

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 26th February, 2019

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KIRINYAGA COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation of the Speaker's Panel from the County Assembly of Kirinyaga. I request the eight officers to stand when called out so that they may be acknowledged in the Senate tradition.

They are:-

- | | | |
|-----|------------------------|----------------------------------|
| (1) | Hon. David G. Wachira | - Speaker of the County Assembly |
| (2) | Hon. Caroline Muriithi | - First Chair |
| (3) | Hon. Lucy N. Mwaniki | - Second Chair |
| (4) | Hon. Simon Kiragu | - Third Chair |
| (5) | Mr. Kamau Aidi | - Clerk of the County Assembly |
| (6) | Mr. Michuki Ngamau | - Assistant Hansard Editor |
| (7) | Mr. Ibrahim M. Kirimi | - Secretariat |
| (8) | Ms. Ruth Muriithi | - Secretariat |

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

I thank you.

(Applause)

KAMUKUNJI ON THE 6TH ANNUAL
DEVOLUTION CONFERENCE

The Speaker (Hon. Lusaka): Hon. Senators, I have another Communication. As you are aware, the Annual Devolution Conference is a forum that brings together the Senate, the national Government, county governments, constitutional commissions, independent offices, the civil society, development partners and other devolution stakeholders to take stock of the implementation of devolution in Kenya. The conference has been held five times, the most recent one being the 5th Devolution Conference that was held in Kakamega, April, 2018.

The 6th Annual Devolution Conference is scheduled to take place from the 4th to 8th March, 2019 at the Kirinyaga University in Kirinyaga County. The theme of this year's conference is 'Deliver, Transform, Measure' with a clarion call of remaining accountable. Deliberations will focus on the Big Four Agenda, water and sanitation. In preparation for the conference, this is to invite you to a *Kamukunji* on Thursday 28th February, 2019 at 12.00 noon in the Senate Chamber for a briefing on the participation of the Senate.

I thank you.

Sen. Kibiru: Mr. Speaker, Sir, I join you in welcoming the delegation from Kirinyaga County led by the Speaker and the Clerk. By extension, I say that this time, Kirinyaga is shining. We are shining. For purposes of record and avoidance of doubt, we are the custodians of Mt. Kenya like it will be confirmed by the Deputy Speaker. We have the tittle deed for Mt. Kenya. Therefore, when you see the delegation from Kirinyaga County, you can be sure that some of the very valuable resources in this country are in good hands.

Mr. Speaker, Sir, as I join you in welcoming the team, I extend a warm welcome to all the Senators to Kirinyaga next week. I ask all of you to come and join us to see the land of plenty. Kirinyaga is our Canaan. I urge all of us to come. The distance from here to Kirinyaga is about 100 kilometers. Therefore, you have no excuse whatsoever for not attending the conference. We have plenty of food, among them the famous pishori rice; the best that there is in the world. We also produce the best coffee and tea in the world. You are all welcome there. Welcome to the delegation from Kirinyaga County Assembly.

I thank you.

Sen. (Prof.) Ongeri: Mr. Speaker, Sir, I would also like to voice my message of welcome to the Kirinyaga County delegation. It is one single county that I have a lot of time for because my household is from Kirinyaga. I, therefore, welcome you and look forward to coming to see where my household comes from. I look forward to engaging you once more. However, I paid the entire dowry. Therefore, there will be no additional dowry to be paid to that region.

I thank you.

Sen. Kinyua: Asante sana, Bw. Spika. Ninachukua fursa hii kuwaalika ndugu zetu wa kutoka Kaunti ya Kirinyaga. Kuna watu ninawajua vizuri kwa sababu niko na shughuli zangu huko Kirinyaga. Watu wa Kirinyaga ni watu ambao wanajitolea na wanawapenda wageni. Mimi kama Mwenyekiti wa Kamati ya Ugatuzi, ninaichukua fursa

hii kusema kwamba tumeweka mipangilio dhabiti na nina hakika kile kikao kitakuwa cha kufana. Nina uhakika kwa sababu ninajua ukarimu wa watu wa Kirinyaga. Tutajumuika sisi sote kama Seneti katika kikao hicho.

Asente sana, Bw. Spika.

Sen. Pareno: Mr. Speaker, Sir, I also rise to join you and the rest of the Members to welcome the delegation from Kirinyaga County Assembly, specifically noting that they are Members of the Speaker's Panel.

We had an interaction with them this morning and I was very happy to learn that even among the Members of the Speaker's Panel, there was gender balance. I saw two ladies and an equivalent number of gentlemen. We shared a lot. We were happy to host them with the Speaker. I welcome them to this Plenary. I am sure that they will learn a lot. They extended a warm welcome to us as we go to Kirinyaga. I am sure that we will be there in numbers to interact with them.

Sen. (Rev.) Waqo: Mr. Speaker, Sir, I also stand to welcome our hon. Members together with my colleagues; hon. Senators and you. Kirinyaga is a famous place that we are all fond of. I have interacted with many people from there through the church. I have visited Kirinyaga on different occasions. It is a good sign that when you are planning on visiting people and before you visit them, they come to you. It shows that they are ready for us. We are happy to have them and ready to consume the rice and every good thing that is there.

I thank you.

Sen. Ndwiga: Mr. Speaker, Sir, I wish to join my colleagues in welcoming the delegation from Kirinyaga. As I welcome them, I would like to thank them. Recently, my Committee; the Committee on Agriculture, Livestock and Fisheries made a trip to Kirinyaga and the County Assembly of Kirinyaga gave us a very good welcome.

Through you, Hon. Speaker, I wish to thank them as we look forward to joining them next week for the Devolution Conference. I know that the people of Kirinyaga are my neighbours. I know that all of us can expect good things in Kirinyaga because the people there are wonderful. I expect that all of us will enjoy in Kirinyaga and learn good farming methods particularly in horticulture, coffee and macadamia which are abundant there.

I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, I will give the rest of you two minutes each because we have a very heavy agenda.

Kindly proceed, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I thank you for giving me this opportunity to join you in welcoming the delegation from Kirinyaga County. I went to Kirinyaga in the company of Gov. Oparanya. We went there to look at the status of preparedness for the Devolution Conference. I can report that they are fully prepared and ready to welcome us. We were welcomed at that particular time by Gov. Waiguru. She did a very commendable job by taking us round to see how prepared they were. They are ready to meet us.

I welcome the delegation from Kirinyaga to the House. I am sure that they are going to borrow a leaf from the debates that are going on in this House. I hope that whatever they borrow, they will take a leaf back to the assembly.

Thank you.

Sen. Wamatangi: Mr. Speaker, Sir, I also rise to join you and my colleagues in welcoming the County Assembly Members of Kirinyaga County in the Speaker's Panel. It is an opportune and good time for them to be here, given the fact that in a few days, we will be in Kirinyaga for the Devolution Conference.

I have risen because it is important to echo the fact that now that Devolution Conference will be held in Kirinyaga, the county assembly has a lot to showcase on how they have steered Kirinyaga County in realizing the benefits of devolution. A few days ago, we had the Governor for Kirinyaga County appearing before my Committee on County Public Accounts and Investments Committee.

One of the outstanding things that the Governor said is that the County of Kirinyaga, after all their recurrent expenditure, has only Ksh600m for development in the entire County; a fact that surprised many of us. If there is one county that requires to be guided on how to deal with the issues of recurrent expenditure and make sure that devolution has value, it is the County of Kirinyaga.

I welcome them and hope that what they learn here will be showcased very well during the Devolution Conference.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Rose Nyamunga

Sen. Nyamunga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to join in welcoming the delegation from Kirinyaga County. One thing that we are aware of is that rice comes from Kirinyaga County. One thing that I must take home to Kisumu County is why there is a lot of rice from Kirinyaga, that is, Mwea Rice, in all the supermarkets, yet there is none from Ahero. That is the secret that I would like to learn from them, so that we replicate in Kisumu County.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Finally, Sen. (Dr.) Lelegwe.

Sen. (Dr.) Lelegwe: Thank you, Mr. Speaker, Sir. Let me join you, as a Member of the Speaker's Panel and also the distinguished Senator from Kirinyaga in welcoming the speaker's panel of the County Assembly of Kirinyaga. I interacted with Members of the County Assembly of Kirinyaga when we went there as the Committee on Agriculture and also during our first assemblies as I served as the Speaker of the County Assembly of Samburu. I interacted with their former Speaker, who is not here with us.

I also want to join Sen. Pareno in thanking the County Assembly for considering gender. This is because their first speaker was a female speaker, whom I worked with.

Thank you.

VISITING DELEGATION OF PUBLIC COMMUNICATION
OFFICERS FROM NAROK COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Thank you, hon. Senators. I would like to acknowledge the presence in the Speaker's Gallery this afternoon of the visiting delegation of public communication officers from Narok County Assembly. I request the four officers to stand when called out, so that they may be acknowledged according to the Senate tradition.

They are:

- (1) Mr. Jushua Ngure
- (2) Ms. Mary Namayian
- (3) Nalepo Nkaiwuatei
- (4) Mr. Jackson Oitinayio

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

Thank you.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I am so happy today to welcome the delegation from Narok County. I am glad they came to see how we do things here. I know them very well. I know Mr. Jushua Ngure, Ms. Mary Namayian, Nalepo Nkaiwuatei and Jackson Oitinaio. Narok is a beautiful place and they are doing a good job there. As I welcome them to the Senate, I would also like to encourage them to continue in participating and making sure that they benchmark and go around.

I see the delegation from Kirinyaga County. I like Kutus very much and hope that next week, when we go there, we will enjoy all the rice. I hope that when they go back, they will do something about all those advertisements which are all over, when going up to Kianyaga. I was there a few years ago, and Narok and Kirinyaga can learn a thing or two about outdoor advertisement.

Mr. Speaker, Sir, I thank you for this opportunity. I welcome and urge them all to continue coming to visit the Senate.

The Speaker (Hon. Lusaka): Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I also rise to join you and my colleagues in welcoming the visiting delegations. With regard to the delegation from Narok County, the communications team, I wish to tell them that yours faithfully is a journalist in training and practice. As you visit the Senate, I hope you will take this opportunity to benchmark with our communications team, and the debate on the Floor, as you go back to continue with your duties to serve in the communications department of the County Assembly of Nairobi.

The other delegation is from Kirinyaga. I was in Murang'a on Sunday together with Sen. Kang'ata and Sen. Mwaura. I congratulated the gentlemen from Murang'a for their prowess in so many things. Today, I congratulate the people of Kirinyaga for their generosity as they prepare to welcome us to the Devolution Conference. I understand that the Governor of Kirinyaga County now belongs to Murang'a.

(Laughter)

Mr. Speaker, Sir, I welcome them.

Sen. (Dr.) Langat: Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to join you in welcoming the delegation from Narok County. They are our good neighbours and we have been living together for a long time. I want to welcome and congratulate them, including Sen. Ledama, because our peace nowadays is enhanced by the fact that they no longer relocate our cattle to their places.

Welcome to the Senate.

Sen. (Dr.) Ali: On a point of order, Mr. Speaker, Sir. Is the hon. Senator for Bomet telling us that the people of Narok are cattle rustlers?

The Speaker (Hon. Lusaka): Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Mr. Speaker, Sir, I simply said that, traditionally, they used to relocate our cattle to their place and sometimes---

(Laughter)

The Speaker (Hon. Lusaka): Sen. Pareno Judith.

Sen. Pareno: Mr. Speaker, Sir, I disassociate myself from those who think that cattle rustlers only come from certain regions. I think this is a vice that can be dealt with by this country, since it is affecting so many people.

I rise to join you, the Senator for Narok and those who have spoken in welcoming our sisters and brothers from Narok County. We have learnt from what we have seen about Narok County, having been among the first counties that actually spent some money on development. Some counties like Kajiado County are said to have spent zero on development. I congratulate them for letting the people know and feel the effect of devolution.

We heard yesterday that Narok County will host the Madaraka Day celebrations of this nation. I thank them for accepting to host. I know that initially it was indicated that it would be hosted by Kajiado County, but I am informed that Kajiado is unable to do so. It is a shame that we were given such an opportunity, and my county being Kajiado, is unable to host. I thank Narok County for setting the pace for the Maa people and those that live within Narok. We will definitely be coming to learn from you.

Thank you and welcome.

The Speaker (Hon. Lusaka): Finally, Sen. Isaac Mwaura.

Sen. Mwaura: Thank you, Mr. Speaker, Sir. I rise to congratulate the people of Narok and Kirinyaga counties. Now that we can hear the people of Bomet and Narok counties arguing about who takes the cattle away, I think the people of Murang'a would graciously accept the donation, so that they can take the cattle to Kirinyaga. This is because, clearly, they have demonstrated the prowess of having two governors at the same time, in the name of Gov. Anne Waiguru and Gov. Mwangi wa Iria.

In the same breathe, I want to congratulate *Wakili* Kamotho Waiganjo for doing the Agikuyu men proud by ensuring that the indomitable lady has finally gotten a home in Kiharu Constituency, in Murang'a County.

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

Sen. Halake: On a point of order, Mr. Speaker, Sir. Is the Hon. Member in order to continue talking about Gov. Waiguru personal relationships? This is supposed to be a welcome, but it has now become Gov. Waiguru's relationship with somebody else. This is what happens all the time to women when they are getting married. We miss the point by now talking about irrelevant things like that.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Hon. Members!

