eng.) Maina: I am audible, but maybe some people need some aids.

Mr. Speaker, Sir, on scrutiny of the resolutions of the Senate, Standing Order No.218---

(Loud consultations)

Sen. Mutula Kilonzo, please listen to me now. Do not talk back there and then you---

(Laughter)

Whereas the Committee has tabled reports before the House, the House is yet to debate the Reports and make resolutions. The Committee continues to closely follow the proceedings relating to energy on the Floor of the House.

The Speaker (Hon. Lusaka): Sen. Outa, what is your point of order?

Sen. Outa: Mr. Speaker, Sir, is the Engineer Senator, whom I respect, in order to just stand and engage with Sen. Mutula Kilonzo Jnr. while ignoring you as the Chair? I have seen him trying to get the attention of Sen. Mutula Kilonzo Jnr. He knows the Standing Orders which state that he cannot engage the Senator for Makueni without consulting you.

The Speaker (Hon. Lusaka): Everybody addresses the Chair, so that should be noted. Conclude Sen. (Eng.) Maina.

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Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. On public participation; the Committee has held 30 sittings so far and all have been open to the public for their attendance. On occasion, it has received interested members of the public attending meetings. Moreover, the Committee has held three sessions with the sole purpose of consulting with the public on various legislations committed---

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

The Speaker (Hon. Lusaka): What is your point of order Sen. Wetangula?

Sen. Wetangula: Mr. Speaker, Sir, I suspect that the Chairperson is reading a very important Statement but he is embroiled in a drawled monologue that does not seem to communicate anything. I have been sitting there quietly straining to hear and understand what he is reading but I cannot. Can he circulate the documents for us to read it on our own?

The Speaker (Hon. Lusaka): That is what I ruled Sen. Wetangula. The Report is being Tabled and it will be circulated.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. The Committee has held 30 sittings so far which have been open to the public and it has received interested members of the public attending its meetings. Moreover, the Committee has held three sessions with the sole purpose of consulting the public on various legislations committed to the Committee.

On stakeholder engagements, the Committee has met with the Ministry of Energy. The Committee engaged the stakeholders on 13th May, 2018, regarding the plight and the outcry and the measures that were being taken to address the cost of energy. The Ministry of Energy and the Rural Electrification Authority were engaged by the Committee on national primary schools electrification programs on 9th September, 2018. The Committee sought to be appraised on the status of the school electrification programme and the progress achieved. It sought to address key challenges affecting the programmes including faulty hardware. Other stakeholder meetings were also conducted in regard to the imposition of the 16 per cent Value Added Tax on petroleum which were held on the 12th March, 2018 and 12th September, 2018.

The next is the challenges and the recommendations. The key challenges encountered in execution of the mandate of the Committee included media coverage of its activities which has not been sufficient and could be improved through building synergies with the media houses.

Thank you, Mr. Speaker, Sir, and we also thank your secretariat for all the assistance that they have given us. Allow me to add that we are engaged in a fairly technical subject and I would ask that the Members be apprised with the issue of energy. There may be technical terms but they should not be scared to say that they do not understand.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I expected the Chairperson to tell us when he is Tabling the amendments to the Energy and Petroleum Bill as part of the report

of what the Committee has done in the last three months for us to prepare. I hope that is not technical.

Sen. Cheruiyot: Mr. Speaker, Sir, I am a Member of this Committee and I confirm what my Chairperson has said. Some of these issues are very technical and that is why people are struggling to understand the things that he is saying.

When the Chairperson was giving the Report, there was commotion and it may have been lost on many Members that he has given a Report which I had earlier alluded to during other businesses of the House. I had talked of the great work that was done by this Committee both in this Session and the Session that lapsed. There was a dispute between Kenya Pipeline Company and a company called Zhakem regarding Line V. If you go to the Hansard, you will realise that by this Committee operationalizing Article 201 and Article 225 of our Constitution, we stopped this parastatal from paying public money because of disputed contractual variation and that is part of what the Chairperson has ably reported.

This is one issue that we are almost bringing to a close in our Committee. When we began looking at the dispute in the last Parliament, the variation was at Kshs10 billion but two weeks ago, the Chairperson of Kenya Pipeline Company appeared before our Committee and assured us that the figure has been varied downwards and it is now about KShs2.3 billion from Kshs10 billion. This means that Kshs7.6 billion was saved courtesy of the work of this Committee. There is a view that the figure can still be reviewed downwards.

The Speaker (Hon. Lusaka): Thank you, Sen. Cheruiyot. Let us get a Statement from the Chairperson of the Standing Committee on Information, Communication and Technology.

ACTIVITIES OF THE COMMITTEE ON INFORMATION AND TECHNOLOGY

Sen. Moi: Mr. Speaker, Sir, Standing Order No. 51(1)(b) provides that at least every three months, a Committee Chairperson is expected to make a Statement relating to activities of the Committee. In fulfillment of that provision, I wish to make a Statement in regards to the Standing Committee on Information, Communication and Technology for the period commencing 9th August, 2018 to 9th November, 2018.

The Senate Standing Committee on Information, Communication and Technology was constituted in December, 2017 during the First Session of the Twelfth Parliament pursuant to the provisions of Senate Standing Order No. 218. The Committee is mandated to consider all matters related to technology, engineering and electronic research, information broadcasting and Information Communications and Technology development. I am fast forwarding.

As outlined in Standing Order 215 (2) the activities of the Committee shall entail the following:-

- (1) Bills considered by the Committee;
- (2) Statements considered by the Committee;
- (3) Petitions considered by the Committee;

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(4) Inquiries undertaken by the Committee and progress of any such inquiry;
(5) Any county visits undertaken by the committee and the outcome of such visits; and

(6) The manner and the extent to which the Committee met its public participation obligations in respect of the business of the Committee.

(7) Under Standing Order 218(4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the National Executive (including adopted committee reports).

During the period under review the Committee has held a total of 12 sittings and held 1 retreat and engaged with several stakeholders.

On reporting on the activities of the Committee, I wish to provide the details of each activity as follows:-

Regarding the Bills Considered by the Committee; the Committee has considered three Bills during the period under review and has adopted the reports which are ready for Tabling upon the Speaker's approval.

The Committee has also proposed various Committee Stage amendments on the Bills which I shall be moving when the Bills will be up for Committee Stage. The bills mentioned are as follows:-

(i) The County Outdoor Advertising Control Bill, 2018 was read a First Time in the Senate on 11th September, 2018 and thereafter stood committed to the Standing Committee on Information Communication and Technology for public participation.

Pursuant to the provisions of Article 118(1) (b) of the Constitution and Standing Order No.134(5) of the Senate Standing Orders, the Senate Standing Committee on Information Communication and Technology invited interested members of the public to submit any representations that they may have on the Bill. The Committee held a public hearing on Thursday 4th October, 2018

(ii)The Copyright Amendment Bill was read a First Time on Tuesday, 12th September, 2018 and thereafter stood committed to the Standing Committee on Information Communication and Technology pursuant to Standing Order No.134(5), for facilitation of public participation. The Committee held a public hearing on Thursday, 4th October 2018 at Red Cross Building. The Committee received both oral and written submissions from stakeholders

(iii)The Data Protection Bill (Senate Bills No. 16 of 2018) was published on 30th May, 2018, and read a First Time on 3rd July, 2018 in the Senate. Thereafter, it stood committed to the Standing Committee on Information, Communication and Technology for public participation. The Committee held a public hearing on Wednesday, 18th July, 2018 at County Hall, 1st Floor Mini Chamber. The Committee received both oral and written submissions from stakeholders. The Committee also held a stakeholder meeting on the Bill at the Sarova Stanley Hotel, Nairobi on Tuesday 17th July, 2018.

Mr. Speaker Sir, The Data Protection Bill has taken an inordinately longer time to process due to its scope, technicality and the need to align it with other international best practices. The Committee has, however, finished its consideration and is proposing a raft of amendments during the Committee Stage

Mr. Speaker, Sir, on the inquiries undertaken by the Committee, it has continued to inquire on the level of connectivity in the county with an emphasis on the former marginalized areas. This is pursuant to an undertaking made by the Cabinet Secretary, Ministry of Information Communication and Technology on Tuesday 6th March, 2018 where he outlined the Ministry's target to ensure all Kenyans are connected to voice telecommunication by the end of 2018 as presented to the Committee during its sitting.

Mr. Speaker Sir, to this end, the Committee made an oversight visit with the relevant arms of Government to the three wards. These are, Mumoni, Tharaka and Ngomeni wards of Kitui County between 19th to 22nd August, 2018. The visit has brought to the fore the glaring inequalities in connectivity. A written undertaking to connect these wards has been received from the Communications Authority of Kenya (CA) through the Universal Service Fund (USF).

The Committee has scheduled similar visits in line with this inquiry in the first quarter of 2019.

Mr. Speaker Sir, the Committee on Information, Communication and Technology has undertaken county engagements in line with their work plan. The visits are tailored in clusters where the Committee meets counterpart Committees in the county assemblies.

The objective of the engagements is to provide a platform for engagement with Members of county assembly committees oversighting matters of ICT. Further, the Committee uses the forums to build capacity of the assembly committees in matters of legislation and oversight.

The Committee has held two successful engagements in Embu County where 9 county assemblies were engaged and Kisumu County where 8 county assemblies were engaged. The Committee will continue to engage county assembly counterpart committees from the other regions in 2019.

Mr. Speaker Sir, on public participation, as indicated earlier, the Committee mainly used public hearings, receipt of memoranda and targeted meetings to further and realize its public participation obligations.

My Committee will be exploring and proposing to the Senate to embrace the use of ICT including social media and telephony to better its public participation strategy and be more efficient.

Mr. Speaker Sir, on stakeholder's engagements, the Committee, in exercise of its mandate, has engaged various stakeholders over the period under review. These engagements have been geared towards making the ICT sector more responsive to the 21st century challenges and to make devolution more efficient and effective. The engagements also provide a forum to monitor the extent to which the National Government has devolved functions to the counties and any challenges that counties may be facing in executing them.

The main stakeholder met include-

- (1) The Cabinet secretary ICT;
- (2) The Communication Authority of Kenya
- (3) The Kenya Film Classification Board (KFCB);
- (4) The Konza Technopolis Development Authority (KoTDA);
- (5) The Kenya Film Commission;

- (6) The ICT Authority ; and
- (7) The Honorary Consul of the Republic of Estonia.

Mr. Speaker Sir, these interactions have led to major resolutions, with a major one being the inclusion of the Committee into the National ICT Committee, which is a forum bringing together high level actors on ICT policy in the country.

I, thank you, Mr. Speaker Sir.

I beg to lay this statement on the table of the Senate.

(Sen. Moi laid the document on the Table)

The Speaker (Hon. Lusaka): Thank you, Chairperson, Committee on Information Communication and Technology.

Proceed, Chairperson, Standing Committee on Justice and Legal Affairs and Human Rights.

ACTIVITIES OF THE COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS

Sen. Cherargei: Thank you, Mr. Speaker, Sir. This is also a fairly technical matter. I hope that my colleagues will bear with me on some of the technical issues that will arise.

Mr. Speaker Sir, Standing Order No.51 (1) (b) provides that at least every three months, a Committee Chairperson is expected to make a statement relating to activities of the Committee.

In fulfillment of that provision, I wish to make a statement in regards to the Standing Committee on Legal Affairs and Human rights for the period commencing 9th August, 2018 to 9th November, 2018.

(Loud Consultations)

Mr. Speaker, Sir, can you kindly protect me? This is not a market place.

The Speaker (Hon. Lusaka): Hon. Members, let us consult in low tones. Let us be serious.

Sen. Cherargei: Mr. Speaker, Sir, I think Sen. (Dr.) Kabaka is too much excited.

Mr. Speaker Sir, the Senate Standing Committee on Justice and Legal Affairs and Human Rights was constituted in December, 2017 during the First Session of the Twelfth Parliament pursuant to the provisions of Senate standing Order No.218. The Committee is mandated to consider all matters relating to constitutional affairs, the organisation and administration of law and justice, selection, promotion of principles of leadership ethics and integrity, agreements, treaties and conventions, implementation of the provisions of the Constitution on human rights.

Mr. Speaker Sir, as outlined in Standing Order No. 215 (2), the activities of the Committee entail the following-

- (1) Bills considered by the Committee;
- (2) Statements considered by the Committee;

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- (3) Petitions considered by the Committee;
- (4) Inquiries undertaken by the Committee and progress of any such inquiry;
- (5) Any county visits undertaken by the Committee and the outcome of such visits; and
- (6) The manner and the extent to which the Committee met its public participation obligations in respect of the business of the Committee;
- (7) Under Standing Order No. 218 (4), the Committee is expected to scrutinize the resolutions of the Senate and formal undertakings given by the national Executive including adopted Committee reports.