Sen. Mwaura: Mr. Speaker, Sir, Gov. Ann Waiguru is a public official. This is a public matter. It is in the public domain. There is nothing out of order in this regard.

This august House joins hands in congratulating Gov. Waiguru in the spirit of devolution. That is what we are talking about.

Sen. Kihika: On a point of order, Mr. Speaker, Sir. Is Sen. Mwaura in order to continue talking about the relationship of Gov. Waiguru? We have not heard men telling us on the Floor of this House who they are marrying. So, they do not have to come here and discuss when a woman is about to be married. It is not a big deal.

The Speaker (Hon. Lusaka): Order, Member! I think in the House we have Senators and not men.

Hon. Members: Yes.

The Speaker (Hon. Lusaka): You are out of order!

Sen. Mwaura: Mr. Speaker, Sir, just recently, Sen. Kang'ata got married. This same House congratulated him.

Hon. Senators: Yes.

Sen. Mwaura: So, I do not know what is out of order for distinguished lady Senators to complain about a governor finding love in Murang'a. I do not think there is anything out of order.

Sen. Cheruiyot: On a point of order, Mr. Speaker, Sir. I am trying to follow what Sen. Mwaura is saying, but I do not see the correlation between devolution and marriage. Is he suggesting that the Governor for Kirinyaga has been devolved to Murang'a County?

(Laughter)

Sen. Kibiru: On a point of order, Mr. Speaker, Sir. I would request that Sen. Mwaura withdraws the assertion that our Governor has defected. He has said that Murang'a now has two governors.

(Laughter)

The Speaker (Hon. Lusaka): Order, Members! That was in a light moment. We need to get to some more serious business.

Next Order.

PETITIONCOMPENSATION FOR PERSONS AFFECTED BY THE JAMES GICHURU
ROAD JUNCTION-RIRONI HIGHWAY (A104) PROJECT

Sen. Wamatangi's Petition will be brought tomorrow. So, we proceed to the next Order.

(Petition deferred)

Next Order.

PAPERS LAID

REPORT ON THE 2019 BUDGET POLICY STATEMENT

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, 26th February, 2019:

The Report of the Committee on Finance and Budget on the 2019 Budget Policy Statement.

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

THE IEBC POST ELECTION EVALUATION REPORT

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, 26th February, 2019:

The Independent Electoral and Boundaries Commission Post Election Evaluation Report.

Thank you.

(Sen Dullo laid the document on the Table)

The Speaker (Hon. Lusaka): What is your point of Order Sen. Outa?

(Sen. M. Kajwang' pressed Sen. Outa's intervention button)

Sen. M. Kajwang': Mr. Speaker, Sir, my apologies. I was consulting on some Great Lake Region issues with sen. Outa and that is why it showed as Sen. Outa was on a point of order.

This could be the second time in the history of this nation that the Senate is receiving this Report. When this nation was at a crossroad and stuck over electoral reforms, the whole nation looked upon the Senators, particularly, Sen. Orengo, Sen. Murungi, Sen. Mutula Kilonzo Jnr., Sen. Murkomen and others to break the deadlock.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

I request that you give directions on how the Report that has been tabled before this House will be processed. After being processed, could the House get a report maybe from the Committee on Justice, Legal and Human Rights Committee? This is because we have invested a lot financially and politically in the electoral process. Elections are things that definitely affect counties. It would be proper for this House to interrogate that Report from IEBC and for the relevant committee to report back to the House.

I say this because it could be unprecedented since this could be the second time that this is coming to the House.

Sen. Mutula Kilonzo Jr.: On a point of order, Mr. Speaker, Sir. Sen. M. Kajwang' raises a very important point. The Committee that was co-chaired by Sen. Orengo and Sen. Murungi proposed two reports. This Report that has been tabled by the Deputy Majority Leader was not contemplated in any of the election laws (Amendment) Bill. The reports that were contemplated to be tabled before Parliament are two-

(1) The Report on the Audit of the Electronic System which included the server. We want to know what was happening with the server.

(2) The Report on the Audit of the Register.

Now, from the Report and the statement made by the Chairperson of the IEBC, they do not have funds to do the audit. For some very good reasons, they do not have funds to audit the server which is the electronic system.

This is a matter that the Committee on Justice, Legal Affairs and Human Rights which is chaired by Sen. Cherargei and deputised by Sen. Linturi must interrogate in detail. Fundamentally, because Sen. Olekina has proposed some election amendment laws so that by the time we finalise this, this Senate can lead the way into having a better election in 2022.

The Speaker (Hon. Lusaka): Thank you. The Report will go to the Committee on Justice, Legal Affairs and Human Rights. After they look at it, they will report back to the House.

Sen. Linturi: Thank you, Mr. Speaker, Sir. Let me undertake on behalf of the Committee that once this Report finds its way on our desks, then we will do what is required to ensure that the information contained therein will be able to inform us towards ensuring that in future, Kenya will have credible elections.

In the meantime, I ask Members to hold their horses because the Committee on Justice, Legal Affairs and Human Rights is a Committee that has the benefit of having senior counsel in it led by Sen. Orengo and the Attorney-General emeritus, Sen. Wako. I assure them that we will do our best to ensure that this problem or acrimony that arises once elections are done, becomes a thing of the past.

For that matter, let us not be speculative. Let us wait and see the kind of report that we will table before this House. We are committed and we have the capacity to deal with the matter.

The Speaker (Hon. Lusaka): Since most Members of the Committee are here, I am sure they will expedite the work. However, I will not give them an open cheque; they have a maximum of 21 days to report back to the House.

Next Order.

NOTICE OF MOTIONADOPTION OF REPORT ON THE 2019
BUDGET POLICY STATEMENT

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order No. 187 of the Senate, this House adopts the report of the Standing Committee on Finance and Budget on the 2019 Budget Policy Statement (BPS) laid on the Table of the Senate on Tuesday 26th February 2019.

The Speaker (Hon. Lusaka): Next order.

STATEMENTSIRON ORE MINING IN KISHUSHE AREA,
TAITA TAVETA COUNTY

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources regarding iron ore mining in Kishushe area of Taita Taveta County.

In the Statement, the Committee should-

(1) Provide ownership details on the investors carrying out the mining activities in Kishushe area of Taita Taveta County;

(2) State whether public participation was undertaken before allowing the miners on the site and table the outcome of such deliberations;

(3) Confirm whether Environmental Impact Assessment (EIA) Report certificate was issued and provide details of the mining certificate and the community development agreement;

(4) Confirm whether the investor pays royalties as per the law; and,

(5) State the Corporate Social Responsibility (CSR) activities that the company is undertaking in the area, if at all.

Mr. Speaker, Sir, it has become fashionable for mining licences to be given by unscrupulous individuals in the Ministry of Mining to unscrupulous people who conduct mining activities without involving the public. This is one of the faceless companies. The community is asking about the miner but he or she has not spoken to the community. Therefore, the Committee on Lands, Environment and Natural Resources should expedite the processing of this Statement so that the people of Kishushe can get what belongs to them.

The Speaker (Hon. Lusaka): The Statement is committed to the Committee on Lands, Environment and Natural Resources.

Sen. Cherargei: Mr. Speaker, Sir, I thought you would allow some comments on the issue raised by Sen. Mwaruma?

The Speaker (Hon. Lusaka): Do you have an issue to raise?

Sen. Cherargei: Yes, Mr. Speaker, Sir. I support Sen. Mwaruma because in my county we have a miner in Chemase-Chemilil Ward, a company called Karebe Gold Mining Limited. This problem is rampant in this country. I do not see the Chair of the Committee on Lands, Environment and Natural Resources but I know the Members of the Committee are present.

Mr. Speaker, Sir, we raised this matter when we had the Senate *Mashinani* in Eldoret. I underscore what Sen. Mwaruma has said. If you go to Chemase, you will find the issues that he is raising. For example, there is lack of CSR. You will also find that people undergo modern day slavery because of the poor working conditions. The young men that work in the Karebe Gold Mine do not have the ability to reproduce. This is because they have been exposed to some chemicals. The cases that the Chiefs deal with are that young men can no longer reproduce or execute their conjugal rights. Therefore, we must hold into account most of these miners that exploit---

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

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

Sen. Mwaura: Mr. Speaker, Sir, Sen. Cherargei has made a very adverse allegation that miners are not able to execute their conjugal rights which may as well be a nocturnal activity. Can the distinguished Senator substantiate how he was able to ascertain lack of performance of nocturnal duties?

Sen. Cherargei: Mr. Speaker, Sir, my good friend did not listen keenly. I said that the young men who work in the mines are exposed to some chemicals. Therefore, Chiefs in Chemase deal with cases of newly married men who can no longer execute their conjugal rights. They can no longer reproduce which is very dangerous. I mentioned the adverse effects that come with miners who cannot be held accountable.

We will consult with Sen. Mwaruma because we need Community Development Agreements (CDAs) according to The Mines and Minerals (Development and Regulation) Amendment Act, 2015---

(Loud consultations)

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

Sen. Cherargei: Mr. Speaker, Sir, I do not know what is exciting my teacher, the Senate Majority Leader. I hope all is well.

(Laughter)

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

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

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, all is well. However, what is the connection between mining and conjugal rights? That is what I

over-heard. Is there a scientific report that my colleague is referring to that is related to the mining, chemicals and conjugal rights?

The Speaker (Hon. Lusaka): Senate Majority Leader, you were not listening. He explained himself and it was clear. May be, you will consult after this sitting.

Proceed, Sen. Cherargei.

Sen. Cherargei: We can talk in camera and share with him some findings.

Mr. Speaker, Sir, we are not against investors; we welcome them. However, they must respect the people who give them the opportunity to exploit their resources. Most of the mining companies in this Republic do not have CDAs according to The Mines and Minerals (Development and Regulation) Amendment Act, 2015. They have not adhered to the law as provided for in the Mining Act. Therefore, I support Sen. Mwaruma in that people who exploit our resources must be held accountable.

There is a Petition that I presented with similar sentiments. Therefore, the Committee on Lands, Environment and Natural Resources must expeditiously deal with this Statement of the great people where Sen. Mwaruma represents and from Nandi County in Chemilil-Chemase area so that people can continue to enjoy. The resources that we have should not become a curse. However, at the moment, they have become a curse because investors are now fighting with the people, sponsoring bribery allegations and many other things. Therefore, I hope that this matter will be dealt with.

Mr. Speaker, Sir, yesterday we toured Solai. Therefore, we should not open a box where our people will always regret why they have such resources. Let the resources be a blessing to this country. Justice should be given to the people of Sen. Mwaruma and Nandi County in Chemilil-Chemase area.

Mr. Speaker, Sir, I, thank you, for the indulgence to at least make a few comments on this issue. I am passionate about it and it is near my heart. I want to see young men who are able to reproduce, an uplifted economy and CSR undertaken.

The Speaker (Hon. Lusaka): Let us keep the comments brief.

Proceed, Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, I rise to support this Statement by Sen. Mwaruma. The issue of mining is something that this House ought to take very seriously. This is because miners are currently getting into our counties. Therefore, it is important that we take this matter seriously. For instance, in Narok County, mining is now getting worse. We have people who are mining volcanic ash and using it to construct houses. It is sold as sand.

Most of these buildings which are collapsing in Nairobi are being built, not with river sand, but with volcanic ash. This is something which I hope the distinguished Senator and Chairperson of the this Committee – who I know to be very diligent – will extend himself a little bit in trying to understand how the Ministry of Mining operates; how licenses are issued to miners and whether NEMA is doing its work properly. Since the functions of NEMA are devolved, this is something that should concern every sitting Senator in this House.

Mr. Speaker, Sir, when you look at the activities of mining in Narok, Taita Taveta and now in Nandi – as it has been explained by Sen. Cherargei – these are things which will continue destroying our environment. Consequently, the problem we had in Solai

nine months ago will now spread across the entire county. This is because of how you license mining and allow people to go doing excavation without giving you a proper plan on how they are going to restore the land.

Therefore, Mr. Speaker, Sir, I hope that the Committee will extend the scope of this Statement so as to give us the proper guidelines on the process of mining. This is because right now, what is happening in most counties is that people proceed to mine and NEMA waits until someone complains. When one complains to NEMA from the national office in Nairobi, they tell you that all their activities are devolved. Therefore, this is an extremely important Statement, and I hope that we will get the response quickly enough with the scope that I have requested.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I support Sen. Mwaruma on this Statement. This is a matter that touches on various other counties, and it is really about community conflicts over mineral resources and their mining thereof. If the members and the people in Kishushe understood the basis of that project; if there had been public participation right from the beginning, even if they were going to benefit, they would already have understood it.

Consequently, there would have been no need for this sort of interaction and querying. Unfortunately, most investors do not want to go that way and they want to keep away from the people. Yesterday, we were at the Solai Dam, and it is exactly the same scenario. In fact, even finding out who exactly the investor is, is a hidden agenda; yet you are mining and extracting from communities and causing them problems, even sometimes in the form of diseases and such things.

Therefore, Mr. Speaker, Sir, it is very important that as the Committee to which this Statement has been committed goes about its work, it has to be very clear in answering the specific questions. It is important that the ownership is known; it is important that if public participation was not done, that it needs to be done. Corporate Social Responsibility (CSR) is also very important. This is because if these miners and the people extracting the earth or whatever it is they are extracting are able to give back, it sometimes helps to neutralise the effects.

I, therefore, support this Statement and we are looking forward to the feedback from that Committee and the answers it will give. We hope for a very comprehensive response to this Statement.

Thank you, Mr. Speaker, Sir.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I congratulate Sen. Mwaruma; this is a very important Statement. As my colleagues have said, it is a matter that is affecting many counties.

Mr. Speaker, Sir, this morning, I was woken up by a call from one of the wards in Isiolo County called Duse, where they have minerals. A Chinese company came and divided the community. They told me this morning they are waking up to fights among themselves. Apparently, what came out is that the county government gave a go ahead, but they do not have a license from the Ministry. This is a matter that the ministry needs to take very seriously, because licenses are issued even in Nairobi without involving the communities on the ground.

Mr. Speaker, Sir, once this Statement is committed to them, the Committee should thoroughly investigate how these licenses are issued. Sometimes they put notices on the newspaper. How many local people read those newspapers and know what the content of the notice is? Apparently, I am told that they are using very dangerous chemicals in extracting those minerals. Therefore, the relevant Government institutions should investigate this matter.

Thank you, Mr. Speaker, Sir.

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. I thank Sen. Mwaruma. I happen to be a Member of that Committee, and I know that we have received several queries on issues of mining. From that our colleagues have said in this House today, it is very clear that what is lacking in this country is a mining policy. As a Committee, we are going to look at what has been raised here and perhaps push the Government to come up with a proper mining policy which involves the locals. This is because what we have now favours investors who come from wherever, and locals do not even know what is happening.

Mr. Speaker, Sir, as we do that, I do not know how, as a Committee, we are going to address the issues raised by Sen. Cherargei about the young men who cannot “function”. As a Committee, I do not think we have that capacity; so, my friend, Sen. Cherargei, will bear with us. However, we will look at the policy and what requires to be done to involve locals on issues of mining.

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

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

Sen. Cherargei: Mr. Speaker, Sir, I appreciate what Sen. Ndwiga is saying, but as a Committee, they have enormous powers to look into some of these crosscutting issues that we are raising.

Therefore, Mr. Speaker, Sir, with your indulgence, considering that my brother is a former Cabinet Minister, he has a broader view on how this House can get a more concise and well researched report. I believe in his Committee. It is not an issue of whether to reproduce or not; we need reproduction to still go up, especially in our young men in that area. Therefore, they must look into that issue more, apart from other issues. The Committee on Health can also be of help to this Committee.

Thank you, Mr. Speaker, Sir.

Sen. Ndwiga: Mr. Speaker, Sir, if my friend heard me, I said we will look at all those issues. Our only problem is about issues of reproduction, which are not the mandate of our Committee. Maybe they are the mandate of the Senate Committee on Health or some other Committee. However, on mining, we are going to look at all the issues pertaining to mining and its policy.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): finally, Sen. (Dr.) Musuruve. Keep it short.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me the opportunity to add my voice. When issues are brought to the Floor of this House concerning counties, we need to take them seriously. This is because Sen. Cherargei brought a similar issue and it has not been addressed yet. Sen. Mwaruma has now brought this Statement and there is need to tie up these issues and give a report that will

give a lasting situation to this issue. This is because Kenyans are watching and they are relying upon us to defend them and sort out the issues that are in the counties.

Mr. Speaker, Sir, public participation is very important; and it is core in the counties. How can an industry be put up in a county yet the people do not know who its owners are, whether it is legit and what it is dealing with? That is something that should never arise in any Community. There is need for the community to be told what the industry is all about, because the goodwill of the community will work very well for the industry. When there is public participation, there will be goodwill of the community. Consequently, CSR will be effective when the project takes off. Therefore, there is a need for an investigation to be done.

Mr. Speaker, Sir, I think that this is a very dirty deal since the owners are not known and even the license has not been procured. There is need for an investigation to be done so that when this industry is being put up, it will be for the good of the people. If it has some negative impact on health, it then needs to be addressed.

Therefore, Mr. Speaker, Sir, this is a Petition that is legit and it holds water, and I support Sen. Mwaruma for it.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Finally, Sen. (Prof.) Ongeru for three minutes.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. I think that Sen. Mwaruma is asking the Committee on Lands, Environment and Natural Resources to get to the bottom of the matter dealing with the social aspect of the miners within the environment where they are working. The second point that must come out very clearly in this report is the benefits that accrue from mining, which is the economic element that must stand out when one wants to mine in any part of this country.

The third element that must come out in that Statement is the environmental concern. We are aware that one of the biggest problems in this country is the environment. When I talk about the environment, I have the equipment and the chemicals being in used in that region in mind. That will help us to settle the debate on how human beings are affected by the chemicals used in that area. That includes the dust that comes from the mine and how it affects the lungs, the respiratory system, the cardiovascular system and the various parts of the body.

It is an important part and that is why some of us were quick to make conclusions. Lungs get compromised too quickly, especially, in the miners' situation. We need to protect these people and investigate their work conditions.

This is a very important Statement and I support.

The Speaker (Hon. Lusaka): The next Statement is from Sen. Wetangula.

IMPLEMENTATION OF THE DIGITAL LITERACY PROGRAMME (DLP)

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I wish to request for a Statement on the Implementation of the Digital Literacy Programme (DLP), commonly called the Computer Programme.

Pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Education on the implementation status of the Digital Literacy Programme by the Ministry of Education.

In the Statement, the Committee should-

(1) Table a status report on the uptake of the Digital Literacy Program under the Ministry of Education indicating the number of learners, per school in each county, that were issued with the digital devices under the Digital Literacy Programme;

(2) State the name of the supplier of the digital devices and the cost incurred so far by the Government in implementing the programme;

(3) Explain the reasons for the change in policy of providing digital devices to every class one pupil to building of computer laboratories in every public primary school that was announced this week by the Cabinet Secretary of the Ministry of Education;

(4) State the total cost of implementing the new policy and explain how the procurement of building works will be done;

(5) Explain whether the implementation will be done in phases or once, and if in phases, what criteria will be used in selecting priority schools;

(6) Explain how the Government will ensure standardisation of the computer laboratories and the timelines for delivery.

(7) Explain to the House whether the computer devices that were given to the school children will be taken away by the Government or whether they will be left with them as gifts after the discontinuation of the programme.

The Speaker (Hon. Lusaka): I will allow a few comments. You will each get two minutes for us to be able to vote.

Sen. Mwaaura: Thank you, Mr. Speaker, Sir. I wish to support Sen. Wetangula for bringing this Statement. If you look at the way we share revenue, this programme is well stated as a national interest yet we also know that it affects counties. It does raise very serious issues of how national interest is defined; this is because you will find that issues dealing with Early Childhood Development (ECD) have not been properly canvassed within the budget.

Some of the classrooms that young children are using to study computers are cheaper than the gadgets that they are using. Yesterday, I saw some very dilapidated classrooms on television and; there have been cases of theft of the gadgets. There is no proper tracking mechanism and the content of this programme needs to be looked into.

The other issue that is critical in this programme that the Chairperson should also respond to over and above the issues raised by Sen. Wetangula is how accessible is the content of these devices to learners with various forms of disabilities. We have those with low vision and those who may have difficulties with mobility. This is something that is never factored in when programming so as to ensure that 10 per cent of our population, who have one disability or another, are not left behind. Our children and learners with disability need to be incorporated.

At some point, we said that, ‘*sio laptop ni lollipop*’. Now that the Government seems to be changing the policy, how do you synchronise the construction of computer laboratories using the Constituency Development Fund (CDF) for the construction of the

infrastructure programme and the World Bank programme? We need to be clear so as not to have double allocation of resources for the same kind of projects.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, this was one of the key projects of the Jubilee Government; the provision of laptops to every primary school student. Unfortunately, without mincing words, it has collapsed just like many others. The Senate Majority Leader will confirm that the other key component of the Jubilee agenda which has collapsed is building stadia in every county. Therefore, in trying to reshape this programme, which the NASA team had proposed and that is what they are trying to do now, the Jubilee Government is seeing the light of day, eight years later.

In responding to this Statement, can the Chairperson of the Committee spell out how much this programme in its initial phase, as formulated, cost and what the building of these laboratories will cost. It is good for us to know that before we get caught up in another scandal like the one for the dams. We may find the laboratories with no equipment.

The Speaker (Hon. Lusaka): Sen. (Dr.) Lang'at, you have two minutes.

Sen. (Dr.) Lang'at: Thank you, Mr. Speaker, Sir, for giving me this chance to make my contribution. I want to thank Sen. Wetangula---

The Speaker (Hon. Lusaka): You are the Chairperson of the Committee and the matter is coming to you. Let us give an opportunity to somebody else.

(Laughter)

Sen. (Dr.) Lang'at: Mr. Speaker, Sir, I just want to accept that we are going to---

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, even before you give directions on this matter, it is my considered view that this is an audit issue. During the previous session, it was mentioned that Kshs17 billion was set aside for the programme and every time we kept asking what the policy is.

In my view, Mr. Speaker, Sir, the change of the programme in the Statement by Sen. Wetangula regarding the standardization of computer is just euphemism or a cover up of failure. The first thing that the country must be told is how many laptops, if at all, have been purchased. Going by the sort of things that this Government has done, it is possible that the laptops were never purchased and money went into private hands.

I am of the considered view that the Committee on Education together with Sen. M. Kajwang's Committee should interrogate this because it is an audit query. The programme should not change before we find out whether or not laptops were purchased, how much money was spent and where those laptops are. Who buys sofa sets and then thinks of buying or building a house? This sort of lopsided programme is only an attempt to cover up. It is yet another scandal.

I thank you.

The Speaker (Hon. Lusaka): Hon. Members, I know there is a lot of interest but because we want to vote, we will contribute to that later.

(Interruption of debate on Statements)

Before we do that, I have a communication to make.

COMMUNICATION FROM THE CHAIR

DEMISE OF MAMA MARGARET WANGECHI IRUNGU,

The Speaker (Hon. Lusaka): Hon. Senators, it is with great sorrow that I have learned of the demise of Mama Margaret Wangechi Irungu, mother to the Senator for Murang'a County, Sen. Irungu Kang'ata.

Mama Margaret was born in 1945 in Kagiko Village, Kangema, Murang'a County. She was a member of Mumbi Catholic Church, C.W.A and one of the pioneers of St. Cecilia Fellowship.

Mama Margaret passed away on Saturday, 23rd February, 2019 at the age of 74 while undergoing treatment. She will be remembered for her humility and dedication to the community at large. Mama Margaret is survived by her beloved husband and six children.

The burial will be held on Monday, 4th March, 2019, at Mumbi Catholic Church, Murang'a Town.

I take this opportunity on behalf of the Senate and my own behalf to send our heartfelt condolences to the family of the Senator and the entire County of Murang'a. May God rest her soul in eternal peace. I thank you.

Let us go to the next Order.

BILLS

First Reading

THE KENYA MEDICAL SUPPLIES AUTHORITY
(AMENDMENT) BILL (SENATE BILLS NO.38 OF 2018)

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

Next Order!

First Reading

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO.39 OF 2018)

*(Orders for First Reading read – Read the First
Time and ordered to be referred to the relevant*

Senate Committee)

The Speaker (Hon. Lusaka): Hon. Senator, I wish to reorganise the Order Paper. So, we will go to Order No.15.

(The Speaker consulted with the Clerk-at-the-Table)

Hon. Senators, we will have the Clerk-at-the-Table read all the Orders that require Division, which are Order Nos. 10 to 14 and we will begin with Order No.10. I order that the Division Bell be rung for two minutes

(The Division Bell was rung)

I now direct that the Bars be drawn and the door be locked.

(The Bars were drawn and door closed)

I will proceed to put the question, which is that The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018) be read a Second Time. You may start voting.

(Voting in progress)

Assisted voters please approach the table.

Second Reading

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

(Sen. Dullo on 20.11.2018)

(Resumption of Debate interrupted on 21.11.2018)

DIVISION

ELECTRONIC VOTING

(Question that the Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018) be read a Second Time put, and the Senate proceeded to vote by County delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, Nairobi

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

County); Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwaruma, Taita Taveta County; Sen. Nderitu, Laikipia County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County and; Sen. (Dr.) Zani, Kwale County.

NOES: Sen. Mwangi, Nyandarua County and Sen. Poghiso, West Pokot County.

ABSTENSIONS: Nil.

The Speaker (Sen. Lusaka): Order Members. The results of the voting are as follows:

AYES: 33

NOES: 2

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 33 votes to 2)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

The Speaker (Sen. Lusaka): Next Order.

Second Reading

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

(Sen. Moi on 27.11.2018)

(Resumption of Debate interrupted on 27.11.2018)

DIVISION

ELECTRONIC VOTING

(Question, that the Local Content Bill (Senate Bills No. 10 of 2018) be Read a Second Time put, and Senate proceeded to vote by County delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, (Delegate, Nairobi County); Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Nderitu, Laikipia County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; and Sen. (Dr.) Zani, Kwale County.