Mr. Speaker Sir, on reporting on the activities of the Committee, I wish to provide the details of each activity as provided below-

7. BILL (S)

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	Impeachment Procedure Bill (Senate Bills No. 15 of 2018)	3 rd July, 2018	Public hearing held on 31 st July, 2018.	In progress. Committee is currently considering submissions by the public	Lack of quorum due to Members being engaged in other Committees or other official duties has delayed conclusion and tabling of reports of these Bills.
	County Statutory Instruments Bill (Senate Bills No. 21 of 2018)	13 th September, 2018	Public hearing held on 17 th October, 2018	In progress. Committee is currently considering submissions by the public	
	Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018)	13 th September, 2018	Public hearing held on 17 th October, 2018	In progress. Committee is currently considering submissions by the public	
	Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23)	13 th September, 2018	Public hearing held on 17 th October, 2018	In progress. Committee is currently considering submissions by the public	

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	of 2018)				
	Statutory Instruments (Amendment) Bill (Senate Bills No. 24 Of 2018)	13 th September, 2018	Public hearing held on 17 th October, 2018	In progress. Committee is currently considering submissions by the public	
	Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No. 27 of 2018)	25 th September, 2018	Public hearing held on 11 th October, 2018	In progress. Committee is currently considering submissions by the public	

8. LEGISLATIVE PROPOSAL(S)

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	Constitution of Kenya (Amendment) Bill, 2018		<p>) The Committee held a meeting with the sponsor of the Bill, Sen. Aaron Cheruiyot, MP.</p> <p>) The Committee approved the Bill to be published but with reservations that the Senate was meant to protect devolution</p>	Done	The Committee delayed in processing this Bill as the sponsor of the Bill had requested the Committee to shelve the Bill until an opportune time.

The Sponsor of the Bill wants Nairobi City County to be given extra county status or be made a metropolis. I know that there was a spat between the Governor and him, but that will not deter the work of the Committee.

3. STATEMENTS

(Sen. (Dr.) Kabaka gestured at Sen. Cherargei)

We have none and, therefore, we --- I do not know what is agitating Sen. (Dr.) Kabaka. He is making funny gestures as I proceed. I know that there are many presidential candidates.

The Speaker (Hon. Lusaka): Sen. Cherargei, concentrate on your presentation.

Sen. Cherargei: Mr. Speaker, Sir, he is distracting me by making funny---

The Speaker (Hon. Lusaka): The Speaker is here to watch anybody who is making funny moves. Concentrate on your ---

Sen. Cherargei: Mr. Speaker, Sir, I am directly opposite him. He should stop making such gestures. There are many presidential candidates.

(Loud consultations)

4. PETITIONS

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	Petition by residents of Bomet and Kericho Counties on the status of land owned by multinationals in Kericho and Bomet Counties	31 st May, 2018	The Committees have met with the Petitioners to discuss the issues raised in the Petition.	In progress	<p>) The Petition was referred to the Senate Standing Committee on Justice Legal Affairs and Human Rights and the Senate Standing Committee on Lands Environment and Natural Resources.</p> <p>) The Committees intends to invite the respondents, who are the multinationals, on 4th December, 2018.</p>

The Petition was referred to us jointly with the Committee on Lands, Environment and Natural Resources, whose Chairperson is in the here. I think we will be done by 4th December.

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5. INQUIRIES

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	Inquiry into the human rights condition in the Eldoret G.K. Prison and Remand.	N/A	The Committee visited the Eldoret G.K. Prison and Remand on 27 th September, 2018	In progress.	Draft report ready for consideration by the Committee

6. COUNTY VISITS

We have not undertaken any county visits up to this time.

7. MOTION

NO	TITLE	DATE REFERRED TO THE COMMITTEE	ACTION TAKEN BY THE COMMITTEE	STATUS	REMARKS
	Motion on the Review of the Relevant Policy and Legislative Framework on the Fight against Corruption by Sen. (Dr.) Isaac Mwaura, Member of Parliament (MPs).	31 st May, 2018	Thus far the Committee has met with the following stakeholders: Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecution, Kenya Revenue Authority, Independent and Electoral Boundaries Commission, Kenya Institute of Supplies Management, ICPAK and the multi-agency team on anti-corruption chaired by the Attorney General	In progress	The Committee is scheduled to hold the final meeting with the Multi-Agency Team on anti-corruption on Thursday, 29 th November, 2018.

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			and constituted organizations such as Asset Recovery Agency, Central Bank of Kenya, Financial Reporting Center and the National Treasury		
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9. CHALLENGES AND RECOMMENDATIONS

The Committee faced the following challenges-

(1) The Committee was unable to transact most of its business due to lack of quorum.

Recommendations:

(a) re-consider the issue of membership in Committees such that one Member should belong to only one committee; or alternatively,

(b) develop a schedule to avoid the issue of Committees with similar membership holding meetings on the same days and at the same time.

(2) Limited media publicity on Committee business.

We have made the following recommendations-

(1) Make use of readily available resources such as live broadcasts or Plenary to create publicity on the Bills before the Committee and broadcast dates on public hearings for efficiency.

(2) Establish a subscription option on the Parliament website for legislative business before the House to allow for dissemination of such information immediately it is introduced in the House, thus providing ample time for the public to prepare and make submissions to relevant Committees and cure the issue of short timelines on notices for public participation.

(3) Prepare legislative impact assessments – I think this is very important – on Bills before Committees and circulate widely using readily available channels to the public to enable them to understand how the Bill will impact on them and hence, make their submissions from an informed point of view.

(4) Make use of social and broadcast media to enhance dialogue and awareness on Bills before Committees, to enable the public to make submissions from an informed point of view.

(5) Recruit more media officers to provide the requisite support to the Committees.

Finally, as a Committee, we are working very hard to ensure that we deliver on these issues, going forward. I agree that we need to supply and ensure that we proceed. I urge my colleagues that this is not a rally where we do campaigns for any positions.

I beg to lay the Statement.

(Sen. Cherargei laid the document on the Table)

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. The good Senator for Nandi County has repeatedly alluded to elections. Could he kindly inform the House - because we are not aware and he is the Chairperson of the Committee on Justice and Legal Affairs – whether there is something that has happened to our Constitution that then sets us up for an election? This is the fourth time that he is mentioning it. Why is he so preoccupied with an election that we are not aware about? Is he in order? We are worried.

Sen. Cherargei: Mr. Speaker, Sir, one of the mandates of the Committee on Justice, Legal Affairs and Human Rights is issues of elections. A referendum might be coming. There is the ‘election’ on the Gender Bill and many other forms of elections that we might have. This is a House of union and, therefore, we should desist from making campaign promises and rallies in the House. There is no vacancy in the Office of the President; I can assure you.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Sen. Cherargei, you are out of order.

Yes, Senate Minority Leader.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I am in the Committee on Justice, Legal Affairs and Human Rights and the Report that was given by the Chairperson was on behalf of that particular Committee. The penultimate remarks that were made were not part of the Report of that Committee. Am I in order to call upon the Chairperson of that Committee, which I belong, to withdraw, and those comments be expunged from the record of the House?

The Speaker (Hon. Lusaka): Chairperson, can you withdraw and let us have what was not in the Report expunged?

Sen. Cherargei: Mr. Speaker, Sir, as much as my memory serves me right, I have not alluded to anything that is not in the Report. People have been distracted and were discussing other issues animatedly. Therefore, they have not gotten my position. I did not allude to anything that is not within the Report. I think my good friend and Senior Counsel, whom I hold in high regard, will agree with me that the Report I have presented is the position of the Committee.

The Speaker (Hon. Lusaka): Chairperson of the Committee on Justice, Legal Affairs and Human Rights, I will ask for the HANSARD report, and if it is proved that what you said was not in the Report, you will have to live with the consequences. Alternative, withdraw to make the matter easy for you.

Sen. Cherargei: Mr. Speaker, Sir, to make some people sleep well, I withdraw.

(Laughter)

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. Under which Standing Order is Sen. Cherargei quoting a withdrawal that will make

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people sleep? The Standing Orders say that you justify what you said or withdraw and apologise; not withdraw and sleep.

The Speaker (Hon. Lusaka): I think he has withdrawn, and since this is his first time in the House, I will let him off the hook. I would have taken offence if it was somebody doing his second term.

Next Statement.

Sen. Cheruiyot, proceed.

ACTIVITIES OF THE AD-HOC COMMITTEE ON TEA

Sen. Cheruiyot: Mr. Speaker, Sir, I want to give an update on the activities that have been undertaken by the *Ad Hoc* Committee on Tea.

This Committee was formed after a Motion that I moved in this House a few five months ago. We, as a team of Senators from tea growing counties pooled together our intellectual resources. At that particular time, we felt that the best thing for us to do was to establish an *ad hoc* Committee to look into the challenges facing this sector.

Mr. Speaker, Sir, we, as a Committee, visited seven counties. We had very interactive sessions with farmers drawn from all walks of life. We also listened to the multinationals.

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

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

In each of those sessions, whether it was in Kisii, Kericho, Bomet, Murang'a or Nyeri counties, we could tell our tea farmers are a worried lot. For a long time, tea was considered to be the green gold of this Republic. Many of its farmers were well-to-do people. They could easily feed their children and pay school fees for them without much struggle. However, this sector has been neglected for a long period of time. Currently, our farmers are extremely desperate.

Even we, as their leaders, were unable to answer some of the questions they asked us. We asked them to share with us their proposals which they thought would revive this sector. In our considered view, we, as a Committee, strongly believe we will be able to streamline the challenges bedeviling this sector.

Mr. Deputy Speaker, Sir, we held a total of 14 sittings. We also had other sittings outside the precincts of this Parliament, listening to farmers.

Some of our key highlights are: We now have a Bill which should be coming up for First Reading this week or in the course of next week. With the formation of the Agriculture and Food Authority (AFA), we need to repeal the Tea Act and amalgamate it with all the other crops, including tobacco which is not very useful. They can be taken care of by a directorate in the Ministry of Agriculture.

One of the questions the farmers kept on asking us was how comes tea despite being the leading foreign exchange earner in our country is taken care of by a small directorate in the Ministry of Agriculture. They could not understand why tourism sector

which is struggling has a full-fledged Ministry dedicated to it. In each of our embassies abroad, we keep on seeing representatives of the Ministry of Tourism purporting to promote tourism.

Mr. Deputy Speaker, Sir, the Bill proposes to devolve tea from the rest of the crops. We are also proposing a strong regulator that will be put in place. We will have people nominated by residents and citizens of those tea growing counties by the Council of Governors (CoG). The Cabinet Secretary (CS) will also propose one or two names to that Committee.

We also have legislative proposals that are being processed by the Committee to regulate the entire sector.

There were also petitions that were brought to support some of the claims that were being made by farmers. For example, they were asking us about land injustices where people were moved out of their home settlements to create room for the multinational companies. We, as a Committee, felt that we could address some of the issues legislatively. We, therefore, gave them a proposal to consider filing their petitions through this House. A few minutes ago, you heard the Chairperson of the Senate Committee on Justice, Legal Affairs and Human Rights speaking to that Petition.

Mr. Deputy Speaker, Sir, as I said, the Committee engaged other stakeholders apart from the farmers. We engaged the CS for Agriculture and he agreed with us that it was Parliament that amalgamated all the crop directorates into AFA. So, it is within our mandate as Parliament to separate them if we feel that it is the way to go. That is what we, as a Committee, have done.

We were able to listen to the Kenya Tea Development Agency (KTDA), the Tea Research Institute, the Competitions Authority, the Kenya Tea Growers Association, the East African Tea Trade Association who do the tea brokerage services in Mombasa and the Attorney General of Kenya. The Attorney General promised to come back to us.

One of the key challenges that people have never been able to unravel is that KTDA was set up through a Cabinet memo. As we all know, we cannot amend a Cabinet memo on the Floor of the House. Despite farmers having contributed through their sweat and blood for all the wealth that KTDA has, when they want to find recourse in the system, they are brought to the fact that they are now managed under the Companies Act just like Safaricom Kenya Limited, East African Breweries Limited, among others. Unfortunate, many of the tea farmers are not literate enough to understand the operations of a company. It is, therefore, easy for someone to take advantage of their ignorance and misuse their investments.

Mr. Deputy Speaker, Sir, in conclusion, the Committee thanks the offices of the Speaker and that of the Clerk for the cooperation and support they accorded us. With their support, we were able to come up with this Report.

We request that The Tea Bill be properly tabled before the House so that the process of public participation commences earnestly.

I beg to table the document.

(Sen. Cheruiyot laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Cheruiyot. I see no request or observations. That brings us to the end of that item.