NOES: Nil.

ABSTENSIONS: Nil.

The Speaker (Hon. Lusaka): Order Members, the results of the voting are as follows:

AYES: 34

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 34 votes to 0)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

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

(Sen. Farhiya on 27.11.2018)

(Resumption of Debate interrupted on 28.11.2018)

DIVISION

ELECTRONIC VOTING

*(Question, that The Statutory Instruments (Amendment) Bill
(Senate Bills No.24 of 2018 be now read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

Disclaimer: The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orendo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

NOES: Nil.

The Speaker (Hon. Lusaka): The results of the voting are as follows:

AYES: 35

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 35 votes to nil)

*(The Bill was read a Second Time and Committed
to a Committee of the Whole tomorrow)*

Second Reading

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

(Sen. Khaniri on 28.11.2018)

(Resumption of Debate interrupted on 28.11.2018)

The Speaker (Hon. Lusaka): Order, Senators! I now put the question, that The County Law Compliance and Enforcement Bill (Senate Bills No.25 of 2018) be now read a Second Time.

Proceed and vote now.

(The Senators proceeded to vote)

DIVISION**ELECTRONIC VOTING**

(Question, that The County Law Compliance and Enforcement Bill (Senate Bills No.25 of 2018) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

NOES: Sen. Ochillo-Ayacko, Migori County;

The Speaker (Hon. Lusaka): Senators, the results of the voting are as follows:

AYES: 34

NOES: 1

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 34 votes to one)

(The Bill was read a Second Time and Committed to a Committee of the Whole tomorrow)

BILL*Second Reading*

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

(Sen. (Dr.) Langat on 28.11.2018)

(Resumption of Debate interrupted on 29.11.2018)

DIVISION**ELECTRONIC VOTING**

(Question that the County Early Childhood Education Bill (Senate Bills No.26 of 2018) be now read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. M. Kajwang', Homa Bay County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; Sen. (Dr.) Zani, Kwale County.

NOES: Nil.

The Speaker (Hon. Lusaka): Hon. Senetors, the results of the voting are as follows:-

AYES: 35

NOES: Nil.

ABSTENTIONS: Nil

The "ayes" have it.

(Question carried by 35 votes to nil)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

MOTION**ADOPTION OF REPORT OF THE AD-HOC COMMITTEE ON THE
MAIZE CRISIS IN KENYA**

THAT, this House adopts the Report of the Ad-hoc Committee on the Maize crisis in Kenya laid on the Table of the House on Tuesday, 27th November, 2018.

(Sen. (Prof.) Kamar on 19.2.2019)

(Resumption of Debate interrupted on 21.2.2018)

DIVISION

ELECTRONIC VOTING

(Question, that the Motion be amended by deleting the full-stop at the end thereof and inserting the following words- “subject to the following amendments to the report- (a) by inserting the words “and the inter-Ministerial Committee on Food Security” immediately after the words “The Cabinet Secretary, The National Treasury and Planning and the Cabinet Secretary, MOALF &I” appearing in paragraph 3 on page 11 of the report; (b) by inserting the words “and the Inter-Ministerial Committee on Food Security” immediately after the words “The CS National Treasury and CS, MOALF &I appearing in column 1 of recommendation 7 on page 111 of the report; (c) by inserting the words “and the Inter-Ministerial Committee on Food Security” immediately after the words “CS, National Treasury, CS, Agriculture” appearing in column 3 of recommendation 7 on page 111 of the report put, and the Senate proceeded to vote by County Delegations.)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. M. Kajwang’, Homa Bay County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Nominated; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; Sen. (Dr.) Zani, Nominated.

The Speaker (Hon. Lusaka): Hon. Senators, the results are out and they are as follows:

AYES: 35

NOES: Nil.

ABSTENTIONS: Nil.

The “Ayes” have it.

(Question carried by 35 votes to nil)

(Question of the Motion as amended proposed)

The Speaker (Hon. Lisaka): Hon. Members, the Motion is amended. The Senate Business Committee (SBC) directed that debate will resume tomorrow as amended. The bars may be withdrawn and the doors opened.

(Bars withdrawn and doors opened)

The Speaker (Hon. Lusaka): Order, Members, before we go to the next order, I think there was a lot of interest in the Statement that had been raised. So, let us give an opportunity to Statements.

STATEMENTS

IMPLEMENTATION OF THE DIGITAL LITERACY PROGRAMME (DLP)

Sen. Wambua: Thank you, Mr. Speaker, Sir, for this opportunity. I pray that you call this House to order.

(Loud consultations)

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

Sen. Wambua: Thank you, Mr. Speaker Sir, for the protection. I rise to support the Statement by Bungoma Senator, Sen. Wetangula, on this matter of the Digital Literacy programme (DLP). It will be remembered that the DLP was not just about the supply of laptops to schools. It was also about building the capacity of teachers in primary schools to take our pupils through computer lessons.

As this matter goes to the Committee, it should also look into the issue of the number of teachers that were trained through this programme and at what cost. What will happen to that expertise that we imparted among teachers in primary schools?

Secondly, the building of computer labs as proposed in the new policy is a good idea. However, this pre-occupation with the notion that one size fits all is one that we must debunk.

(Loud consultations)

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. There are some schools in this county that lack basic infrastructure in terms of classrooms. I am wondering whether we will witness another situation as we have with medical equipment. We decided that we give CT scan machines to every hospital in this country.

There are schools that do not need computer labs today. They need class rooms. As the Ministry of Education rolls out this policy, it will be important to carry out proper feasibility study and align the needs of the schools with it.

Lastly, I want to ask the same question that was asked by Sen. Wetangula. What will happen to these devices that have already been issued to our pupils? Will they be retained by the pupils, or will they be returned to school? Let there be proper policy guidelines on this issue. We do not want to see situations where some schools will be giving those laptops to the pupils and other schools requiring them to return them.

I support.,

[The Speaker (Hon Lusaka) left the Chair]

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

Sen. Halake: Thank you, Madam Temporary Speaker. I rise to support the Statement by Sen. Wetangula about the DLP. I know the Senate Minority Leader, Sen. Orenge did mention about collapsed projects in this country. I do not want to say it is collapsed, but it looks like it has shifted from what it was intended to be. This programme was mooted in 2013. It is now some 7 years. I do not know why it took us 7 years for us to change course and decide we will build computer laboratories in schools.

This project was to be driven by the Ministry of Information and Communication Technology (ICT). The Speaker mentioned that the Ministry of Education has a lot to answer about this. However, this was supposed to be driven by the Ministry of Information and Communication Technology (ICT) and The ICT Authority. Therefore, it is one of the things that we need to look at to make sure that we have----

(Loud Consultations)

Madam Temporary Speaker, I cannot hear myself. I need order.

The Temporary Speaker (Sen. (Prof.) Kamar): Order Members! Resume your seats and allow the Member to be heard.

Sen. Halake: Madam Temporary Speaker, my Chairperson is making a lot of noise today and creating excitement in the House. Can I be saved from my own Chairperson?

The Temporary Speaker (Sen. (Prof.) Kamar): Order Members! Please consult quietly.

Sen. Halake: Madam Temporary Speaker, as I was saying, this was started in 2013. It is now seven years down the line and very little progress has been achieved. Now, somebody is changing the initial programme to something totally different. Sen. Wetangula has a lot of points. I took some notes regarding that because initially, the Ministry of ICT through the ICT Authority was to implement this. However, it now looks as though the Ministry of Education will lead this. Therefore, we need to know where the responsibility lies so that we know who to hold accountable. This is because we do not know whether it is the Ministry of Education or the Ministry of ICT as it was initially

mooted but seven years down the line we have a totally different concept from what it was before.

Whether it is given to the Committee on ICT or Committee on Education as Sen. Wetangula has requested, we need to know the cost of both the initial plan and new plan and who is supposed to drive it.

Madam Temporary Speaker, I support and look forward to seeing the report on this so that we know who to hold accountable. The Ministries need to tell the House who is responsible for this project because right now, it is a bit confusing on whom to hold accountable.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this Statement. Seven years ago, I rose up and said that it was a completely misguided policy to introduce laptops to young children in this country where most schools do not have electricity. I still stand by what I said seven years ago. Shifting the policy to building computer laboratories, in some regions, is still misguided.

I support what Sen. Halake Abshiro has said that it is important for us to know who will be responsible for this Statement. Is it the Chairperson of the Committee on ICT, the Committee on Education or both?

The truth is every opportunity to transact in billions in this country becomes transactional. It is never for the interest of the people of this country. For example, we hear about big transactions for dams but it is not for the interests of the people of Kerio valley. Issues of education, for example, the laptops, are not for the interests of the children in schools.

Someone should make me understand this. How do we expect a child who does not have a classroom to have a laptop? Most schools in Narok, Baringo, Isiolo and most parts of Kenya are built of cow dung while some children study under a tree. This is theatre of the worst form. It is not even Nollywood; it is *ushambahood*. To be honest, I find it to be lack of reasoning by the people who come up with these policies or just pure corruption.

Madam Temporary Speaker, I support this Statement and hope that you will commit this to the two Ministries for them to come clearly and tell us what happened to the laptops, which schools were given and the suppliers. I like it when Sen. Wetangula requests for the names of the suppliers. I bet that when you follow through, you will find that it is some highly connected individuals who were all about transactions.

Madam Temporary Speaker, I hope that you will give a short time for us to get this and correct it before this country commits another billion of shillings into the policy of building computer laboratories.

I support.

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. M. Kajwang, did you have an intervention?

Sen. M. Kajwang: Madam Temporary Speaker, it is both. However, I can contribute if you allow me.

The Temporary Speaker (Sen. (Prof.) Kamar): Okay.

Sen. M. Kajwang: Thank you, Madam Temporary Speaker. I thank Sen. Wetangula for bringing up this matter. This is not a matter that affects a single county or a House of Parliament; it affects the entire nation.

Madam Temporary Speaker, the Chair has ruled previously that Statements of this nature need to be prosecuted within the Committee. However, this is a kind of Statement that I appeal it be brought to this House, sitting as a Committee of the Whole. This is because it is extremely important and is about resources of colossal amounts. There are people who say that close to Kshs70 billion have been spent or misspent on this particular project.

Madam Temporary Speaker, as opposed to other Members who have stood before us and said that giving laptops to children was an idiotic kind of plan, I still believe that the children of this country need to be introduced to technology but not in the form and style that the Jubilee Government wanted to introduce our children to technology. We could have gone for a hybrid solution where in certain areas we provide tablets and in others, computer laboratories.

Madam Temporary Speaker, finally, I appeal that we find a way of bringing some of the issues that are affecting the education sector in this country to the plenary rather than keeping them at the Committee. This is because in the education sector, when we are not talking about laptops, we will be talking about a curriculum that is on a foul start or text books. The corruption has now moved from schools; it is now in Nairobi. We will be talking about the Ministry of Education making pronouncements on Higher Education Loans Board (HELB) that makes us wonder what they had for breakfast before they made them.

We will be talking about increased fees at the universities while students are threatening to go on strike. We will be talking about issues of D grade students being taken to schools to teach our children to earn A grades. How ridiculous can it get? We will be talking about issues of delocalization, which is a good idea but poorly implemented.

Madam Temporary Speaker, I appeal to the Chairperson of the Committee on Education that over and above the request for answers by Sen. Wetangula, we find another way of making sure that the Senate as a whole, the way we were seized of the issues of managed equipment scheme, we have a session to talk about some of the challenges in the education sector. Even though Early Childhood Development Education (ECDE) and village polytechnics were partially devolved, the residents of this country still come to us to help them in issues to do with infrastructure.

Teachers come to us when they have been delocalized, for example, if taken from Nairobi and sent to Mfangano Island and yet the family is in Nairobi. We are destroying families and professions of certain people. When teachers go for higher courses in respective areas, they are delocalized without giving any due regard.

Therefore, even if it is a one day workshop or conference of the Senate to discuss the challenges in the education sector, I volunteer to attend and ask these questions to the Ministry.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Members, because of the interest on this, I request that each member contributes for two minutes.

Proceed, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. This Statement which has been sought by Sen. Wetangula – and we really appreciate him for bringing it to the House – reads like a nitty gritty of the process that anybody should go through when they are thinking of implementing a project. It contains the sort of the questions that should be asked, and the sort of answers that should be sought in advance.

Madam Temporary Speaker, for a long time, questions were raised about the whole issue of getting children to have laptops. Many of these issues would be avoided if people had an ear to listen; and to know that it was constructive criticism that would have helped us to implement something that was going to be worthwhile. We now have the new thinking; that instead of issuing laptops, we have laboratories and various issues that have not yet been streamlined.

The issue of the implementation policy needs to be explained. This will include the procedure that should be followed; the building which should be given, as other members have said; and the phases, if it is going to be in phases. If so, which counties will start and which will end. All these are very critical issues to consider. There is also the explanation of how the Government will ensure standardization of computer laboratories across the board. This is because this can be an area where you might find some students in some counties having better and more sophisticated laboratories or even better equipment compared to others.

It is also important to think about training of teachers in ICT, because that will be very critical. We also need to think about the levels where it is going to begin; at what levels are we talking about? Are we talking about right from Early Childhood Development Education (ECDE) up to primary level? All this has to be put out very clearly.

Madam Temporary Speaker, this is such an important issue and I am happy that it has come out, because it will allow the Committee on Education to interact with the relevant agencies within the Government Ministries so that they can come up with the answers. I support what Sen. M. Kajwang' has said, that this needs to come as a report---

The Temporary Speaker (Sen. Prof. Kamar): Proceed Sen. Cherargei Samson.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I agree with my colleagues that the issue of the laptop project should be made an issue for the Committee of the Whole. This is because if you look at some of these issues, they are cross cutting. I thank Sen. Wetangula for seeking this Statement. This issue must be relooked at because, apparently, if you do not take care, the education sector is going to the dogs.

Madam Temporary Speaker, many people are saying that Kshs70 billion was spent on this digital learning process. However, when you go to some schools, you wonder whether it is the laptops which were needed, the infrastructure or classrooms. We appreciate that the Government has tried to connect electricity across most of the primary schools in this Republic. However, when you go to some of the schools where this laptop project is being implemented, you wonder whether they the need laptops or infrastructure.

That is why, Madam Temporary Speaker, this issue should be brought before a Committee of the whole House so that we can interrogate it fully. This is an audit query

and we need the entire Senate to look at it. If we do not take care, the education sector – which is facing a lot of challenges, including from delocalization and confusion in the curriculum – will suffer. There are many other issues that we must agree on, in this education sector, especially on the digital learning programme.

It is even shocking that some of the gadgets that were provided for Class One are now being used in weddings. We saw sometimes back, even on social media, that people are using the gadgets to take photos in birthday parties and in some weddings. Therefore, we must agree that this issue must be brought to an end so that we can bring sanity and ensure that even as we introduce the issue of making our children techno savvy, we must do so in a proper and honest way.

Sen. (Dr.) Cheruiyot: Thank you, Madam Temporary Speaker. I support this very important issue that was raised by the Senator for Bungoma. However, I will do my thinking along the lines of Sen. M Kajwang'. I do not think that this was entirely a silly idea, as is being posed by many of our colleagues. While it may have been a brilliant idea to introduce young children to ICT literacy at a very young age, the issue that many Senators are raising is the way in which this programme was introduced and how it has been executed.

Madam Temporary Speaker, I have seen this in my county, where occasionally, when I visited primary schools, the head teachers took me around, showed me gadgets and said; "This is where we dumped those things that you sent us from Nairobi." There is completely no programme, no facilitation, and no curriculum preparedness for the teachers that are supposed to teach the young people.

Therefore, perhaps the most urgent and important thing that we need to do, as a House, when this Committee retreats to consider this issue with an eventual view of presenting it before the entire House is to answer the following questions: "What was the intention? Where are we currently? What went wrong and what if the programme can be salvaged going into the future? This is because I still hold the view that even at that young age, given the way the world is moving, it is important for our children to be computer literate and for them to understand many of the things that we are doing in this day and age.

Therefore, Madam Temporary Speaker, I support the sentiments that are being raised by Sen. Wetangula.

Thank you, Madam Temporary Speaker.

Sen. Mwaruma: Thank you, Madam Temporary Speaker, for this opportunity to support the Statement by Sen. Moses Wetangula. It is a very good Statement because some of us had already argued that this programme was bound to fail from the word go. This is because how do you take laptops to schools, yet they do not have the required preparedness in terms of electricity, safe storage and training of the facilitators? Therefore, some of us saw this happening.

This is one of the failures of the Jubilee Government, so to speak, because most of the programs are implemented without preparedness. Look at the new curriculum; the Minister herself said that they were not ready to implement it. However, people went ahead – I do not know from where – and said, "You must implement the curriculum."

Similarly, look at the Big Four Agenda; you do not know the beginning nor the end; there is still no preparedness. Therefore, we would need a proper audit of the budget, because there was already a budget line of Kshs17 billion for the digital literacy equipment. We need a proper report on that, the same way we need a report on the many projects that are being suggested by our Government, and which are failing.

Madam Temporary Speaker, I beg to support.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for the opportunity to remark about the Statement made by the Senior Counsel, Sen. Wetangula. This is a very good Statement.

Madam Temporary Speaker, there are two tragic issues about this programme. One, the programme has totally failed. This is because there was no curriculum in the first place; there was no infrastructure to ensure that it took off in the second place; but more importantly, its implementation was designed in such a manner that large chunks of this country associated with different opinions were left out.

Madam Temporary Speaker, when the report will come out, it will be noted that there were certain areas in this country that were not designed to benefit from this programme. That level of discrimination and leaving our children behind is not acceptable, because we want a nation where equal opportunity is given to every person who desires to have knowledge of this kind. Knowledge, when it comes to ICT, is important because that is where the world is going. All us, including our children, must have this knowledge. However, the little bit of this programme that has been implemented left out large chunks of this country, particularly areas that are represented by people of my opinion, people of the opinion of Sen. Wetangula, and people who are generally marginalized when it comes to implementing good Government programmes.

Therefore, Madam Temporary Speaker, what I – and I believe my colleagues – expect is that we will also have a report that will indicate the extent to which it was implemented and the areas it covered, because we really want to know why---

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

Finally, the Senate Majority Leader, Sen. Murkomen Onesimus.

The Senate Majority Leader (Sen. Murkomen): Thank you, Madam Temporary Speaker. I second the very important Statement sought by the Senator for Bungoma. First of all, this is a timely discussion about technology and digital literacy. I know that there are many critics who have said that the laptop project, which never succeeded in the intended manner, was a mistake. I do not believe it was a mistake. As they say, a good idea can give way to a better idea.

A good idea can give way to a better one. After the Government realised the infrastructural challenges and the challenges in education that are beyond the provision of the laptops, has come up with a more adaptable programme; that is, computer labs and literacy.

Madam Temporary Speaker, I think that is the right way to go. We must give credit to the Government and its officials for agreeing to fine-tune this programme to fit our situation as a country at the moment. We cannot say, as a nation, that we should not be able to go that direction. Even countries that are less economically endowed than us such as Rwanda are already adopting that process. We also know that already some

schools where it is working, the laptops have been provided; not only the laptops, but the literacy information in the equipment.

I think the attitude that should take us towards looking at this issue is how we should make it succeed. We should not be excited as the Senate to just look for faults but also to suggest ways of making it better. I look forward to a response to this Statement and hope that the Committee will even go further than that to ensure that they engage with the whole Senate and the Cabinet Secretary on the information they are going to provide so that we can see what else we can contribute in our counties. We shall see whether it is even necessary to work with the county governments because they are dealing with pre-primary education and whether that programme can start at the pre-primary level. These are the ideas that we must enrich.

I do not agree with those who say that it failed. For example, I heard Sen. Mutula Kilonzo Jnr., say that most likely it is an audit issue. We all welcome any process of accountability and anything that is required to ensure that we use our resources properly should be supported. However, I do not support the mantra in the country that on every project that involves a lot of money, we just start by saying that it has been looted.

There is a new song in this country that, everything that has lots of money being spent, everybody just thinks about who looted the money, who was the agent and what percentage they looted. We have become a country of pessimism. This is what we read in the newspapers every day. I think even the President should lead this nation on an interrogation of this argument, belief, mentality and mindset that every big project has been looted.

Being the President of the Republic of Kenya, His Excellency Uhuru Kenyatta has a responsibility not just to lead but to inspire people to work as a team and a nation to achieve certain objectives and targets. If we do not do that, we are going to be a country--

The Temporary Speaker (Sen. (Prof.) Kamar): Your time is up but let me add you one more minute.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, my point is that, as a nation, we just have to rise to the occasion and provide leadership on a discussion about Government projects and whether everything is being stolen. What is going on in this nation anyway, if everything is regarded to have been stolen?

I have seen even the discussion about dams and many other projects; the colossal amount of money that is being discussed to have been stolen. Every supplier, business person is supposedly---

Sen. Ochillo-Ayacko: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. Ochillo- Ayacko, you have an intervention.

Sen. Ochillo-Ayacko: Madam Temporary Speaker, is it in order for the good Senate Majority Leader to doubt in this House what the Director of Criminal Investigation (DCI) has told the country? He is claiming that money that was intended for dams has disappeared for work not done, when that particular officer has no opportunity to come here and rebut?

The Temporary Speaker (Sen. (Prof.) Kamar): Point made, Senator. He is expressing his shock on the amounts. He may take a longer time to believe than the way you have taken a shorter time. However, he is expressing shock.

Finalise since you have only 30 seconds.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, in fact, I never even talked about the DCI. We are not supposed to believe in any way that everything he says is the truth because we know that some institutions in this country have been used to kill programmes and projects that were intended for certain parts of the country so that the money can be diverted to other parts of the country.

As a leader, who is living in this country and who knows how systems can be misused to the disadvantage of others, I am entitled to the doubt that I have, about some of the things I have said about this nation.

For example, when we say Kshs21 billion was lost---

The Temporary Speaker (Sen. (Prof.) Kamar): You have 15 seconds though.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, if we say Kshs21 billion has been lost, honestly, where were we sleeping until this kind of money was lost in one year? Those are some of the things we must interrogate as a nation so that we do not become a perpetual nation of pessimism.

Thank you.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, honourable Members. I now direct that the Statement be directed to the Senate Committee on Education. However, because there are a few things that have arisen on audit issues and Information Communication and Technology (ICT), I would encourage the Chair of the Senate Committee on Education to do exactly what the Chair of the Senate Committee on Justice, Legal Affairs and Human Rights did over the weekend where he invited the Members of two other committees as friends of the Committee.

I would, therefore, encourage you to invite them so that you can discuss it conclusively because we do not want to do two reports. It is now directed to the Senate Committee on Education and so be it.

Thank you.

Next Order.

MOTION

CONSIDERATION OF NATIONAL ASSEMBLY AMENDMENTS TO THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL

The Temporary Speaker (Sen. (Prof.) Kamar): Let us have the Senate Majority Leader. We are waiting for you.

The Senate Majority Leader (Sen. Murkomen): Thank you, Madam Temporary Speaker. I beg to move:-

THAT the amendments by the National Assembly to the Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018), be now considered.

Madam Temporary Speaker, this is a straightforward Motion. It is a procedural Motion and we have not reached as stage where we can discuss, debate and vote. This is just to open the door for this House to reconsider the amendments that were put in our own Bill that was sent to the National Assembly. It is a Bill where we are dealing with matters of transition from the time of the end of the term of a governor and the beginning of another term.

We have discussed in detail the procedures and this House passed it. However, when it went to the National Assembly, there are certain amendments that were suggested which will be properly moved at the right time. However, today is just about this House having the opportunity to receive that very important Motion so that we can deliberate at the appropriate time and vote on it.

I request Sen. (Dr.) Zani to Second.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I stand to second that these amendments that came from the National Assembly be considered in the Senate. This is one of the important Bills that came as we were finishing the last Session. It deals with governors, their transition and many other issues that are meant to create harmony as the transition is being made from one county government to another and one governor to another. It ensures, for example, that assets are well documented and things are put into order even in terms of the ceremony.

While the Bill was being moved and discussed on this Floor of the House, there was a lot of clarity that in many of the county governments, especially at the time of transition, there was no guiding principle and, therefore, no uniformity within the various counties about how that transition was done; whether it was done in a public space, whether there was a judge to administer oath and other many issues.

It was a very comprehensive Bill and we are happy, as the Senate, that it went to the National Assembly. I think it would be important for us to consider the amendments that have been done by the National Assembly and then make an informed decision about how to go forward.

Madam Temporary Speaker, I second.

(Question proposed)

Sen. Were: Thank you, Madam Temporary Speaker. I rise to support the Motion; that this House considers the amendments from the National Assembly on The Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018).

You will note that this Bill is supposed to guide us on how governors transit from the last general election to the next one, to avoid confusion and ambiguity within which very many wrongs are done. This Bill will also allow our counties to take care of anything that was in the previous government, so that any audit queries that need to be sorted out by the incoming government are taken care of using the assumption of office committees that were suggested in this Bill.

We welcome the National Assembly amendments. As this Bill goes towards becoming an Act, we shall remember that our role as the Senate is to strengthen and put in order counties and their governments.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, before I put the question, I want to confirm that this matter does not concern counties, and for that reason, we will vote by acclamation.

(Question put and agreed to)

With that, therefore, we will await for the Senate Business Committee to bring it back for finalization.

Next Order!

BILL

Second Reading

THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL (SENATE BILLS NO.27 OF 2018)

(Sen. Halake on 19.02.2019)

(Resumption of debate interrupted on 19.02.2019)

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, this is resumption of debate and the Mover still had 43 minutes to complete.

I, therefore, call upon Sen. Abshiro Halake to take the Floor.

Sen. Halake: Thank you, Madam Temporary Speaker, for allowing me to resume the debate that was interrupted on 19th February, 2019.

As I continue with my moving notes, I would like to remind us that The Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill (Senate Bills No.27 of 2018) seeks to establish a framework for the preservation of human dignity for the promotion, monitoring and enforcement of economic and social rights; to establish mechanisms to monitor and promote adherence by county and national Government to Article 43 of the Constitution, and for connected purposes.

I do not wish to repeat everything that I have said in my previous moving notes, but I would like just to remind us that this Bill gives effect to very a important part of our Constitution, especially Articles 19 and 43 on the Bill of Rights.