COMMUNICATION FROM CHAIR

IMPLEMENTATION OF UNIVERSAL HEALTH CARE IN COUNTIES

Hon. Senators, before we exit the Statements Hour, last week I gave some directions to the Senate Majority Leader to work together with the Chairperson, the Senate Committee on Health. At the end of my ruling, I did say that they are supposed to have listened to the CS for health today. We invited the Senators of the country because of the nature of the matter which was canvassed here that gave rise to that ruling. At the end of my ruling, I also said that once they have listened to the CS, I will require that the Senate Majority Leader and the Chairperson Committee on Health jointly inform me on what has transpired so that I can give further directions.

Hon. Senators, as you are aware, this matter came by way of a Statement under Standing Order No. 48(1) from the Senator of Isiolo County. However, there was a lot of interest from other Senators from all over the country.

There is nothing in the Standing Orders demanding as a prerequisite the actions we are taking. On the other hand, there are rules permitting the kind of procedure we are approaching. It is discretionally. To my mind, this is a matter that should not just lie with the Committee. This is because the Standing Order says the Committee may file or table a report. It is, therefore, discretionally. I will exercise that discretion in the interest of the country.

Therefore, without further ado, I will give the Senate Majority Leader not more than three minutes to inform the House on the action taken in compliance with that ruling so that I can give further directions and then we move on to the next order.

Hon. Senators, before we listen to the Senate Majority Leader, the next item requires voting. It is a matter that I had ruled that it concerns counties and, therefore, we need numbers. As we listen to the Senate Majority Leader, please do not leave. Thereafter, we will go to Order No.8 and conduct the vote.

IMPLEMENTATION OF UNIVERSAL HEALTH CARE IN COUNTIES

The Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, this morning, we held a meeting in this Chamber and many Hon. Senators attended. I want to appreciate their contribution and commitment to this process. It occurred to us that the---

(Loud Consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Omanga! Order Sen. (Dr.) Lagat and Sen. Moi. Order, Sen. Omanga, take your seat.

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The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, did you say order Sen. Omanga Gideon Moi? You have combined the two names---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. Murkomen. Are you on a point of order or are you doing what you were directed to do by the Chair?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I was just informing the Chair that you could have combined the name Sen. Omanga and Sen. Gideon Moi in one sentence. It is important to draw the right distinction.

Sen. Moi: On a point of order.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Moi, are you complaining?

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it? Sen. Moi will speak first and then Sen. Omanga.

Sen. Moi: Mr. Deputy Speaker, Sir, I wanted some clarification. I was talking to the professor here, who is a pastor---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Is that a Senator you are referring to?

Sen. Moi: Mr. Deputy Speaker, Sir, yes, it is---

The Deputy Speaker (Sen. (Prof.) Kindiki): This is because you have said professor and pastor---

Sen. Moi: Mr. Deputy Speaker, Sir, yes, he is a Senator first, but a jack of all trades. He and I heard---

The Deputy Speaker (Sen. (Prof.) Kindiki): A master of some?

Sen. Moi: Mr. Deputy Speaker, Sir, I also think the Senate Majority leader heard it too. You said Senator *Kukumanga*. I do not know who that Senator is. I am not aware. Could you enlighten us please?

(Laughter)

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

Sen. Omanga: Mr. Deputy Speaker, Sir, I want you to make it clear, because being an Adventist and the head of Dorcas; the women union in the Seventh Day Adventist, it would hurt my---

The Deputy Speaker (Sen. (Prof.) Kindiki): Being a Senator too.

Sen. Omanga: Mr. Deputy Speaker, Sir, yes, but I start first with God before the Senate. It is good to make it clear because I also heard *kuku* something and Sen. Moi was sitting next to me. You have to make it clear because my congregation is watching.

(Laughter)

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

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

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, there is a general rule that when there is a debate or a contribution in the House, the rest of the House should listen in silence. I heard what was going on; what you and the Senate Majority Leader were saying. How that word turned to “*kukumanga*” worries me, because I do not know what Sen. Moi and Sen. Omanga were talking about.

(Laughter)

We can check the HANSARD tomorrow, whether what the Deputy Speaker and the Senate Majority Leader said was anywhere near that word. However, I am worried that the word must have occurred in their conversations.

(Laughter)

Sen. Wetangula: Mr. Deputy Speaker, Sir, on a point of order.

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

Sen. Wetangula: Mr. Deputy Speaker, Sir, I have the advantage of sitting very close to the Chair. I heard the Chair say, “order Sen. Moi” and in quick succession say, “order Sen. Omanga.” What appears is that the context of what they were discussing has overridden them and unlawfully found its way to the Floor and mischievously being made to appear as if the Deputy Speaker is the culprit.

Sen. Olekina: Mr. Deputy Speaker, Sir, hypothetically, suppose you said *kukumanga*, what exactly is it? I know that we have people from the Kamba community in this House and the pomegranate fruit is *kukumanga* in Swahili. What is the big deal then?

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

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

The Deputy Speaker (Sen. (Prof.) Kindiki): That is overruled. Sen. Moi and Sen. Omanga and your collaborator, Sen. (Dr.) Lagat, the activity you were all engaged in is contrary to the standing orders. You are lucky that I called you to order and left it at that. However, you now want to complicate matters by introducing things that are nowhere found within the language that is spoken in this Chamber. This lays credence to perhaps, what some of the other Senators have said, that it could be true, as a hypothesis, in discussing an unhealthy and inappropriate discussion which we do not have time nor interest to engage in.

You are better advised to let that matter lie as it is. Next time, I will make more devastating orders instead of just calling you to order.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I must confess that together with Sen. Faki, over the weekend somewhere in Turkey, we enjoyed the pomegranate fruit, also referred to as *kukumanga* in Swahili. Perhaps, that is why Sen. Faki was excited---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, stick to what you were directed to do. Hon. Senators, we have important business to transact.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I want to report to this House that we held the meeting with the CS and the Principal Secretary of the Ministry of Health and other staff. We had very elaborate discussions that lasted about three to four hours. I must confess they were fruitful because we stumbled upon information that is useful to us.

However, we did not conclude the conversation because there was a litany of documents that were missing. Besides this, the documents that were given to the Senate require further scrutiny in as far as their authenticity is concerned.

All this business forced us to do one important thing. We did not engage in the discussion of universal healthcare which is supposed to be launched. We allowed that to be carried out via the Committee on Health which will work with the Cabinet Secretary of Health. They will create time to discuss the universal healthcare.

Meanwhile, we focused on the health equipment and their procurement which needs to be further interrogated and completed so that a report can be formally put before this House.

Mr. Deputy Speaker, Sir, since the issue of universal healthcare is not controversial yet - it is just about involvement of the Senate - our proposal was that the Committee can proceed with dealing with it. However, when it comes to the equipment, we should proceed as we did. I know you want this issue to be dispensed with in good time. However, I seek your indulgence that good time is allocated to this important issue. Next week, most Senators will be engaged in other business of the Senate that will engage almost more than half of the House.

Therefore, my request is that although this may take a little bit more time, this issue be interrogated to its final conclusion, so that we avoid the suspicions and if there are any anomalies, we deal with them. Whereas the National Treasury, for example, has been deducting money from counties for the last three years, it is apparent that those deductions were done despite the fact that not all counties have received their medical equipment. This includes my county that received the equipment recently.

Mr. Deputy Speaker, Sir, there are very many glaring questions. For example, should those counties that have paid way before continue paying for machinery that they did not have and whose worth has not been quantified? The Cabinet Secretary has promised to supply us with more information that will show what was supplied and at what cost. This issue is so important for the Senate, but it is also extremely important for the country, so that we can have a closure.

Mr. Deputy Speaker, Sir, we discovered that what is called an agreement between the national Government and county governments is not an agreement but a Memorandum of Understanding (MOU) that is not even witnessed. We know the standing of an MOU *vis a vis* what can be a binding agreement on behalf of counties; the legal structure that deals with these kinds of MOUs, including the Intergovernmental

Relations Act, which was not followed. We do not even know under what law the main contractor was engaged. Was it the Public Private Partnership (PPP) and was it followed? What are the State obligations and so forth?

Mr. Deputy Speaker, Sir, we are still scrutinizing the main contract, where some and others have not been witnessed. It is not even initialized on every page; it does not have the seal of the company and the Government. All these things are important and we are still grappling with the methodology with which we will apply to bring all these things to conclusion.

I beg for your indulgence that we take a slightly longer time to scrutinize these issues, even if it means completing it around January, so that we can table a report to the House once we come back from the recess.

Thank you.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Majority Leader. What is it Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I thought before you give directions, I will ask you, very kindly and politely, that you allow may be two or three of us to give a little more insight into this matter, so that when you give directions you have the benefit of all the information.

First, I suggest that you order a team, through the Clerk, to scrutinize the contracts. Some contracts were signed in 2017, yet payments were being done in 2015.

Secondly, is on the issue of some of the MOUs that Sen. Murkomen has mentioned. The County of Bomet, for example, did not sign. So, on what basis therefore, were the deductions done?

Lastly, it appears to us that the Ministry of Health and the officials who were seated here this morning, are not clearly aware of the initial agreements and the deductions that were made of Kshs3.8 billion to Kshs9.4 billion annually. Therefore, I suggest that other than the Ministry of Health, you order that the Council Of Governors (CoG) be at the next meeting, together with the National Treasury, so that we understand the basis upon which counties like Trans Nzoia, where the Chairman of the Committee on Health comes from, no equipment has been delivered yet they have been deducted so much money just like the rest of the counties.

Lastly, it also appears that there are 21 hospitals that have been included---

The Deputy Speaker (Sen. (Prof.) Kindiki): Be brief Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: It is the last one, Mr. Deputy Speaker, Sir. A variation of Kshs9.4 billion is in respect of 21 hospitals that 47 counties are bearing the brunt of that variation. So, the National Treasury must come here, together with those variations, so that we can interrogate this matter in detail. However, I want to say that Sen. Kipchumba Murkomen, the Majority Leader conducted this meeting the way we expect a majority leader to do.

Thank you.

(Applause)

Sen. Cheruiyot: I am not sure about that---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot. Sen. Ochillo-Ayacko, proceed.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. In addition to what Sen. Mutula Kilonzo Jnr. has just said, it is also very important to verify if the county assemblies were involved. Was it just the executive committing resources or the assemblies were involved?

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Senator. Sen. Moses Wetangula, proceed. Try to be as brief as possible.

Sen. Wetangula: I also want to thank Sen. Murkomen for chairing the meeting well and all Senators for the enormous enthusiasm that they rightly showed.

Mr. Deputy Speaker, Sir, given the enormity of this matter, the interest that it has generated and the fact that we all want to come and prosecute our county interests; I would urge the Chairperson that we probably have a smaller committee of the House. We know the challenges the Committee on Health has faced and that is not the direction to go. However, we should have a committee put together, that can analyze these documents very carefully and bring reasoned reports that can then be the basis of our debate.

Secondly and lastly, on the point that Mutula Kilonzo Jnr. has said, I looked at the documents at a glance, a county like the one the Speaker in the Chair represents has only one institution listed. However, we are lumped together and are being taxed Kshs200 million per annum with some counties that have got about five institutions. Others have about four institutions. Nobody has taken into account the interests of equity that must guide the running of public affairs in this country. So, we need a thorough look at this, including but not limited to the possibility of getting the Auditor-General to give us analysts to go through these documents to assist this House.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am afraid Senators that we cannot listen to everyone---

The Senate Minority Leader (Sen. Orengo): Just one point, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, Leader of Minority.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, maybe this is repetition, but I also must say that the Leader of the Majority did a good job this morning.

In terms of the issues that arise out of the proceedings we had this morning, I think the Chair, together with the small committee, should sit with a technical committee from the Clerk's office to bring out the issues because even looking at the documentation, I was very worried that a document that is binding the Kenyan Government or the county governments on the face of it, was not a proper document that can be admissible before anybody.

At the back of the Constitution normally there is what we call the public seal. That public seal serves a purpose. All these documents, even on account of the counties,

there are no seals or rubberstamps from the counties. So, even a legal analysis will bring a lot of issues. We probably can give the Government a way of structuring negotiations up to the point where you have a binding agreement, when having these documents that are called MOUs.

Lastly, a batch of documents was tabled. I want to plead with you, because of what we had this morning, that those documents should be kept under lock and key until the Chairman calls for it. Otherwise, those documents will change because they were scanned and not original documents. For that matter, the Senate should go by the documents that were produced and not those that are brought later.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof) Kindiki): Order, Senators. I am afraid that I have to cut short the interventions because of time, we have to balance the interests of so many competing items in the Order Paper every day, and it is not an easy job. I seek your indulgence for those who have not been able to contribute.