The object and purpose of this Act is that it provides a framework for preservation of dignity as set out under Article 19, which is the Bill of Rights, and the Constitution through the realization of economic and social rights under Article 43, as well as the standards that are to be adhered to by the national Government and county governments. It establishes the right mechanisms within which counties and the national Government can start looking at issues around economic, social, political, health, education and other aspects that our citizens need to enjoy within our Constitution.

Madam Temporary Speaker, I alluded to a bit of statistics that our country has with regards to what the social and economic rights are. I would like to revisit that a little bit with regard to some of the issues that we are looking at and why this Bill is very important at this time. The implementation of the rights and fundamental freedom is the duty of the State, and every state organ must do this. Therefore, for the state organs to have a framework within which to do this, it is the incumbent on this House to make sure that this framework exists.

Our Constitution states that the State shall take legislative policy and other measures, including the setting of standards to achieve the progressive realization of the rights guaranteed by our Constitution under Article 43, which is about our citizens attaining the highest attainable standards of health, housing, adequate food of acceptable quality, clean water and education, as well as other social and emergency medical support as appropriate.

Madam Temporary Speaker, I do not wish to go back, but our country is one that has extremes. We have super-rich people and some of the poorest people on earth. The inequality gap is unacceptable. Until such time that we put certain frameworks in place to correct this, we will not be doing justice to our country as legislators. Therefore, this Bill comes in at a time when we need to ensure that we do not leave anybody behind.

I am not saying that the minority and the majority who are poor have access to these things, but while the minority super-rich are accumulating so much wealth, the poor are getting forgotten and becoming poorer. Extreme inequality is getting out of control, and I have said this before. We have an impressive economic growth of perhaps 5.8, and we expect to grow even more. But is that trickling down to the poor and the most vulnerable in our society? We must put in place systems and mechanisms and start giving effect to our Constitution that guarantees decent livelihood; good quality of education, water, food and shelter to our citizens.

I would like to mention that less than 0.1 per cent of the population, which is less than 10,000 people, own more wealth than the bottom 99.9 per cent in our country. The richest 10 per cent in Kenya earned on average between 23 and 25 times more than the poorest 10 per cent.

The number of super-rich in our country is one of the fastest growing around the world, yet the poor are also the fastest growing. This is because our country is very young and the population of unemployed youth is high. Therefore, we have a huge population that has no access to some of the most basic things.

The other day, university students who had been asked by the Ministry of Education to repay the loans given to them by the Higher Education Loans Board (HELB) said something amazing. They said that they cannot afford to repay the loan because they do not have jobs. However, the really disturbing thing that we read and saw was the case of a 22-year-old man who attempted to smuggle his daughter in a bag out of hospital because of extreme poverty. He could not afford to pay the medical bill and he tried to fundraise but he could only raise Kshs3,000 or thereabouts.

This is unacceptable in the 21st Century and in a country that has sustained a growth rate of close to 6 per cent which is one of the most impressive growth rates in the sub-Saharan African in the last few years. We are grateful for the growth but the question

is; is this growth coming to the poorest and are there mechanisms in place to ensure that there is a framework in place for the national Government and county governments?

Devolution is supposed to bring services close to the people and it is supposed to trickle down economic and social benefits to the people, but is it happening? Why is it not happening? Is it because there are no frameworks in place or there are no legislations in place or is it because of corruption? As this House, we need to stand up and be counted by doing our bit which is to make the right legislation, policies and regulation within which nobody is left behind. That can then enable us and the counties to look if the population is getting the right education and other services.

In this country, the rich are able to dodge taxes. That explains the reason as to why we are given an estimation of how much will be collected in taxes but we not only fall short, but we fall short by a big margin. You are then left to wonder if the estimates were based on anything to begin with. That is because the super-rich or whoever the corporates are evade paying taxes and we lose so much money every year yet we talk about the big four agenda. The big four agenda is a strategic direction, and it is very good. It looks into manufacturing, universal health, security, food security and housing which this Bill provides a framework within which they can be provided.

What I find disturbing and what this House should be worried and concerned about is the fact that unequal access to opportunities such as health care and education is rife in our country. Nearly one million primary school going children miss out even as we talk about 100 per cent transition from one level to another. Some of them are under-educated because they are in poor conditions.

A few minutes ago, we were discussing the digital literacy and we said that we have students learning under trees in 2019. The promise of digital literacy is out of reach for all these kids. What do we do about this? We need to make sure that a child in Turkana, Isiolo and Elgeyo-Marakwet have equal chance at school and have access to food and nutrition.

I must commend our country because stunting has been contained though we still have cases of acute malnutrition in pockets of my county; Isiolo. However, this is what we need to look at for us not to have a generation of children who cannot think because they are stunted. We should not have a generation of children who cannot compete on the world stage or at the national stage because they did not have equal opportunities.

I would like to give credit to Sen. Hassan, who conceived this Bill, in the last Parliament. He came up with this Bill and allowed me to build on its strength and it is one of the game changing Bills that we will look at our country not just as one that is giving fish but one that is teaching its population to fish. It is also a country that is providing framework within which everybody is given equal opportunity.

The issue of health is a big agenda under the big four agenda, our Constitution and this Bill, yet we spend a paltry 6 per cent of our Gross Domestic Product (GDP) on it. This is unacceptable in a country where a quarter of the population lacks access to medical care. Previously, I worked with the Global Fund. On that day when the Global Fund and the President's Emergency Plan for AIDS Relief (PEPFAR) pulled away their funding to the health sector, because Trump came into the equation, that is when we realised that this country's healthcare can be paralysed.

These are some of the things this Bill would look to improve with a view of ensuring that our investment in the health sector is improved. When that is done, the promise in our Constitution will be realised because we have a right, as a people, to adequate healthcare. The President has identified universal healthcare as a key strategic pillar under the Big Four Agenda.

Poverty remains a big thing and gender inequality is also prevalent. Economic policy is not supposed to abet extreme inequality like holding back women's economic empowerment. Our rural women work on 96 per cent of our land but they only own 6 per cent of the land. How is it that so much work by so many women only gives them access to so little in terms of economic empowerment? They do not have any collateral even if they are to go to a bank.

They do not have anything in their name because they only own 6 per cent of the land resources in this country yet almost a 100 per cent of rural land is being worked on by women. Why is it that the work of women is not translating to economic resources that they can enjoy? These are some of the inequalities and the things that are leaving a lot of the population behind especially the youth and women, who do a lot of the work but own very little of what they work on.

The time of reform is now and this Bill is part of that reform. It seeks to put in place mechanisms that will make sure that our Constitution is not just a piece of paper but that we work on a daily basis to achieve the promise of a good nation and the promise that is contained in the Bill of Rights.

The Senate Majority Leader seconded this Bill in the First Senate, and I have the privilege of having him second it again when I moved it hence history has come to full cycle. This is an important Bill and we need to pay attention to some of the provisions within it. The principals in it should be the principles of our country where nobody is left behind and nobody or no child in this country is disadvantaged socially, economically or health wise.

Nobody, including Persons with Disabilities (PWDs) or women that I have just talked about, who are more than a half and work on land almost all the time but own nothing, should be disadvantaged. That should be corrected.

Madam Temporary Speaker, this Bill seeks to make sure that counties make strategic plans for the realisation of economic and social rights. Many times, when people do not have plans, they do not know how to go about executing some of these things. Since this Bill provides for that, it will give counties a game plan or a blueprint within which they can execute some of the provisions in our Constitution.

I will not take all the time because I would like to give some time to the seconder, because he has the history of this Bill and also, he believes in the provisions of this Bill regarding counties.

Many things have been said, including miscellaneous provisions, and I do not wish to go into details because they are all written in this Bill. However, I would like to emphasise that this Bill not only provides for high-level strategic directions and constitutional provisions but it also goes down to the nitty-gritty of implementation through strategic planning and monitoring of the plans at the county level.

It also gives the Kenya National Commission on Human Rights (KNCHR) power to coordinate the work and provide oversight. At the same time, it gives very succinct provisions for the Senate to be involved in all this and to see to it that the social and economic rights of our citizens are guaranteed. It should not just be on paper but in what we do on a daily basis as counties, the national Government and oversight bodies to ensure that our people have the dignity and services that they deserve. Not only are we going to implement the social and economic rights but also preserve their dignity.

Madam Temporary Speaker, allow me to just mention a little of the judicial interpretation as regards this Bill. A few years ago, Justice Mumbi stated that—

“The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.” (Justice Mumbi in *William Musembi versus Moi Education Centre (2014)*).

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

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

Madam Temporary Speaker, Justice Mumbi’s statement captures the spirit of this Bill and gives an interpretation that is clear even from the Judiciary, Executive and from our own perspective as legislators, that we need to legislate. That is exactly what we are doing at the moment.

Without belabouring the point, I would like to stop there and ask Sen. Murkomen, the Senate Majority Leader, once again like he did a few years ago, to second this Bill.

The Senate Majority Leader (Sen. Murkomen): Thank you, Madam Temporary Speaker, for this opportunity. I congratulate Sen. Halake, whom I know as a passionate legislator with a passion for human rights, for coming up with this important Bill. This Bill, though initially was in the previous Parliament and was moved by Sen. Hassan Omar, it needed resuscitation of the person of the calibre of Sen. Halake who has done her homework and excellent research. It is sad that this Bill did not sail in Parliament, not because of lack of commitment on the part of the Mover in the previous Parliament, but basically because somebody sat on it in the National Assembly busy searching for something that would give an excuse not to pass it. It is such a beautiful Bill.

This Bill basically seeks to operationalise the Constitution. As we all know, the Constitution is the framework for governing the state. Although our Constitution is one of the most detailed constitutions in Africa, it could not have possibly captured everything that we need in this country. Therefore, Parliament exists to continue making laws to make it possible for this Constitution that we are talking about to be operational and have meaningful application in the lives of the people.

Article 43 of the Constitution states what economic and social rights are. This Bill basically deals with the preservation of human dignity to enforce economic and social rights.

If you read Article 19 of the Constitution, you will realise that it gives the framework or the general provisions on the Bill of Rights and recognises the most

important reason why these rights are necessary in a state. It is important because the reason why the Bill of Rights was supposed to be bolstered in the Constitution of Kenya, 2010, was because for many years since 1963, the conversation about development in the country was about developing this nation as a gift or charity and that the state was helping the citizens to advance in development.

The conversation was always about what we call charity-based kind of development. For many years, whether you voted for the Government or not, it was important to have someone from your community. In fact, if there is something that Kenyans are struggling with – this is a conversation that is going on outside this House and around this country – it is about inclusivity.

The Senate Minority Leader and I had an opportunity to have a debate in one of the local media houses about inclusivity because that has been elusive in this nation. The reason why we fought for Independence was actually our independence struggle. The reason why we united, regardless of the communities, tribes or religion, was because we were united as Kenyans; Blacks, Whites and Indians. All communities held hands together to fight for Independence and it was because we were driven by the desire to have rights.

Initially, it was about rights of workers, and that is why we talk about people like Harry Thuku and Tom Mboya whose basis and foundation for fighting for Independence was to fight for rights of workers through trade unions. We also had Mzee Jomo Kenyatta, Jaramogi Oginga Odinga and all the founding fathers of this nation. The desire was to have a nation where a black person, an indigenous or an African at that point in time was going to have an opportunity to exercise rights of owning property, freedom of expression and freedom to access information and so on. So, what drove us to fight for Independence was right to dignity. That was the reason we wanted to govern ourselves. However, after Independence, we lost the way.

In 2010, we put in place a Constitution that makes it mandatory for the state to perform its obligations to deliver social and economic rights. What was originally known as third generation human rights are aspirations that were necessarily going to be met by the state. Now, they are mandatory obligations in the Constitution. That is why Article 19 of the Constitution talks about the rights and fundamental freedoms.

The Bill of Rights talks about rights for each individual. They are not granted by the state and do not exclude other rights and fundamental freedoms that are not in the Bill of Rights but are recognised or conferred by law, except the extent that they are in consistence with this Chapter and are subject only to the limitation contemplated in the Constitution. That means as agreed by the people of Kenya.

Madam Temporary Speaker, rights and pursuit of rights or what Americans call pursuit of happiness, is the right of every Kenyan. It is the responsibility of the State to ensure that what the Constitution does when it comes to rights, is that the rights of every citizen are unlimited. What is limited is the action of the State in forestalling or limiting those rights. The State is the one that is being regulated not to limit those rights. Otherwise, citizens have those rights as granted by God and are not subject to limitations that are not contemplated by the Constitution.

Madam Temporary Speaker, Article 43 of the Constitution talks about social economic rights. This includes attainable standards of health, accessible and adequate housing, reasonable standards of sanitation, to be free from hunger and to have adequate food of acceptable quality, to clean and save water in adequate quantities, social security and to education.

When the State performs what they do, for instance, Universal Health Care (UHC) as big four agenda, that is an obligation under the Constitution. Why do we then need this law? This law is providing the framework of achieving that right. It is providing the mechanisms that must be applied by national and county governments to ensure that these rights in this Constitution are achieved.

If you read the objectives of this Act in Section (3), you will realize that the framework of the social economic rights is being provided for. Second, the standards that must be adhered by national and county governments to achieve these rights. Three, is to also provide mechanisms for monitoring and evaluating these rights.