I want to take this opportunity to equally thank the Senate Majority Leader and all the Senators for availing yourselves to the interactive meeting with the Cabinet Secretary. The Statement that gave rise to this activity was under Standing Order No.48(1). If you look at Standing Order No.48(1), (2) and (3) (a) and (b), the Speaker has the discretion of referring the Statement to a Committee, which I did, even in an amplified way. The other discretion is of the Committee. Once the Committee has interacted with the relevant Senators, including the Senator who asked the question, the Cabinet Secretary or any other person, it is must not table a report; it is discretionary.

I have listened to the very persuasive arguments that have been made about the enormity of this matter, and more so, because it involves the application and use of public funds across the country. Again, it involves devolution, which we all accept, as a House, and individual leaders, is at the cornerstone of the survival of our country going forward, in terms of checking excesses of decentralization, *et cetera*. So, any resources that are being clawed back from counties must provide value for money because the people at the grassroots require these amounts of money to the last shilling.

Having said that, I have noted the request by the Senate Majority Leader about timelines, and the House is in session next week until Thursday, as per our Calendar. If there are other activities of social or other nature, you, your Whip and your counterparts on the other side of the House, must work out a way of making sure that the business of the House is transacted and is not distracted by other activities. They could be important but, of course, the proceedings of the House take precedence over any other activity that we do here.

I am almost persuaded by the remarks of the Senate Minority Leader and Sen. Wetangula on the need for more time, but I am afraid that we are working within the Standing Orders. More so, we are working within the need for interim or short-term and long-term solutions to the people of Kenya. As has been humbly argued, we may not have enough time to exhaustively deal with the myriad issues that have arisen from this meeting.

It may also be recalled that I did say, during my remarks in my ruling last week, that once the Senate interacts with the Cabinet Secretary, I will require the Report that

had been submitted by the Senate Majority Leader, after which I will give further directions. So, in the context of what I have said, and considering that the House will proceed on Christmas recess on Thursday next week, there is need for the people of this country to get some immediate interim answers.

I, therefore, direct as follows: One, that the Chairperson of the Committee on Health, on behalf of the House, working together with the Chairperson of the Committee on Devolution and Intergovernmental Relations and the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, because we have been informed that there are legal issues arising about the relationship between the national Government and county governments---

Those three Chairpersons under the coordination of the Senate Majority Leader will again engage further with the Ministry in terms of whether there is further information that you require. At the same time, they will engage with the representatives of the Council of Governors of the Republic of Kenya as well as representatives of the County Assemblies Forum (CAF) and other stakeholders as they may determine. After such engagement, whether physical or through correspondence because of the shortage of time now, I will require that an interim report be tabled in this House on Wednesday, 5th December, 2018, at 2.30 p.m.

(Applause)

That interim report shall contain interim recommendations on how this Senate can further engage on the issue, because nothing prevents the Senate from engaging on the matter thereafter. However, we cannot hold the answers that Kenyans want to hear from us by saying that we need a lot of time, and until we finish everything, we will say nothing.

We must provide some answers next week on Wednesday, at 2.30pm, and I expect that to be done. There are other ways, including any Senator bringing a substantive Motion for further action, in as different variety. The varieties are there, including formation of an *ad-hoc* Committee *et cetera*, where the Senate can engage on this matter going forward.

It is so ordered. Thank you.

We will now go to Order No.8. Please, remember what we said about numbers; we need the threshold.

MOTION

ADOPTION OF CPAIC REPORT ON INQUIRY INTO POSSIBLE LOSS OF FUNDS THROUGH ACQUISITION OF LAND BY THE NLC

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into possible loss of funds through the acquisition of Land LR.No.7879/4 (part) by the National Land Commission, for use by two public schools (Ruaraka High

School and Drive-In Primary School), Nairobi City County, laid on the Table of the House on Wednesday, 8th August, 2018.

(Sen. M. Kajwang' on 15.11.2018)

(Resumption of Debate interrupted on 15.11.2018)

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

Sen. M. Kajwang': Mr. Speaker, Sir, I rise pursuant to Standing Order 81(1) that talks about the manner in which votes are taken in the House. That Standing Order 81 (1) says:

“Unless the Speaker, for the convenience of the Senate otherwise directs, voting on any Division in the Senate shall be by electronic voting.”

Mr. Deputy Speaker, Sir, I want to beg your indulgence, for the convenience of the CPAIC that brought this Report to the House, that of the Mover and Seconder of this Motion, the people of Kenya and those who are tired of the corruption and impunity in this Republic, that you rule that on this particular Motion, voting be manual. Let the delegations be called one by one, so that each delegation shall pronounce itself on the particular matter.

Mr. Speaker, Sir, I do not dispute your ruling in the last sitting where you ruled that this is a matter affecting counties. All I beg is that for the convenience of the House, we do a manual vote---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is the convenience?

Sen. M. Kajwang': Mr. Deputy Speaker Sir, probably, you might want to seek the views of the Members.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. M. Kajwang', do not seek assistance. I would want to understand why you are inviting the Chair to look at the application of this Standing Order. For that to happen, you have to convince me “what convenience” you are talking about.

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, thank you for giving me that opportunity. This is a Report and a Motion that has generated a lot of public interest. In that last sitting when we discussed this matter, you presided over a discussion on the Report of the Powers and Privileges Committee.

This Report has faced various roadblocks. The best way to make sure and to assure the nation, that hon. Senators acted in the best interest of the public is to have an open and transparent vote where delegations are called upon to vote, so that Kenyans know where their stand on this particular matter.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. M. Kajwang', this is not the first time for this House to vote on a sensitive or controversial matter.

Secondly, there is the reason why voting is electronic and largely secret. What you are seeking for, is the exemption. I am not convinced with the explanation you are giving and the line of argument you are approaching---

(Sen. Olekina consulted loudly)

Order, Sen. Olekina! How can you interrupt the Chair? Interrupt your colleagues.

When you have an important point to canvass, you need a lot of composure because you need to make sure that your point is heard. However, making it even for the arbiter to appear as if he is part of the game, then you lose it.

Sen. M. Kajwang', I want to hear you a little more about the convenience. This is because from the way you are talking, you are bringing out the need to make the public see how Senators will vote. To me, this works against your argument because that amounts to intimidating them to declare how they are voting. So, think about it. I can hear two other comments, and then I make a ruling and we proceed.

Sen. M. Kajwang', do you want to add a few other comments?

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, not a comment, but just a point of order. The Chair has attempted to take a fairly defensive position. I am not accusatory or implying any improper motive on anybody. The Standing Order says "for the convenience of the Senate." I feel as the Senator for Homa Bay County and the leader of that delegation, as a Chair of the CPAIC and as the Mover of this Motion, that for my convenience, I would have preferred and loved to do an open vote.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, hon. Senator! We will not spend much more time on this. The electronic voting is available to the public. It can tell you how a Senator voted. So, the debate on this matter either pro or against is over. It is time to vote. Can we proceed accordingly?

I, therefore, direct---

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

The Senate Deputy Speaker (Sen. (Prof.) Kindiki): Is it different?

The Senate Minority Leader (Sen. Orengo): Yes.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, it is you who made a ruling that this matter concerns counties. If a matter concerns counties, it goes to the core of the business of the Senate.

Mr. Deputy Speaker, Sir, Order No.8 is a matter on which the Senate has spent considerable public resources. This matter was committed to a Committee on the realization that it was a matter that the Senate through an *ad hoc* Committee needed to look into and report back to the House. If need be, a vote be taken on it.

In accordance with the Standing Order Nos.82 and 83 that talks about Division, your discretion in terms of Division and ringing of the division bell is that, that bell should be rang for five minutes. I am pleading with you because the Executive, the Office of the Director of Public Prosecution (DPP), the Director of Criminal Investigations (DCI), and the Ethics and Anti-Corruption Commission (EACC) have absolved themselves on matters corruption. This is an opportunity for the Senate to show whether they are fighting impunity in terms of corruption or not.

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

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, please, allow me to say---

The Deputy Speaker (Sen. (Prof.) Kindiki): I am not interrupting you, but I hope that you are not imputing that this House---

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I have not said anything. I am just talking generally. Why this fear?

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

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I normally do not insist on making a point in this House. However, this one, I will make without fear of contradiction ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, you will make it.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, you must hear me out, you cannot hear me in---

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, but you must also take directives of the Chair. You cannot be heard that way. You are a very senior lawyer. Please, resume your seat.

Sen. Orengo, you are not just a senior lawyer, but you are also a senior Member of this House by virtue of the office you occupy. From where I sit, that is why it is not up to me to know who you are gesturing at on the other side or whatever, it is not my business. When I sit here, because sometimes, I sit elsewhere, my business is to uplift the dignity of this House. That is my work. Therefore, anything that tries to institutionally suggest---

(Sen. Murkomen consulted loudly)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Leader of Majority! Your office also does not allow you to do what you are doing. You should be the last person to be called to order.

(Laughter)

Hon. Senators, I was explaining to Senior Counsel, Sen. Orengo, Senator for Siaya County, that while I sit here, my business is to ensure that the dignity of this House is always respected. Therefore, I was just cautioning you. You are free to contribute to the debate, but do not throw mud at this institution, otherwise, impair our dignity in the eyes of the public. However, you can say whatever comment you want to say.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I did not throw mud. I am not trying to cast aspersions. I know what the rules say. I promised to live by them when I took the oath. It is not just the dignity of the institution, but the dignity of every single Member of the Senate. If there was anything to bring on anybody who is a Member of this House, the rules are so clear on how to do it.

Mr. Speaker, Sir, this is an opportunity for us to express ourselves like other institutions that have expressed themselves on the war on corruption. This issue arose because the House was convinced that this was an incident of corruption. That is why the word 'fraud' appears in the Motion. So that nobody thinks that the voting was rushed, I was going to request that the Division Bell be rung for 10 minutes instead of 5 minutes

and you have the discretion. In the meantime, Kenyans will see for themselves who was here and those who were not here in those 10 minutes.

In fact, there have been instances where, when there are no numbers, we give a little time for people to come in and now I am asking for your discretion. Give us a little more time to find out where other Members have gone.

The Deputy Speaker (Sen. (Prof) Kindiki): Thank you, the Senate Leader of Minority!

The **Senate Minority Leader** (Sen. Orengo): The Senate Leader of Majority seems to know where they have gone.

(Laughter)

The Deputy Speaker (Sen. (Prof) Kindiki): Order. I will not allow any further points of order on this matter.

Sen. Orengo, I wish you had started with your last point. Under Standing Order No.81, the Speaker has discretion to allow the ringing of the Bell for a period of more than 5 minutes.

I am convinced that beyond peradventure that this is an important matter. This Senate has been seized of this matter for a long time. There is a time the Senate was not looking very good in the eyes of the public. So, we have come a long way.

So, let us find a dignified end to this process. I see no harm in granting that request. The only trigger that can enable the Speaker to direct for extra time is after the 5 minutes have lapsed, then after that, if there will be need, I will direct for extra time. Therefore, without much further ado---

(Loud consultations)

(Sen. M. Kajwang' stood up in his place)

The Deputy Speaker (Sen. (Prof) Kindiki): Order, Senators. Order Sen. M. Kajwang'. Resume your seat, Sen. M. Kajwang'. Standing up does not give you the Floor. You cannot stand up *suo motu* and expect to get the Floor. I am encouraging this so that we have a way of listening to each other and running the House in a proper way.

Hon. Senators, the requests I have for this screen is full. So, I have to do what I must do and that is to direct that the Division Bell be rung for 5 minutes and, thereafter if the Senate Leader of Minority is not satisfied with the outcome, I will order that it be rung for another 5 minutes.

It is so ordered.

(The Division Bell was rung)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! The Senate Leader of Minority, would you want the bell to be rung for another five minutes?

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! I direct that the Bell be rung for another five minutes.

(The Division Bell was rung)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators, take your seats.

(Loud consultations)

I now direct the doors be locked and the bars drawn.

(The doors were locked and the bars drawn)

DIVISION

ELECTRONIC VOTING

(Question, that the House adopts the Report of the Sessional Committee on CPAIC on the inquiry into possible loss of funds through acquisition of LR No.7879 (4) (part) by the National Land Commission, for use by two public schools (Ruaraka High School and Drive-In Primary School), Nairobi City County, laid on the Table of the House on Wednesday 8th August, 2018, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy, Kwale County; Sen. (Prof) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. Khaniri, Vihiga County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Sakaja, Nairobi City County; Sen. Shiyonga, Kakamega County and Sen. Wambua, Kitui County.

NOES: Sen. Cherargei, Nandi County; Sen. Kihika, Nakuru County; Sen. Moi, Baringo County and Sen. Murkomen, Elgeyo Marakwet County.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows:-

AYES: 15

NOES: 4

ABSETENTIONS: 0

Therefore, pursuant to Article 123 of the Constitution and Standing Order No. 78(2)(c), the question is lost.