Madam Temporary Speaker, some few years ago; that is, over 10 years ago, I was hired to be a consultant in a few non-governmental agencies to deal with matters of rights based approach to development. That is moving from development as a gift to development as a right. This is what this Constitution is talking about. However, the question we are asking ourselves is that, of what standards are we talking about? When the Constitution talks about right to health, food or housing, how do we measure these standards. What are the monitoring and evaluation mechanisms? How do we operationalize and apply the equalization fund?

Madam Temporary Speaker, both levels of governments are expected to abide by Article 10 and 174 of the Constitution in promoting this sustainable development in social right. Again, this law provides that the national Government and county government must respect and fulfill these rights as set out in the Constitution by formulating policies, legislation and strategies that are meant to achieve these rights.

Remember the President addresses the nation every year on the measures that have been put in place by the national Government in achieving rights, including social economic rights. Two, to establish mechanisms that might be considered for necessary enforcement of these rights. Three, availability, accessibility, adaptability and acceptability of service that would facilitate the realization of the economic and social right. Four, is to put in place measures that target marginalized and vulnerable persons so that they can achieve their rights.

In other words, other than just the national Government reporting on measures of achieving these rights, I will persuade the Mover of this Motion that we should also add an obligation to the governor and the county executive to address the county assembly every year, on measures that have been applied to achieve realization of rights at the county level. We need to know that this county dealt with marginalized groups, women, persons with disability in this manner and their reporting obligations are in this way.

That will enable those right holders to have a mechanism for enforcement. When they appear before court, they know that the standards that have been put in place in the counties, the budgeting mechanisms, and issues that have been addressed by the county

have gone to the right to housing, water, education, or health and attainable health standards.

Talking about health, this is one area that our counties have greater obligation. It saddens me, as the Senator for Elgeyo-Marakwet County, and as a Senator in this great Republic, that the state of health in this nation is appalling. Yes, we thank devolution because some of our counties have invested in health. However, the standards are deteriorating. For instance, in my county, the first few years of devolution, the county had put a lot of effort in ensuring that the health facilities have been equipped and improved.

However, at the moment, if you go to Iten County Referral Hospital, the standards are appalling. The workers who are there are demoralised by the payment. In that hospital, you have an accountant, for instance, being on contract and being paid very little amount of money compared to the money that is expected to fund that county hospital.

If you go to Chebiemit Hospital, you will find that in the absence of a room to put equipment and very small issues here and there, the county is unable to fund structures to accommodate the medical leasing equipment distributed by the national Government. If there is an area that I will encourage Senators, as soon as we start our oversight responsibility with the resources, we have to audit clearly the health sector. We must audit how much counties are raising. Most of our counties are raising little amounts of money compared to what they are expected to raise. Why? Since devolution came in, own source revenue has become a cash cow. One of the worst things that is happening in the counties is that, even the money that is raised from the hospitals itself, very little is being given to finance the hospital itself.

Madam Temporary Speaker, if there is a place that I really hope I will come back to this House within this year, to have done a thorough analysis and oversight, is the health department of Elgeyo-Marakwet County. That is a department that we thought it had hope in the first few years of devolution, but the standards are now deteriorating. I have had a conversation with Senators that most of the counties are going back. People talking about, you go to a hospital and the only thing that you find there are painkillers like Panadol, or that prescriptions are given in hospitals, but you have to go and buy medicine from a private entity.

I have an analysis as to why my county health sector is in such a state, only to establish that the leadership of the health department in Elgeyo-Marakwet County is wanting. The people who are running it, have no capacity. To a greater extent, it is because everybody in the county is running around to enrich and benefit themselves to the extent that our county health sector goals are not being achieved. People of such counties or our citizens must have a right to have a conversation with their county government.

In any case, Article 176 of the Constitution talks about county governments being the government of the people, and that the people will have a right to make decisions that affect them. In fact, the Constitution talks about their own local government.

Madam Temporary Speaker, my conversation with citizens of my county tells me that the people are not being involved accountably in the manner in which these health facilities are being run. Information is not trickling down to the people as to the reason why these health facilities are not being managed in the manner that is required.

Therefore, we must make, in this law, provisions that will make it mandatory for the county to report, including the amount of money that is spent on social economic rights.

If you talk about the right to food, we must go to Elgeyo-Marakwet County and find out how much money has been put in the agriculture sector to guarantee this right to food. If we go to the right to health, we must ask how much money has been put into health, including health facilities; how much is being spent and how much is being raised.

Madam Temporary Speaker, that level of accountability will make it possible for us to track that which is--- That is why I am challenging the Mover that we must move a little bit further to provide mechanisms for tracking realization of these rights. That way, citizens can act on it and complain to the oversight institutions. If we are doing monitoring and evaluation, we are not doing it for the sake of political arguments. Sometimes when I talk about issues that affect my county on the Floor of this House, the only response that you get out there is, "How much money did the Senator bring?" yet, we know that the money that we have budgeted for in this House is the only money that is being used out there in the counties because very little is being raised by counties.

Madam Temporary Speaker, there is no money that a governor, a Member of County Assembly (MCA), the President or a Senator takes to any county. The point is that this money is actually being divided in this House, and it is the role of the Senator to fight for those resources as to which county it goes. However, no individual can use money from his pocket and say that they are running the State.

Therefore, some of the most ridiculous questions that you hear sometimes are when someone tells you, "O, we know the Senator fought for roads in this county. He fought so hard to ensure that infrastructure is done in this county. However, that is national Government money; where are his own roads?" As if I was supposed, after fighting for national Government projects to go to my county, to now go ahead to my bank account and withdraw other money to be used in whatever project.

Sometimes the response that is given to us is ridiculous. People talk about, "You know the Senator is raising these issues because he wants to be the Governor." What is the problem with that? If the Senator raises issues for five years and they leave this House like the six colleagues who left this House to become governors, another Senator who comes here will pick from where that Senator left in dealing with the issues. He will continue with the standard and vigour that that Senator pushed those issues, so that when that Senator is a Governor in his county, he must not complain if we are pursuing certain levels of accountability vigorously in the Senate so that social economic rights are achieved.

Madam Temporary Speaker, let me tell our governors that there is no benevolence in serving people. It is not an act of charity, but a duty. You swore by the Constitution and agreed that you want to serve people. You must be willing to be put to task and be held accountable, because the job of being held accountable is provided for in this Constitution and given to the Senate. We will do it with a lot of vigour, and that is why we are proving a legal framework that will enable us to pursue these important rights.

Madam Temporary Speaker, there is something else that we must do as a nation; we cannot oversight the rights of Kenyans from both national and county governments if we are going to, in any way, inhibit the functionality of our national independent

institutions. For us to ensure that rights are achieved in this nation, we must allow the Kenyan National Human Rights Commission (KNHRC) to perform. We must allow the National Gender Commission (NGC) to work. We must allow the Commission of Administrative of Justice (CAJ) to perform its responsibilities independently.

I challenge my colleagues in Government, in Jubilee and in the administration of the Government that it is good as a nation for us to accept institutions to operate independently. It is good because, today, we are in office, but you will not be in those offices tomorrow; and you will need institutions that will guarantee your rights. That is why I challenge the judges and the Judiciary that they must remain above board.

They must not enter into the pockets of county governments or the national Government because Kenyans depend on them to guarantee their rights. If there is anything that a judge in the High Court or any court of this great Republic must do, it is to ensure that the oath of office that they swore is to, first of all, ensure and guarantee that Chapter Four of the Constitution is being preserved.

Madam Temporary Speaker, in my short time in politics, I have learnt that short-term interests will not make this country move forward. We must, therefore, accept to move together as a nation by ensuring that rights are being achieved and guaranteed by independent institutions.

As I second this Bill, there must be a proper reporting mechanism that is going to be provided for in those county strategic plans. This is because yes, citizens will say they want this and that, but do not have the ability to deduce which one is a right and which one is a luxury for them. It is, therefore, important for those who are in governance in counties to do what is right to ensure that this law is observed. This is a beautiful law and I just want us to ensure that we add a few structures for reporting so that we then have a law that is accountable to the people of Kenya in many ways. I congratulate the Mover, and I will work with her on any further suggestions that I have so that, at the Committee Stage, we can add more provisions to this law.

I also request our Members in the National Assembly to work with us to ensure that these rights are achieved. Let us put aside our small fights over supremacy of which House is bigger, which one has come with many laws and which one has come with less laws. What is important is that whosoever will come with any legislation, we must all cooperate to pass it, because it is in the best interest of the people of Kenya.

Madam Temporary Speaker, I beg to second.

(Question proposed)

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I stand to support this Bill and congratulate Sen. Halake for bringing it. I also remember that Sen. Hassan Omar brought this Bill in the Eleventh Parliament, and he was very passionate about it, as would be any Kenyan. This is the basis of life and development. You are not going to talk about anything if you are not going to talk about the basic rights, and these have been enshrined clearly in the Constitution but all over the country.

Madam Temporary Speaker, it is interesting that across the world, various countries have various levels of inequalities. Some developmental theories have tried to

capture the level of inequalities by having, for example, various measures. One of these measures is a Gini co-efficient, which gives a figure of zero to one. The more person or county is closer to one, the more unequal they are; and the more they are closer to zero, the more equality they seem to exhibit.

It is, therefore, difficult to have, for example, a national Gini coefficient. We have it proposed at 0.445 per cent, which gives a level of almost in the middle there; suggesting that when they report, there is still quite a high level of inequalities. However, there is a variation. If you go to Tana River County, for example, it is at 0.62; Kwale County is at 0.6; and Kilifi County is at 0.57. But with other counties like Turkana, for example, probably because they do not have a lot of distribution and variation with lower Gini co-efficient.

However, Madam Temporary Speaker, we do not even have to look at the Gini coefficient to realize that we have a problem. If you look at the various sectors where, for example, inequalities are likely to come about, then there are various levels of inequalities that will be there. For instance, the inequalities of income; and that discrepancy is very high. Any theories – for example, on stratification – will talk about the various stratus right from the days of Karl Marx and Max Weber, who talked about social clarification and stratification. In Karl Marx's terms, these are the bourgeoisie and proletariats, which is what we are talking about in terms of the differences. Yet these people have the same soul, same blood and same aspirations.

Therefore, all countries try to, as much as possible, reduce the inequality gap. Unfortunately, that is easier said than done. For example – and I think Sen. Halake mentioned this – the top 10 per cent of the richest households in Kenya are the ones which control 40 per cent of the country's income. On the other side, the poorest 10 per cent control less than one per cent. Therefore, once again, when you are talking about forces of production and forces of economic production, you are talking about a situation where those who are very poor do not even have the means of production; they do not own the means of production and they can only provide their labour. However, when that labour is given, then the terms for paying for that labour vary from one country to another, and they are quite desperate and low within a Kenyan set up.

Once you talk about inequality and differentiation, then, of course, it will come with other levels of inequalities including life expectancy which will be lower for those who are poor and higher for those who are richer. We will have the national index but we will have a variation. We will have unemployment inequalities, and those in health; HIV/AIDS and education. These are even dire because they contribute to the transition rates that you are going to have.

As I said, this is not only a problem in Kenya; it is, indeed, profound in Kenya where you find that many people go through primary education but when it comes to transition to secondary schools, it dwindles. If you were watching television about two or three days ago, there is a young girl from Narok County who scored 407 points and was called to The Kenya High School and unless well-wishers come to her aid, she will not manage to pursue her dreams because the parents cannot afford.

Madam Temporary Speaker, there are inequalities in water, health and the list goes on and on, to our very own gender inequalities that come in as a result of all that. I

think it is the basis of all these that the framers of the Constitution 2010, were formulating it, they were very clear in Chapter 4 about the Bill of rights. They ensured that this Bill of rights becomes the equalizer. How does it become an equalizer if there is no operational framework? This is what this Bill wants to do; it wants to put the framework at the county and the national levels so that it is possible for indices of baseline study to be done. I have seen it mentioned in this Bill.

How do you begin to improve health, education standards and how do you begin to infuse right through the budget process and the CIDP within the counties to ensure that these inequalities are taken care of? Of course, peripherally, you will find that this has happened. Cosmetically, this can happen, but how do you ensure that this is actually sustained.

This Bill does something good; I think it is in Clause 19 where they set out provisions on delegated legislation, so that a particular mechanism is put into place to ensure that there is a mechanism of management of direct and indirect conditional grants that are appropriated from the Equalization Fund that can be controlled and looked at.

I think in another clause, they are very specific where the report is meant to come to various Houses, including the Senate. This is in Clause 14 where it states that (14): Once every year, not later than 30th September, a report will be put into place by the Commission on Human Rights. They will give this report and it will go through various organs: The Senate, the National Assembly, every county Assembly and the Commission of Revenue Allocation (CRA).

Again, it goes a step further to ensure that there is a direct monitoring and evaluation mechanism by ensuring that a system will also be put into place to get these indices. So, it might not necessarily be the Gini Co-efficient which is more elaborate to calculate, where you should have a Lorenz Curve and a lot of data but at least some sort of data that will be put into place and this will help us.