(Question negated by 15 votes to 4)

Order, Senators. I now direct that the doors be opened and the bars withdrawn.

(The doors were opened and the bars drawn)

Next Order.

BILLS

Second Reading

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

(Sen. Dullo on 21.11.2018)

(Resumption of debate interrupted on 21.11.2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Dullo is not present. The Bill is deferred.

Sorry, Senators. The item on Order No. 9 was for resumption of debate so any Senator who had not contributed can contribute. I see a request from Sen. Cherargei and Sen. Olekina who have left. Therefore, the Mover should reply. The Mover is also not here. When the Mover engages the Chair, a time for division will be set.

(Bill deferred)

Second Reading

THE LOCAL CONTENT BILL (SENATE BILLS NO.10 OF 2018)

Sen. Moi: Thank you, Mr. Deputy Speaker, Sir. I beg to move that the Local Content Bill (Senate Bills No.10 of 2018) be read a Second Time.

The Local Content Bill (Senate Bills No.10 of 2018) was drawn up by the Senate Committee on Energy to make sure that Kenya fully reaps all the benefits of oil and other natural resources. It was inspired by my Committee at that particular time; 2014, in the First Senate where I was a Member.

The importance of this Bill to Kenya is enormous. In this Local Content Bill (Senate Bills No.10 of 2018), we propose to legislate minimum standards for local content development because these issues are not addressed holistically in the existing law. There has been piecemeal consideration given to later themes in various unconnected pieces of legislation, all of which adopt a large revenue-based model.

The local content in reality, policy and laws have transformed countries around the world. I would like to give three examples of the countries which have adopted the local content in their legislative agenda and made it into Bills. We will start with Nigeria. The first image that comes to mind when we think of Nigeria and oil resources is Niger Delta and the conflict that has dismembered communities there. However, there is a beautiful story told by local content development there. Before 2010, Nigeria like Kenya, did not have a local content policy at all. In spite of being the world's eighth largest oil exporter, it did not have a Local Content Bill. They had been exploited left, right and centre.

Oil in Nigeria account for upwards of 40 per cent of its Gross Domestic Product (GDP) and records at least USD1billion in investment annually. Before 2010, over 90 per cent of the investment imports were imported into Nigeria and there were no local Nigerian companies in the supply value chain. In 2010, Nigeria passed the Nigerian Local Content Bill, which required local forums to participate in the extractive industry value chain. Immediately the Bill was passed, there was massive impact. Before then, Chinese tanks flew Nigerian flags to meet the requirements of the new regulation but slowly, Nigerian local companies came in to the industry and we saw this for ourselves when we were introduced to the businessmen.

Today, Nigerians have super oil tankers thanks to the Local Content Bill which compelled that they had to have a Nigerian content in their logistics.

The Nigerian Local Content law has achieved phenomenal success. It has enhanced domestic participation and facilitated growth of a globally competitive domestic industry and auxiliary.

We went to Brazil and saw what happened there. As it happened in Nigeria, their uptake was slow and initially, there was cosmetic compliance. However, progressively, international oil firms were required to invest in domestic capacity building and technology transfer. Brazilian firms slowly but surely began to produce and supply small items such as pipes. However, through the gradual attainment of experience, they moved to the more sophisticated products of oil well drilling beds.

As at 2016, just 13 years following the adoption of the local content policy, Brazil is one of the world's leading producers and suppliers of sophisticated oil well drilling beds that used to come from Texas, Saudi Arabia to South Korea, the Asian tigers which we are all familiar with. However, they too adopted the Local Content Bill and have championed the developments of their industries.

Mr. Deputy Speaker, Sir, so, what does this Bill seek to do for Kenya? The Local Content Bill identifies a national interest. It does this by doing the following main things;

(i) It requires a minimum percentage value of goods and services to be provided from Kenyan sources, that is local procurement.

(ii) It also requires for the service sector in the oil and gas value chain to be dominated progressively by Kenyan players.

(iii) It requires international companies to pursue policies that ensures employment of Kenyans in the oil and gas sector and requires for this purpose that these companies establish training institutions for skills and knowledge transfer.

Mr. Deputy Speaker, Sir, I am happy about this Bill because of the fact that they will be compelled to pay a percentage of funds to our local universities to set up oil and gas teaching faculties.

(iv) It promotes local manufacture of imports consumed within the local oil and gas industry. It requires investment companies to partner with local companies in transferring manufacturing capability to local companies. In addition, it requires international companies to offer wider shareholding to locals in such companies for knowledge transfer.

To achieve these aspirations, the Bill establishes necessary institutions to monitor its implementation. It also prescribes rules of engagement for all parties. It also requires all investment companies in the oil and gas sector in Kenya to adopt annual local content plans which shall be monitored and sanctioned upon non-compliance on annual basis. Continuous monitoring is at the center of the success of this proposed legislation.

For these reasons, I personally view local development as more than just a policy. I see it as capacity enhancement for local actors at different levels of society to make meaningful engagements in extracting industry activities with a view to broadening local value chain.

Mr. Deputy Speaker, Sir, as I summarize, the purpose of this Bill at the end of the day is that we want to see how Kenyans will get value and benefit from their natural resources. We want Kenyans to have a lick of the spoon. We want Kenyans from the whole value chain to benefit from the natural resources starting from the cooking industry, the logistics or transport industry, the lawyers, bankers, engineers, which I am sure you will be interested in. We do not trust companies that promise to help Kenyans. We are legislating to compel them for it to be a must because these resources belong to Kenyans.

Mr. Deputy Speaker, Sir, I am convinced today as I was in 2016 that this is a transformative piece of legislation. This Bill is bound up by the very essence of our aspirations as a people. Therefore, through it, we will have the opportunity to actualize our constitutional aspirations of prospering our people through the judicious expectations on natural resources. I am persuaded that it shall bring prosperity to the entire nation and our people. For this reason, I have zero hesitation in stating unequivocally that this is a very good Bill.

With this Bill, Kenya will have gifted herself a versatile tool that will equip her well to hasten to the globalization gravy train in the oil and gas sector where we will have domestic private sector that is not only resilient but globally competitive with strong domestic industries.

Through this Bill, we seek to make a bold statement that we shall no longer, as a people, wait for goodwill of the global investment companies. We shall from now on take charge of the tools of trade, improve our capacity and engage on equal terms with the fiercely national outlook. Let us gift ourselves and our future generations the keys to sustainable development.

At this juncture, I would like to thank all those who were involved in the development of this Bill. I thank the Committee of the last Senate, some who are with us and those who are presently in the Committee on Energy. I thank the legal clerks who

assisted us. I also thank those who contributed to make this Bill what it is. Let us be a more equitable, prosperous and united Republic through enacting progressive and futuristic piece of legislations for the benefit of our current and future leaders.

I now call upon the distinguished Senator for Kitui to second.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Moi, first, you need to move. Therefore, you must conclude by saying 'I beg to move'.

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to move. I thought you knew.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Moi.

Sen. Moi: Mr. Deputy Speaker, Sir, I beg to move.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very Well. Thank you, Sen. Moi. Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. From the outset, I stand to second this important Bill and thank the Senator for Baringo for moving it. I believe that, as he said, it is a progressive piece of legislation.

In support of this Bill, I want to begin by saying that Article 96 of our Constitution is very explicit that the Senate represents counties and serves to protect the interests of those counties and their governments.

Mr. Deputy Speaker, Sir, one of the most refreshing provisions of this Bill is that it is very explicit that the interests of counties and county governments are taken care of in as far as the extractive industry is concerned. This Bill creates a platform or a framework through which the benefits from exploration of natural resources are able to trickle back to the communities where those resources are found.

I want to go to Part II of the Bill which defines the roles of both the national Government and county governments in the extractive industry. As both levels of Government define their roles under this Bill, there will be more clarity especially on the part of the operators or extractors of these resources on where exactly they should go and for what.

I come from a county that has a wealth of natural deposits including coal, iron ore and manganese. One of the biggest challenges that we face as a county is the lack of clarity as to where the extractors should go for what licences. It is not clear whether they should go to the national Government or county government, and what roles each of the level of governments should play to facilitate the exploitation of these resources. This Bill puts that matter to rest. The roles and duties of especially county governments are clearly stated in this Bill.

Mr. Deputy Speaker, Sir, another important aspect of this Bill is that it puts in place a platform on which communities can negotiate for benefit sharing agreements. I will keep making reference to my county. Another challenge that we have been facing in the extraction of resources in my county is what percentage of that benefit from the extraction of the resource should go to the community, the national Government and the promoters of the projects. This Bill creates a platform where the negotiations for benefits sharing agreements could be ironed out without conflict of interests.

The Bill creates opportunities for locals to take full advantage of opportunities along the extractive value chain. While moving this Bill, the Mover has made reference to the Nigerian local content law. This law has continued to build local capacity and capabilities for both personnel and companies in Nigeria to continue to play a leading role in the exploitation of their natural resources. According to the Nigerian local content law, the provisions are very clear that there are exclusive considerations for indigenous companies when it comes to exploitation of natural gas and petroleum.

Mr. Deputy Speaker, Sir, Clause 8 of the Bill obligates county governments to play a facilitative role in the development of capabilities and capacities of local contractors and companies.

The other challenge being faced by counties is that instead of the county governments facilitating companies to exploit resources for the benefit of local communities, they have been putting roadblocks and insisting on so many levies. This Bill puts paid to those discussions and obligates counties on what their duties and roles are in the extractive industry. It also makes it mandatory for county governments to implement strategies to enable local participation.

Mr. Deputy Speaker, Sir, Clause 30 of the Bill makes it mandatory for foreign companies that win contracts to get involved in the transfer of technology to local persons and companies. The Bill obligates the Cabinet Secretary (CS) in this sector to ensure that the envisaged transfer of technology is not whimsical or a decision that he or she makes. It is a decision that must be penned and signed through contracts, agreements and concessions.

Under Clause 25 of the Bill, the operators are also required to develop local skills by entering into alliances and some contracts with local firms in order to build local capacity. This is a Bill whose time has come; one that this country needs as we move towards industrialisation, so that the industry is properly regulated with proper laws and legislation.

I take this opportunity to thank the Senator for Baringo County for being very consistent on this Bill. If you listened to him, he started on this Bill in 2016 and has not given up on it. I urge my colleagues to support this Bill. They may propose whatever amendments they want, but let us pass this Bill in the best interest of this country and for future generations.

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

(Question proposed)

Sen. Farhiya: Mr. Deputy Speaker, Sir, thank you for allowing me to contribute to this very important Bill. I also express my gratitude to Sen. Moi for bringing it to this House.

Many countries have developed from locally generated resources. When we allow investors from outside this country to take over all the contracts pertaining to extraction of minerals, exploration of oil, among other industries, we will be creating a room for them to make a lot of profit and then expatriate it to their counties. Let us assume that every year they make a 10 per cent profit from their investments, in ten years' time, they

would have made more than 100 per cent of their original investment. If they continue operating within the country, then every other subsequent year, they will continue making profits at the expense of Kenyans. That means we will be aiding them to create job opportunities for their people in their countries.

This Bill is long overdue. Let me give an example of our refinery. Right now, we are extracting oil from Turkana County. Instead of us refining it here, we are exporting it all to another country to be refined. How can we talk about industrialisation of our country if we cannot refine our oil? Before we talk about industrialization, we should start by setting up oil refinery in this country. It can also be useful to our neighbour country, Uganda, which has also discovered some oil deposits. Kenya needs to refine her own crude oil without exporting it. This will be cheaper for us not only refining the crude oil in another country, but we will save a lot in terms of shipment of it and other costs associated with refining.

Mr. Deputy Speaker, Sir, this Bill obligates the Government to ensure there are strategies for preference to be given to locally owned and controlled finance enterprises. It advocates for maximum local value addition of our resources. Currently, we have the Youth Enterprise Fund, Uwezo Fund, among others. We need to support these enterprises and ensure that they benefit our people. Why can we not support our local youth to access to resources that are necessary to ensure that Kenyans benefit from locally generated resources?

Mr. Deputy Speaker, Sir, we also have the Export Processing Zones (EPZs). They generate a lot of income from this country. When their grace period of paying taxes lapses, they move to another country and reap the maximum profits. That means, every time the economy of Africa is being drained and exploited by the foreign investors. Our policymakers need to come up with policies that will protect Kenyans from being exploited by these investors.

As we do that, Kenyans need to be vigilant of this vice called corruption. We need an enabling environment for locals to thrive. That can only happen if we say no to corruption in this country.

Mr. Deputy Speaker, Sir, I gave an example of crude oil from Turkana County. We, as Kenyans, how are we prepared to ensure that we have right skills to drill and refine it? As much as we import some skills, how are we handling skills transfer? We are talking about youths who are about 60 to 70 per cent of the population of this country. How are we empowering them to do the right thing? How are we building our students capacity in schools in terms of identifying the right profession from the beginning so that they focus on the right skills that will help them in future?

All of us want to do white collar jobs. Some youths are busy looking for jobs for themselves. There are few people who sit in an office and wait for other people to generate business for them to execute it. If the other person commonly known as *mtu wa mkono* who generates the business is not there, what will happen to the accountant, human resource officer and the procurement officer who sit in office? Since all our training now is geared towards white collar jobs, how will companies generate business even to create local business? In my view, capacity building for our people is key for industrialisation.

It is likely we might discover other oil deposits in Wajir County because it is also in the same kind of environment with Turkana County. We have also discovered coal deposits in Kitui County, among other resources. We need to encourage the youth from tertiary institutions to universities. This would ensure that people have skills to take advantage instead of importing skills. How well prepared are we and what mechanisms have we put in place to make sure our youth acquired the required skills? We need those skills to ensure that Kenyans benefit abundantly from local resources.

Apart from having those skills in Kenya, we also need to share them with the rest of Africa so that all Africans benefit from their resources because as a continent, we have been exploited for a long time. Let us think big so that at least even if we are not up there, we can be somewhere in between so that we develop together as we move forward.

As I said, this is an extremely important Bill for this country. Therefore, we should all of us support it.

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

Sen. (Prof.) Ongeru: Thank you, Mr. Deputy Speaker, Sir. I rise to congratulate the Mover of this Bill, Sen. Moi, for having carefully thought through one of the most important pieces of legislation that we need to introduce into our country in terms of how we handle both the natural resources available in our country. The natural resources could be in the air like the wind energy or on the surface like the water. Today, we are having the blue ocean and other benefits that accrue from that level or whether they are underground natural resources that need to be exploited.

One of the biggest headaches I have experienced over a period of time and for many years is that when you want to explore or invest in industrial products, the local content or people are nowhere to be seen. How do you enrich the country, its people and the population if you cannot create a local content aspect of the Bill that will enforce the constitutional framework that was laid out; so that every Kenyan shall enjoy the prosperity of this nation? How are they going to enjoy that prosperity if they are not allowed to add value through their own content? In a nutshell, this is one of the most important Bills that we need to pass through in this House as fast as we can.

I see it in many dimensions; the first dimension is that very few Kenyans have a direct input in most of the industries that have been set up in this country. The net effect is that when the profits are being declared, there is a complete evacuation of all the profits outside the country and, therefore, the country does not stand to benefit in any way or manner. I argue so because I know that if industries are set up in this country, they need manpower which must be completely and properly skilled.

I once had the pleasure of working as a Minister in former President Moi's Government, and I was given the task of setting up a skills programme for this nation through technical training and applied technology. This was meant to help Kenyans acquire certain skills at various levels so that they could participate in any industrial venture that comes into this country. Firstly, we secured employment for those who were skilled and secondly, we empowered our institutions that offer training opportunities – particularly universities, technical training institutes and other such institutions – to provide enabling capacities to enable Kenyans to excel in every sector. Therefore, whether it is in marine, industrial, agricultural, social, the sciences or whatever sector you

are thinking about, Kenyans have the capacity to put in their stamp so that they can earn out of their sweat and skills.

The first important element that this Bill brings out is the content of training, but we must now gear our universities and our Technical and Vocational Education Training (TVET) colleges to train manpower which is relevant to the industrial needs of this country. There must be public participation between our public universities and private universities with the industry in Kenya so as to mould a curriculum that is serviceable for both sides. There is the question of developing a curriculum which is essential and important for delivering this capacity. That is a gain through this Bill.

The second gain is that when it comes to elaboration through the skills, there is the element of innovation. In any country, money lies in innovations and Intellectual Property Rights (IPRs). Today, China is harassing the rest of the world because they have put their resources and energies in ensuring that the people who are skilled come up with multiple innovations that can churn out various products that are competitive worldwide, therefore, creating immense wealth for the Chinese Government. Equally, Kenya can borrow that example; that once we have developed our manpower base and we have bequeathed them with the skills that are necessary and essential for the development of that industry, they will excel in a much better way than has been the case.

Therefore, this Bill requires Kenyans to be in charge of their destiny. It does not matter whether it is a foreign investment company, Kenyans will have their destiny because they can make decisions on behalf of whatever company that is investing in Kenya. This is the first element that we gain out of it.

What about the agricultural industry? Today, this is one of the biggest headaches; whether it is the dairy, wheat, coffee or tea industry. We see a lot of mechanization taking place. If Kenyans are not part and parcel of this process, we will be spectators in an industry that is exploiting local resources. This is why local content in the way of manpower is important.

Today some of our farmers will do value addition for some of their products. Why should I sell raw milk directly to the factory when we can do value addition such as producing cheese, yoghurt and various forms of drinks, as I have seen the South African drinks on our supermarket shelves? They are milk products that have been added value and skills and are being sold here at three or four times the cost of the raw materials. This is where the wealth is.

I want to inform the Senate and my colleagues that one of the things that has made the United States of America (USA) the kingpin of the world is because of IPRs. They have invested in inventions and, therefore, you cannot buy, sell or reproduce what they have invented until ten years are over. Using the global law on IPRs, you cannot form the generic version of what has been developed. Why are Kenyans not using their own raw materials to develop IPRs that are clearly generated in this country? When you sell or use your innovations, you create wealth for that nation. Therefore, *per capita* income goes high, employment opportunities rise and the country moves to the grade or level of newly developed nations that can earn from their own sweat. This is in agriculture.

In the mineral sector and under water materials, we have petroleum products. This is a feature we are going to see as we move forward and as they continue exploring. We do not have the expertise to do the extractive processes that are required. We, therefore, need chemical analysts; people who know the density, molarity or the characteristics of the petrol that we want to exploit. What is currently happening is that we get crude oil and transmit it to the port for refining or the raw material is exported as it is.

I believe that manufacturing features prominently under the Big Four Agenda. One of the things we ought to do is to establish various refineries so that if we have discovered the crude oil in Turkana, for instance, why can we not have a refinery there so that the pipeline that goes all the way to Lamu, can transport a finished product for export? This will earn the country tremendous resources and money.

I have had a problem, because when a resource is found within an area, how do local communities stand to benefit? How will Meru, for instance, benefit if we discover some minerals underground? This Senate must pronounce itself well, because the percentages that are being shared from industry to industry differ. We need to make a standard rule or legal framework that will assess what kind of percentages are available to the people. If the local content takes a bigger share, then those percentages can vary. However, so long as the local content has not taken a bigger share, then we are in deep trouble. We need to rationalize this thinking and get things moving in a predictable manner.

On this aspect, we stand to gain immensely if we have a legal framework that will tie in all these things that I have mentioned.

In summary, I am saying that the local content means; one, increasing the knowledge and the power of our people. They will have to know what they are handling, what they are doing with that product and how it will be finished. Secondly, the local content will give skills at different levels to our manpower. There are those who are semi-skilled, others are skilled and there are those who are in the top grade, who do not have to go to the university to acquire those skills. We have millions of our children who can acquire skills and make a livelihood out of those skills but they are just lying idle and dormant. That is second element that we stand to gain.

The third element that we stand to gain is in terms of the people from that region who gain from whatever resource that is available in that area. That will raise the lifestyles of those people a little higher than it is today. That way, the local people will benefit. The fourth element is that our universities will tailor courses and training programmes that will be supportive of our industries. It is, therefore, a symbiotic relationship between the public and the private sector, universities and various training institutions. Therefore, they will create an enabling environment where these people can thrive.

The fifth element that we shall gain out of this is the sustainable use of our raw products. We have totally destroyed our environment because we have not used it sustainably. I suspect that a few years down the road, we will have a country which is almost a semi-desert. We need to think about this; how do we use technology and local resources to sustainably exploit what is available to us, while at the same time replenishing what we are using? Therefore, sustainable use of materials also has got a

connotation of replenishment. Replenishment is a totally new game altogether, because you can employ thousands of people in replenishing your environment so that it can feed into the products that you want to develop. That way, you can sustainably use those resources for the benefit of this nation.

The sixth element is that it will increase the Gross Domestic Product (GDP) of this country. We do not have to start struggling about our GDP base, because we will be among the league of those newly industrialized nations and playing in that league. Today, the poverty levels are very high, and we need to reduce those levels. We shall not be comfortable if those poverty levels remain that high.

I, therefore, support this Bill with the sole mind and purpose that it will actually lift the single ordinary Kenyan from unskilled to a skilled level. That is the basis upon which I am supporting this Bill. Once you increase the skills, which translates to wealth, because they can either do their businesses innovatively, or they can be engaged gainfully in other areas.

With those few remarks, I thank Sen. Moi for bringing this Bill. We are ready to support it to the end and ensure that the regulations that will be developed are clear enough so that we implement them without just having a Bill or a legal instrument lying on the shelves.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof) Onger. Indeed, the professorship in you is justified.

(Applause)

Proceed, Sen. Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you, Mr Deputy Speaker, Sir, for the opportunity to make my remarks regarding this Bill. I totally agree with my neighbor and colleague, Sen. (Prof.) Onger, who is a person with a wealth of experience and whose presence in this House is something to celebrate. I take this opportunity to congratulate my brother, Sen. Gideon Moi, for thinking about the local content. I had the privilege and honour to travel with Sen. Gideon Moi to Korea in my previous life---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Ochillo-Ayacko. How many lives have you had?

Sen. Ochillo-Ayacko: I have had four---

The Deputy Speaker (Sen. (Prof.) Kindiki): I thought it is only this one?

Sen. Ochillo-Ayacko: I have had many physical lives but professional lives, yes, I have had many.

The Deputy Speaker (Sen. (Prof.) Kindiki): Like nine?

Sen. Ochillo-Ayacko: Quite a number. Mr. Deputy Speaker, Sir. Fortunately, I have not lost any; so, I am still alive, thanks to God.

I want to congratulate Sen. Moi and I hope he does not stop vying for the Senate; he should also look for opportunities in higher seats.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Ochillo-Ayacko. I do not begrudge you or Sen. Moi; but this is not the forum for that. You can do that over the weekend in the villages, valleys and hills of this country.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. I am merely encouraging him, because competition will give us good output. He is a nice gentleman and his niceness or his magnanimity to the local people is manifested in his involvement in this Bill.

Mr. Deputy Speaker, Sir, I have had an opportunity and also a rare privilege to be the Minister for Energy in this country. This Bill is about oil, gas and other hydrocarbons, which ordinarily fall within the Ministry of Energy and Petroleum. How I wish that it covered all natural resources that we have in this country so that it is not just restricted to hydrocarbons. It should be expanded to other opportunities and resources that God has given unto to us, as a people, from any particular area or region in this country. Nevertheless, this is a wonderful Bill and a step in the right direction, towards identifying the need to benefit locals in extraction of resources that are naturally found in their areas of residence or in their areas of birth.

Mr. Deputy Speaker, Sir, if you look at this Bill keenly – and I believe that everybody has had occasion or will have an occasion to look at it keenly – it has a pre-supposition – and a correct one – that most of the owners of the extractive industries are people who are foreign to our nation. They are people who come from beyond our borders, they are well resourced and whose objective is to exploit as much as they can; get it out of the country, make their money and go to wherever they came from. Therefore, this Bill is premised upon that, which is correct. This is because if you look most of the corporations that are extracting minerals, oil or hydrocarbons, you will find that they are owned by foreigners who declare profit beyond our borders; and what they declare to have profited from are things that God naturally gave to us. Whenever they make or declare such profits, very few of our locals benefit from such declarations.

Mr. Deputy Speaker, Sir, this is a timely Bill. It is important to appreciate the fact that God is always kind to all countries. God has been kind to Kenya, because many people thought that Kenya did not have oil, gas or other forms of minerals. However, in the last decade, a discovery of sufficient quantities of oil and gas indicates that God has been generous to us, as He has been to other countries.

It is, therefore, upon us as a people to have the legal framework through which we do not allow other people, coming from other countries, to lick as clean and leave us dry or broke. This is, therefore, a timely Bill that ensures that something substantive is left within our borders and among our people.

As it has been correctly identified by the wonderful Sen. (Prof.) Onger, the most important local content is knowledge. Knowledge and technology is so important because without them, you will be a person who has been taught how to eat fish, but not how to catch it. It is, therefore, important to look after fish and catch it; and also pass the knowledge of how efficiently to do so rather than just being given an overwhelming appetite for eating it. It is, therefore, important for us to have a legal framework through which multi-national companies coming within our borders to participate in the extraction of minerals, oil, gas and other things, can transfer the skills they have. This

framework will also assist us to ensure that our people acquire skills and also transfer the same skills to others for posterity. This will help us continue to prospering as a Nation. Therefore, this is a very important Bill.

Mr. Deputy Speaker Sir, there are some aspects of this Bill that I thought and will persuade my brother, Sen. Moi, to look at. If you look at the definition given to local company or content, you will find that it is covering the entire Nation. If we are to contextualize that and look at regions where oil and gas is found, for instance in Turkana, we need to have affirmative action or take a step in the right direction to ensure that we also protect the Turkana community or any other community from other locally empowered investors. This is because when you go to a place like Nyatike, in Migori County, and discover that there is gold and copper; and then you find out that the people there do not have the requisite technology and resources and as a Kenyan – because the Bill talks about matters that are nationally Kenyan – you pair up with a company, for instance from China to go and exploit the residents of the area. Yes, you will be a local person who is a local to Kenya, but in terms of doing justice to a County like Turkana, Nyatike, or a sub county like Kuria, where you find such minerals, you will not have done justice because you will still have contributed to the social and economic gap that we are trying to narrow when it comes to wealthy and poor Kenyans.

Therefore, Mr. Deputy Speaker, Sir, I will propose to my brother, Sen. Moi, to look at the definition of local companies and content so as to tighten it. whereas we are all Kenyans and we are entitled to equal opportunities when we are talking about local content, we should also make it more local, so that other parts of Kenya that are doing better than others do not ride on this framework to continue creating economic disparity among Kenyans. This is something that if it is not addressed, explosive relationships between the people who live in counties will continue.

Mr. Deputy Speaker Sir, just a couple of months ago, we discovered that the people of Turkana County were blocking the movement of crude oil from that place to where it was supposed to go to. You will see similar incidents happening elsewhere; and we have seen them in places like Baringo County, where perennial conflicts between the people who are trying to get geothermal power and the locals exist. We have seen such conflicts when transmission lines in the energy sector are being built across Maasai land without taking into consideration wealth distribution or the rights and interests of the Maasai people. It is, therefore, important to tighten this Bill and ensure that there is something local about the content that is left for the people. Otherwise, Kenyans and generally the world over, people are not equal.

We know that there are Kenyan communities and counties that are vulnerable, and that they can be exploited easily. Besides protecting the national interests, the Senate should also go further down and protect the interests of our counties. We should also ensure that people within the counties, where we come from, are protected and are not exploited by other people who come from counties that may have acquired technology before them. That is an area that the mover of the Bill should look at and make certain adjustments so that our people do not suffer the exploitation under the guise of local content by local exploiters. We should not shut our eyes or ears from the fact that there

are people who are likely to develop such exploitative local abilities and would, therefore, defeat the desire for this Bill to transfer skills to the local people.

Mr. Deputy Speaker Sir, I also want to thank the Senator for ensuring that this Bill has the component of sustainability. We are gifted or given resources by God, as our provider, and if you look at the Bible, Genesis 1:28 directed us to this. That is the first commandment which God gave us, which is to multiply, fill the world, and conquer it. In my view, we should manage this process in a sustainable way. Managing the environment sustainably is key because it is something that we have also put in our Constitution. We are aware that as we extract these minerals, there is a lot of degradation, wastage and, consequently, most of these minerals get exhausted.

Once this happens, the people, their children the other generations after them who will come after us must find a place that was also created and gifted to them by God. We should not assume that we are the last creatures that were given that commandment by God. Therefore, as we use technology to exploit these resources for the benefit of the current humanity, we must be mindful of the fact that God continues to give life through our mothers and sisters, who give life to future generations. These future generations are also entitled in the same way that we are, to have a good environment, resources and to continue to live the same way that we are also living.

Therefore, Mr. Deputy Speaker, Sir, this is a good Bill, and I would like to support it in its entirety. I also want to propose that other sectors – not necessarily the energy sector where we have natural resources that are gifted to us by God – should have a similar Bill, policy and principle which promotes the transfer of skills and empowerment to the local people.

Other multinationals or global companies should try to assist or partner with us in making these resources of monetary or economic use to us.

With those many remarks, Mr. Deputy Speaker, Sir, I thank the Mover of this Motion and encourage him to continue moving more Motions and, probably, look for better things.

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

(Laughter)

Sen. Ochillo-Ayacko, you seem to have more than one agenda. I said it is fine; you can have as many agenda as possible. However, you must distinguish which agenda falls where. Here, you just support the Bill; as for these other things about the future prospects of the Senator for Baringo County, a whole country side is open for you to go and canvass it there.

Sen. Moi, you should have protested the mixture of agendas on this Chamber. You should have risen on a point of order.

Proceed, Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Thank you, Mr. Deputy Speaker, Sir. I thank the Mover of this Bill for coming up with this legislative proposal that will anchor the requirements; that when we have exploitation of natural resources, there must be benefit in terms of the skills transfer and available business opportunities to the locals of that area.

Mr. Deputy Speaker, Sir, oil exploration has been done in my county going back to 1986/1987. In fact, some locals have been complaining about it because of other reasons. However, the main reason is that when those foreign companies come in, there is no clear guidance on how they should interact with the locals in terms of what business they are doing and how the locals can benefit. You will then find somebody coming up with everything; from skilled to unskilled labour. If he has been working somewhere else, and he has trained some skilled labour, he will come with those ones and want them to do the work at the expense of the locals.

It is good that the Bill says that its purpose is to come up with maximization of value addition and creation of employment for the locals, use of local resources, expertise, and all that. That, in itself, will develop the skills of the locals in the extractive industry. They will get employment directly and have a priority in terms of provision of services. I know of a case where a company was exploration for oil in Laisamis Town, but they were buying food from a supermarket in Nairobi. These were things which the locals could have provided to them. Therefore, if there was a regulation like this, then the locals would have benefited.

In terms of skills transfer, if we know what skills these companies require, we will then also establish the relevant courses in our institutions. We do not just have to train for the sake of it, just for people to get degrees or diplomas; but we will be addressing a particular gap in the requirement of skills in that sector.

The Bill talks of exploitation of gas, oil and petroleum resources. I do not know whether it is possible, at this stage, but I would have liked that scope to be widened. Of late, other resources are being exploited and which require skills transfer. For example, we have wind and solar energy, which are abundant in parts of the county which we represent; and for which we require specific skills to run the equipment. There should be skills transfer and the operation of those stations, turbines and solar plants should be done by locals. However, that will require inclusion of those kinds of resources in this Bill instead of limiting it to hydrocarbons. Let us widen it to include all the available natural resources in this country. These should include all extractive industries, for example the mining of coal in Kitui.

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

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

Instead of having a series of legislation addressing different resources, if this could be amended to include all the extractive industries and for the exploitation of all the natural resources, it would make it neater. We should have legislation that would cover all the available spectrum of natural resources. Other than that, the Bill is applicable to all the natural resources.

Mr. Temporary Speaker, Sir, we know that we have other Bills in this House, for instance the Natural Resources Benefits Sharing Bill 2014, which goes directly to addressing what accrues from the exploitation of that resource. However, this Bill should not be confused with that one, as it is only on the side of transfer of the available

opportunities during the establishment of that extractive industry because we will have employment of youth and skills transfer. When they are doing that, these extractive industries should also provide some scholarships so that the youth from those areas are trained. That way, they can learn the necessary skills so that, with time, there will be a transfer, not only of skills, but also of management of the systems.

As Sen. Ochillo-Ayacko has said, when you define a local company as one registered in Kenya, that also disadvantages locals. This is because Kenyans are not at the same level in terms of development, skills and business. If a resource like oil is found, for instance in Turkana, then it should be biased towards companies from that region so that the people from that region can also get opportunities. For example, an oil exploration company will be required to hire local labor and also hire vehicles from the locals instead of buying their own. The locals will also be supplying what they can, in terms of the daily usable items, for example food and all that can easily be procured from the locals. Unless the locals know that those opportunities are available in law, they will not be able to prepare themselves.

When they hear that an industry is coming up there, they will provide the necessary skills and capacity so that they can benefit directly from it. That way, it will improve and develop the economy of that area, unlike what is happening now, where a company comes with everything. The only thing you get from such projects is menial jobs, like casual work and security guards. These contractors come with their drivers, while we know that there is no shortage of drivers wherever you go in this country. This is because they come with complications and requirements which are tailored to lock out the locals.

Along the way, by the time they are coming to this country, some Kenyans would have already brokered some of these facilities. For example, I am the one who will provide the vehicles and food, among other things and the small tenders are already collected along the way. Therefore, by the time they get to the communities on the ground, they are already fully equipped. That is wrong. What does the community on the ground benefit from? That company will be there for the next 20 or 30 years, but the local community would not have benefited at all. Let us, therefore, limit even the company to the local ones.

The policy should be that all they need should be sourced locally. If it is not available in that ward or sub-county, it should then be sourced in that county. If it is not available in the county, it can then be sourced nationally. That way, we will ensure that everybody benefits. That way, the one who will be affected directly by exploration or exploitation of those resources benefits directly from it. More often than not, that is the person who is often affected directly one way or another than any other Kenyan.

I support that we need to have this kind of legislation because this is the only way we can make sure that Kenyans benefit, especially people from the northern part of this country or the arid parts. I am saying arid parts because those areas have, for a long time, been neglected and that is now where the next frontier for development is. That is where you will get all the resources; if it is oil, wind and solar, they are all in Turkana and all these other arid areas. That is where the next frontier of development is and that is why we are talking about clean energy.

Mr. Temporary Speaker, Sir, laws should be created to cushion locals from the influx of foreigners, who will come and take over what locals can do in terms of provision of locally available skills, materials, and services. That way, we would have cushioned them and it would be a reason for them to develop, ending up with a positive impact.

As I said before, oil exploration has been going on in my county. I know about three of them that have been going on since 1988 or 1989 by Amoco. We then had the Chinese company around Laisamis in 2014. The last one was Tullow which, before it discovered oil in Turkana, it was actually exploring for it in a place called Maikona in North Horr Sub-County. If you look at the way they were dealing with the locals, because there was no framework, it was like they were doing you a favour by giving you that opportunity.

I can see that the Bill outlines the responsibilities and the roles of the national Government and county governments. They have to make sure that when these exploiters come knocking, once this law has gone through, it is complied with before they can start doing their exploration. That is the only way to secure the benefits for the locals. This being the only part of the local content in terms of development and transfer of skills, we should make sure that we pass the Natural Resource Benefits Sharing Bill, because it directly affects what accrues from that exploitation to the local community, county and national Government. That way, we will also have another level of direct benefit. Those who can benefit directly through skills, employment and business opportunities will do it, but the general public will benefit through that benefit sharing arrangement.

Thank you, Mr. Temporary Speaker, Sir. I beg to support the Bill. I hope that we will pass it so that we can have this law to cushion our people against any exploitation.

The Temporary Speaker (Sen. Lelegwe): Thank you, Sen. (Eng.) Hargura.

Proceed, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to contribute to this Bill. First, I thank Sen. Gideon Moi for coming up with this Bill. I congratulate him because, in his mind and from the way this Bill is framed, he wants to ensure that what is Kenyan must benefit Kenyans. I congratulate you, Senator, for coming up with this noble Bill and I believe it is going to help many Kenyans in this country.

I commend him for coming up with this Bill because it informs us about the Sustainable Development Goals (SDGs) directly. When you look at sustainable goal number one, which is eliminating all forms of poverty, this Bill is speaking to it. When we have resources in the county, they must be used by the locals to benefit them. If the resources benefit the locals, it means that their livelihood will become better and it will eliminate all forms of poverty.

This Bill also addresses SDG goal number 2, where we are eliminating any form of hunger. According to this Bill, it seeks to spur development in the counties. It is addressing the people that you are supposed to represent, as a Senate. The Senate represents counties and the interest of the counties and this Bill is directing us to that goal. When we eliminate all forms of poverty and hunger, it means that Wanjiku will benefit from this Bill.

I commend the crafter of this Bill because he is looking at long-term benefits to the locals. This Bill has immediate, short-term and long-term impact. Even when people go to a county and find resources there, instances where they cannot ensure their proper utilization are there. In such a situation, this Bill encourages that when a company goes to a county and finds resources that can be used, it then means that the company should engage with the locals so that, at the end of the day, the locals also benefit. The locals of this country must be protected.

There are instances where you find that a county has minerals but they end up not benefiting the county. This Bill is speaking to that deficit so that in a situation where there are minerals in a county, even the residents seek to benefit. That has implications because a company going to a county and to exploit minerals there must ensure that there are immediate, short-term, and long-term benefits for the locals.

This Bill also has a direct impact to Article 43 of the Constitution, which clearly states that everyone has a right to food, shelter, education, and all those rights. If the locals are empowered, they will be able to manage themselves, buy their own water, have shelter, and people will be able to take their children to school. This Bill is well thought out and crafted; and it needs to see the light of day. When you look at this Bill, it is not only addressing the nation, but humanity. It has a humanitarian touch because it ensures that you do not exploit the locals. When the locals benefit, it then means that the human race benefits.

In a situation where locals are involved in the extraction of minerals in a certain county and they benefit; it means that employment opportunities will be created. Employment is a real issue in this country. The fact that this Bill seeks to protect locals so that they can get employment makes it a noble Bill. This is because there are situations where you go to a county and find some of our youth are idle and do not know what to do. However, sometimes when you look at that county you will find that there are mineral resources that are benefiting the county, yet the youth are not benefiting. This Bill seeks to protect and take care of the youth of this country.

This Bill also speaks about having joint ventures. This is because in a situation where an organisation, company or someone goes to a county and finds that there are resources which the locals cannot manage, then there can be a joint venture where the organization, in partnership with the locals, will eventually lead to a win-win situation. This addresses SDG Number 17.

This Bill is sustainable because when we use local expertise, we will be enriching our locals and making them creative. We will also be making them use their intellect as well as their capacity. We have to ensure that our locals are protected and that they are part of the investments in the county. They should also benefit from the investments that are in the county.

I hope that Sen. Moi will think of issues of training and capacity building of the locals. There are instances where the locals are not aware of the resources in their counties; and neither do they know of how to make use and benefit from them. The issue of training on local content should be brought up and taught in colleges and TVETs. This will make the common *mwananchi* not to be naïve in the county because sometimes they

are not aware of the gold that they have. Therefore, there is need to build capacity in this area.

This is a good Bill but it should also have a component for Persons with Disabilities (PWDs) in the counties. When you talk of local content, investment, capacity building and people benefiting from the resources; all counties should ensure that they grow together with PWDs. This is because most of the time when we have attractive Bills like this one, PWDs are usually left out. Therefore, there is need to bring them on board so that we can have inclusive development that will benefit the whole nation. There is a question mark when counties thrive yet PWDs have been left out. It is important to bring in the issue of disability, because it is a global concern. Nations worldwide are thinking of how they can grow together with their people, which includes lifting up PWDs so as not to leave anyone behind.

I, therefore, strongly support this Bill, which is well thought out. It is going to drive this nation very many miles from where we are. Congratulations to Sen. Moi for this wonderful Bill.

The Temporary Speaker (Sen. Lelegwe): Thank you, Hon. Senators. I do not see more requests. I now call upon the Mover of the Bill to reply.

Sen. Moi: Thank you, Mr. Temporary Speaker, Sir. Before I continue, I would like to thank all the Senators who have contributed profusely. It has been very enriching and I have listed and noted their concerns. Most Senators have talked about the issue of what we call 'local.' This Bill deals with local content and how the local people will benefit, and not be overrun by the other bigger 'locals.'

Sen. Hargura, I also agonize about this. I was trying to dig down to what is 'local.' For example, in my county, we have geothermal exploitation, and we have discovered oil. The benefit of this should be first be to them; and likewise to other counties. Unfortunately, I was advised by the lawyers that we were shackled by the Constitution on that issue. However, there will be a time when we will all see how to maneuver through it so that the first beneficiaries are 'local' and then we step up to the others.

Sen. (Dr.) Musuruve, there will be no development without our PWDs. I totally agree that we must enshrine it in the Bill and, together, we will do that. Forgive me for that *kukata kona kidogo*.

Mr. Temporary Speaker, Sir, I do not want to say more. However, I am happy about the enthusiasm that this Bill has created. I want to read what is inside the Bill, because people have been talking about training in our universities and what we will have.

This Bill requires international companies to pursue policies that ensure the employment of Kenyans in the oil and gas sector; and extractives. It requires, for this purpose, that these companies establish training institutions for skills and knowledge transfer in Kenya in collaboration with Kenyan universities. Further, it requires that they set up research and development facilities in Kenya.

Mr. Temporary Speaker, Sir, as I conclude, you have heard the Senators say that we have the other Bill which has other revenue sharing arrangements and which goes hand in hand with this Bill. That is a good Bill. Ultimately, this Bill goes beyond the idea

of monetization of benefits expressed in percentages of revenues shared from natural resources or material sales. It is about growing our collective capacity and capability, as a nation, to meaningfully participate in the extractive industry value chain and to capture higher value domestically. I see local content development as more than handouts; I see it as an empowerment to the citizenry, both moral and legal, to partake of the constitutional objectives of ensuring that our natural resources benefit us.

Mr. Temporary Speaker, Sir, pursuant to Standing Order 61(3), I request that you defer putting of the question on this Bill to a later date.

The Temporary Speaker (Sen. Lelegwe): Thank you, Sen. Moi. I, therefore, defer putting the question on the Local Content Bill (Senate Bills No.10 or 2018) to Tuesday next week.

Next Order.

Second Reading

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

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir. I beg to move that the Statutory Instruments (Amendment) Bill (Senate Bills No.24 of 2018) be now read a Second Time.

Mr. Temporary Speaker, Sir, the purpose of the Bill is to amend the Statutory Instruments Act in order to expressly include the Senate in the statutory instrument scrutiny process. As part of Parliament, the Senate of Kenya has a role in making the laws of Kenya, which includes statutory instruments. Excluding the Senate in such an important aspect of law making would deny counties the right to be represented.

My Committee brought this discussion to this House sometime back. What happens is that, ordinarily, the statutory instruments would be introduced to both Houses and both Clerks. After that, the Clerks determine whether they are relevant for the Senate or the National Assembly. In this case, what the National Assembly amended in this Act is that all the statutory instruments should be taken to the National Assembly. Who determines what goes to the Senate? That means that it is the National Assembly to determine for us what comes to our House.

In this same House, we agreed that, that was not in order. In the first place, there was a procedural error because when that happened, the amendment happened because it affected both Houses. Consequently, the amendments should have come to this House, which did not happen. The amendment was only taken to the National Assembly and it was assented to. In response to that, we are trying to correct the anomaly, as a Committee, to ensure that the right thing happens.

Mr. Temporary Speaker, Sir, Article 94(1) of the Constitution provides that-

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

Similarly, Article 94(5) of the Constitution provides that-

“No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under the authority conferred by this Constitution or by legislation.”

The import of those provisions of the Constitution is that Parliament has the sole prerogative to make law. Therefore, Parliament may, in certain instances, delegate its law making power to another authority; for instance, a Cabinet Secretary (CS).

Once the power to make the law has been delegated, it is still incumbent upon Parliament to ensure that the delegatee exercises this power in a manner which it was intended. The Statutory Instruments Act, therefore, provides for this process through Parliament. Presently, however, Section 11 of the Statutory Act provides that-

“Every Cabinet Secretary responsible for regulation-making authority shall within seven (7) sitting days after the publication of the statutory instrument, ensure that a copy of statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.”

Mr. Temporary Speaker, Sir, in Clause 11(2) of the Statutory Instruments (Amendment) Bill, 2018 says that-

“Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of the Constitution, all regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.”

That is what it reads.

Mr. Temporary Speaker, Sir, the law is ambiguous in its current form as it does not clearly state the statutory instrument that shall be considered by the Senate and the National Assembly. It says that all the statutory instruments should be tabled in the National Assembly and then it says ‘in the respective House.’ Therefore, one is left to wonder who decides which statutory belongs where. If all of them are tabled in the National Assembly and not in the Senate, we are then leaving that power to the National Assembly.

As a result of that, counties will lose the benefit of ensuring that they, at least, have been represented well because this House exists to protect them.

Mr. Temporary Speaker, Sir, the Bill proposes an amendment to Section 11 of the Statutory Instruments Act to provide that every CS responsible for a regulation-making authority shall, within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the Clerk of the Senate and Clerk of the National Assembly. This will ensure that both Clerks are covered for determination. Therefore, this amendment proposes to delete subsection 2, which currently provides that all statutory instruments shall be forwarded to the National Assembly.

The Bill also seeks to amend Section 11(3) of Act to provide that-

“The Clerk of each House shall register or cause to be registered every statutory instrument transmitted to the respective House for tabling or laying under this Part.”

The Bill further proposes to amend Section 15(3) of the Act to provide that an extension given by either House of Parliament to a Committee on Delegated Legislation to report on the consideration of the statutory instrument shall not exceed 21 days. The Bill that

was proposed by the National Assembly makes reference only to an extension of time, but does not limit it. If we extend something and do not limit it, nobody may ever consider it.

In conclusion, Mr. Temporary Speaker, Sir, by passing this Bill, the Senate will expressly provide for its involvement in the process of scrutiny and approval of statutory instruments. This will ensure that the interests of counties, in delegated legislation, are protected. Consequently, counties will effectively discharge their function under Part 2 of the Fourth Schedule of the Constitution.

Mr. Temporary Speaker, Sir, I beg to move and invite Sen. (Eng.) Hargura to second.

Sen. (Eng.) Hargura: Mr. Temporary Speaker, Sir, I beg to second The Statutory Instruments (Amendment) Bill (Senate Bills No. 24 of 2018). As the Mover has said clearly, lawmaking is the responsibility of Parliament, which is, the Senate and the National Assembly. When we make laws, we should do it together. A Bill may originate in any House, but if it concerns counties, the law says that it has to be considered by the two Houses.

More often than not, we do not go legislating very minute and specific details. We normally say that the CS or the relevant authority will make the necessary regulations. That is already part of that Bill which has gone through this House.

Once it has gone through this House, it is only proper that when that authority – which has been given the regulation-making function in a particular Act, once it has been assented to, is making regulations, it has to submit them back to the two Houses. This is because the devil is in the details. We may legislate something good, but if the regulation-making authority makes a regulation that is not in line with the spirit of that Act, the implementation of that Act will not be as envisaged by Parliament.

Mr. Temporary Speaker, Sir, I will give a case in point. In 2016, we passed The Community Land Act, where we said very clearly that the CS for Lands is supposed to make regulations. I looked for those regulations and was surprised that they actually went through the National Assembly in March this year. Those regulations will govern the implementation of the Community Land Act, which clearly affects counties. However, the Senate did not have an input on how that Act will be implemented.

In my case, I have a very serious issue when it comes to community land. Our main issue has been to make sure that community land is clearly defined. That is why, when that Bill came from the National Assembly, it was rejected in totality in the Senate. Moreover, it had to go through mediation the whole day, where we scrutinized it clause by clause, starting with the title to the end. We wanted to make sure it was in line and would assist counties with regard to community lands; to ensure that they are registered and not to disadvantage communities.

Mr. Temporary Speaker, Sir, knowing how communities who occupy community lands operate, the main issue is to demarcate that land between the communities. This is because we find communities fighting each other because of the boundaries. Where does their land start and end? That question needs to be answered before any registration or demarcation of community land is done. This needs to be captured in the regulations.

This regulation has gone through the National Assembly, but it has not come to the Senate. If it does not address that aspect, then we, as the Senators who represent counties, will have to be careful to scrutinize it and make sure they address community land. If we do not have that opportunity to do so, this otherwise good law might not be properly implemented because of regulations which do not come to this House. We cannot confirm whether what we legislated on is what the regulations are addressing. Also, on whether the regulation-making authority, using the powers which have been given by Parliament, is doing the right thing. This is why they bring their regulations to be approved.

We, as Senate, have to make sure that any law we pass and which donates regulation-making powers to another body – in this case an Executive office such as the CS – then we must make sure before that regulation is implemented we have to approve it again. The amendment which is made to this law is that once the regulation-making authority makes the regulation and gazettes it within seven days, it has to be brought to the two Clerks. The two Houses go through the regulations so that approval is sought from the two Houses. The two Houses must enact that law. If you check, this law came into effect in 2013. Perhaps the Senate was not in place then, or it had not fully grasped the amendments on this law.

At this point in time, we have to come in and make sure that we, as Senate, try to avoid this to reclaim our ground. This is because it has been the tendency of the National Assembly to always see how they can bypass the Senate. Unfortunately, during the first Senate in the Eleventh Parliament, many Bills bypassed the Senate, yet they were supposed to have come through Senate. They, instead, went directly to the President for assent. They, therefore, became law before passing this House.

At one time, we had to seek advice from the Supreme Court on these Bills which concern counties. We sought an opinion as to what is a matter or Bill concerning counties. In fact, the ruling we got was that there is nothing which does not concern counties, because all these laws will be implemented in one or another county. We cannot say that there are matters which do not concern counties.

Whenever a regulation is brought, it has to go to the two Clerks. They introduce it to the two Houses and we all have to make our contribution to it. This is to make sure that the regulations which were made by this House or the two Houses are addressing what we have---

The Temporary Speaker (Sen. Lelegwe): Order, Sen. (Eng.) Hargura. You will have a balance of 12 minutes when the Bill next appears on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m., the time for interruption of the Business of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 28th November, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.