Madam Temporary Speaker, I find that when we are talking about various counties, it is only that it is done on a very *ad-hoc* basis where you find various counties being given various positions in terms of this is the best and this is the worst performing. I wish there were better social acknowledged audits so that a discussion can begin within the various regional blocs in the various counties so that county X can ask: Why are we being left behind? Why are we, as Lamu County, not doing as well as Tana River County? Our socio-economic, cultural environment is more or less the same. When we begin to do that, then we begin to infuse the importance of what the leaders of those counties have to do.

What needs to be done again, can be infused by what people bring on the table. This Bill again does something else which is very important. It probably does because there was a shortage of the Public Participation Bill that has not been made into an Act and yet it infuses a process of public participation that is clearly stipulated at the various sections; this is at Clause 21. It goes very specifically to talk about what would be expected and this is fantastic for a Bill to do this in carrying out public participation because this, to me, is the biggest milestone in the Constitution.

The framers of the Constitution were Kenyans and hence they knew what would happen. They projected half of these things happening and they put various regulatory mechanisms; the Controller of Budget and the Senate, to ensure that there are controls.

Today, we have woken up to Kshs21 billion in a scam called a dam. Audits have to be made because it is people who are involved, but the strongest tool in this Constitution is public participation and public opinion. That is why, even in the regional framing of this Constitution, the governors were envisaged to be within the counties so that people can come to the governor and say: “We needed this hospital to be in place, what is wrong?” “We needed this school to be in place, what is wrong?” The Governor would have to respond directly to that, and then we would have the Senate as an audit and a controlling mechanism to ensure that this happens.

One way or another, many processes have found a way to distance themselves from public participation, either by putting adverts in the newspapers and, therefore, nobody will turn up for that participation. They are not really going out of the way. This clause is very important. I will not go through it, but it ensures and goes through each stage to ensure that adequate public participation is made.

I think this particular clause should be infused in all the laws and the legislative proposals we are making, up to the time the Public Participation Bill is enforced. Identifying the relevant stakeholders, for example, and representing the relevant sectors who are directly affected in decision making, this must be there on the table, and informing the residents of the respective counties of the intended preparation and so on and so forth. Those are very critical and important in this Bill.

So, again when development of theories started in the 1960s, one of the driving forces was economic development and everybody was trying to ensure that their Gross Domestic Product (GDP) is very high. People forgot that you could have very high GDP, meaning you have big inequalities because the upper classes have more and, hence, they are pushing up GDP, creating more inequality and having more people at the bottom who do not have access to that economic output.

What is very important and key, even as you look at that, other scholars came and said that you could have very high GDP, but you must look at the levels of various indexes which are important in ascertaining these inequalities and these begins to be used as a basis. One of these is a human development index which now looks at the value of the human beings; economic, social, education and health. This is very important, so that GDP does not become the main driving index.

Again, we have disparities here. We have an index that is 0:1 human development index. The closer to one, the better human development index you have. Again, we have a variation and it becomes a problem. I just picked a few figures from the various regions where the former Central Province is placed at 0.6 per cent, which means that they are relatively not doing badly in terms of education, health, *et cetera*.

You cannot compare it to Turkana County, for example, whose HDI is at 0.33 per cent. So, again, it becomes a challenge even for the implementation of this Bill to already infuse in our thought systems that the levels of development within the various counties will be different. I would like to inform Sen. Halake that this might be an area where even as you engage with the Commission--- We are talking about the Equalization Fund

and that fund is probably being phased out. I remember in one argument where people were asking how much from the Equalization Fund they were going to get from their counties and you are told that it is not a good thing to want funds from the Equalization Fund.

You should be moving towards a place where you do not need monies from the Equalization Fund at all but clearly, there is such disparity, that probably the mechanisms for monitoring, evaluation and processing it all will not be the same across the various counties.

Madam Temporary Speaker, to add to this, I would maybe also infuse another important angle. We need to have a strong advisory, oversight committee within these various counties that can go and pick out the specifics. For example, when you go to Turkana County with an HDI of 0.33 per cent and compare it with the former Central Province and put the same mechanisms, you might miss out on certain things.

The best place to start would be the health sector and the crisis that we have just experienced and identify why nurses reported in some counties and not others. How come some counties are a little bit ahead with the implementation of universal healthcare than others?

Madam Temporary Speaker, another important aspect is to talk about the database. This is where we have the base line survey that the Mover of this Bill talked about. Where does that the database begin? Who is where? Where are the pensioners? What is the general level of what the *status quo* might be? Sometimes, when looking at database, it is unfortunate because in Kenya, we rely on archaic database. We also do not use the database for secondary data, real evaluation and analysis over and over again.

An example is the household we are talking about in Turkana. We know that Human Development Index (HDI) in Turkana is 0.33 per cent but what about the specific different households and their various addresses? This is because if a person wants to come up with an immunization platform, to reduce life expectancy or address a specific issue, they need to have the salient data for each of those households.

For example, are their pensioners? Are they getting their social protection money and what exactly is happening there? Therefore, it is a lot of work but it is possible because it is well enshrined within the Bill of Rights, which as I said earlier, the purpose is to recognize and protect the fundamental rights. They belong to each individual and are not granted by the State. They can only be enhanced by the State, as alluded to by Sen. Murkomen earlier on.

The mechanisms are straight forward. The Kenya National Commission on Human Rights (KNCHR) that is established under Section 3 of the Kenyan National Commission is the main body to do this. The Mover of this Bill needs to engage with this Commission which probably, has quite a lot to handle. She should talk to them and let them know that this is coming so that it can apportion various segmentations and deal with the specifics that come with it.

The general objectives and purposes of the Bill are very clear. We have talked about the preservation and establishment of mechanisms which are in place.

Part II deals with economic and social rights. Clause 5 (1) states that:-

“Pursuant to Article 43 (1) and 53 (1) (c) of the Constitution, every person has a right to the highest attainable standards of economic and social rights”.

Unfortunately, this right is on paper and not in actuality. In terms of sensitization, people feel that it is a prayer and a blessing from the State when this right is given to them. If that was not the position, we would have more people demanding for this right and coming out to say this is their right.

We might not have the best public health system but we can have something which is, at least, running to the point that somebody can get malaria tablets and be healed. It is not easy. If you look at countries that are more advanced in terms of healthcare, you will still find the same problems. For example, they have to wait for a longer time for treatment through their National Hospital Insurance Fund (NHIF). These things keep coming up over and over again.

Clause 5(1) (b) (c) (e) states that:-

“Pursuant to Article 43 (1) and 53 (1) (c) of the Constitution, every person has a right to the highest attainable standards of economic and social rights including the right to-

- (b) accessible and adequate housing;
- (c) reasonable standards of sanitation;
- (e) basic nutrition for children;

All these sounds very good but it is a mouthful and a lot of hard work. However, it is not impossible. I pray through this Bill, we will achieve that.

Madam Temporary Speaker, I second.

The Temporary Speaker (Sen. Pareno): I do not know whether you were seconding or supporting. The seconder had already done his bit.

Sen. (Dr.) Zani: Madam Temporary Speaker, I support.

Sen. Farhiya: Thank you, Madam Temporary Speaker, for allowing me to contribute to this Bill. I thank Sen. Halake for bringing it. It is long overdue and what is required to develop this country.

We are missing out on a lot of development because of inequality that is in the country. This is because whenever there is an election, people think about whether their leaders are in the presidential race so that they can benefit. If this legislation did not only exist on paper but on real terms, then everybody will demand for their right as provided by the Constitution of Kenya 2010.

Madam Temporary Speaker, I like almost everything that is in this Bill. However, one of the resounding clauses that that makes me relate to it is Clause 6 (1) (a) which states that:-

“The national Government and county governments shall, to the extent of the constitutional mandate, respect, protect, promote and fulfill rights and fundamental freedoms set out under the Constitution and in particular-

- (a) formulate, implement such policies, legislations, strategies and put in place such mechanisms for the realization of the economic and social rights;

Madam Temporary Speaker, one of the reasons why I sometime fear that this country might not attain the required development is because for it to attain the required

development, it needs hardworking people. There has to be output. The population of the country has to produce and add value to the product, have functioning industries and brains that work. For this country to harness that opportunity, it needs a level playing field. Therefore, we need such legislation to enable that environment to exist.

The inequality that exists in this country is due to corruption. People like shortcuts, for example, during examination period, people steal the exams so that they can take an opportunity that is not theirs. However, when they are caught cheating, they say that they have been targeted. Also, in terms of employment, merit is not taken care of. The people that deserve to get jobs are not given an opportunity to add value through economic analysis and put in place the right strategies so that this economy can take off.

Madam Temporary Speaker, Clause 6 (1) (e) states that:-

“The national Government and county governments shall, to the extent of the constitutional mandate, respect, protect, promote and fulfill rights and fundamental freedoms set out under the Constitution and in particular-

(e) put in place measures that target marginalized and vulnerable persons in ensuring the economic rights in ensuring their economic and social rights are realised and that they have access to goods and services that are of an acceptable standard;

We are talking about 100 per cent transition from primary to secondary schools. One of the schools in my county has 70 children in one classroom and there is a shortage of 28 teachers. Even if there was a brilliant child within that crowd, how will he or she ever get an opportunity to take advantage of the 100 per cent transition to reach his or her potential?

If one teacher is marking 70 scripts, how will he or she turn around to ensure every child benefits? We appreciate the Government’s effort to ensure that there are equal rights in terms of transition in education. However, what kind of quality are we getting? As we speak to this Bill, let us also talk about the quality of those services in terms of access. Kenya does not lack Bills, laws or norms; we have them all on paper. However, where is the commitment to ensure that all the laws are followed to conclusion?

Let me give an example. Right now, in terms of the Procurement and Disposal Act, there is 30 per cent that is set aside for the marginalized groups, which are; women, youth and Persons Living with Disabilities. Who is monitoring that? I will move an amendment to this, so that the Kenya Human Rights Commission sets out a database to ensure that this is also monitored. If a county does not meet that requirement, the subsequent budget is deducted to the level of non-compliance, so that people know that there are consequences of not complying.

Right now, the county government and the Ministries do not comply. Who is monitoring? Even if it is monitored, what is the consequence of not meeting that requirement? There is no legislation on that. Therefore, I will move an amendment to ensure that this is monitored. If the county government or the national Government does not meet this threshold, they will miss their next allocation by the same budget.

Madam Temporary Speaker, the other issue that I feel good about this law is the fact that it mandates the county governments to ensure that there is a strategy put in place and followed. It ensures that it is not just on paper, but there is related action that follows.

This law envisages collaboration between departments in terms of the development of the action plans and implementation. Also, this law envisages that there are sufficient financial and human resources to ensure that this is followed.

This law also requires that there is a gap analysis, because we can never ensure equality if we are not able to analyze those gaps. After analyzing, this should be ensured with an action that corrects that.

Let me also commend this House for having pronounced itself continuously to be the superior House. Let me tell you why. There is what we call ward equalization fund that will be debated in this House. This will ensure that the wards that do not vote for governor do not suffer inequality. The issue of ‘the President is my person,’ is also sometimes replicated in the counties. For example, if there are sub-counties that never voted for the sitting governor – and their ‘person’ failed – it does not mean that they are not entitled to get services from the county government. This House again has pronounced itself by ensuring that there is legislation to address inequalities adequately.

Madam Temporary Speaker, the other issue that I want to commend this legislation for is that sometimes Bills are passed both in the National Assembly and the Senate. However, they do not set a framework in terms of their implementation. However, in this Bill, there is a provision for delegated legislation.

Clause 19 states that:-

“The Cabinet Secretary, in consultation with Cabinet Secretary responsible for finance and the Commission shall, within a period not exceeding twelve months of commencement of this Act, make regulations generally for better carrying out the provisions of this Act.”

It should also provide a framework for collaboration, monitoring by the Commission and national Government and the county government in the implementation of this Act. Therefore, everything that can easily lead to inequalities has been addressed.

Madam Temporary Speaker, I do not know whether people understand the impact of the inequality that is growing, as it was much canvassed by Sen. (Dr.) Zani. These inequalities exist even within counties. Unless inequalities are addressed, the more the gap widens, the more the people will become more disgruntled. That pride of nationhood is killed by inequalities. There will be somebody out there, who has never worked hard as you, but reaps benefits that are undue to them, just because somebody who holds a high position of authority in a parastatal, for example, gives them a job, which they do not even deserve. That person may give them business opportunity instead of the people who were even more deserving because they would have given them better pricing. As a result of that, they become richer. The youth will then look up to this person, who is just a thief, for lack of a better word. That person will continue getting rich, while the hardworking Kenyans do not even get to that level.

(Sen. Halake offered Sen. Farhiya water)

Thank you, Senator.

This is what discourages Kenyans from working hard. To come back to my earlier point, if hardworking Kenyans are not rewarded appropriately, then this country will never develop, or whatever development we achieve, will be destroyed by any other subsequent elections, the same way we experienced during the post-election violence and the likes. It is because people will think that they will never get equal opportunity.

What will happen to the minority, for example, who know that they do not have enough numbers to ever have their own elected as the President of this country? Do they not deserve justice and economic empowerment? There is also the case of women, who are not at the table when the resources are shared. The politics in this country is resource-based and the campaigns need financing, which most women do not have. As a result, they never get an opportunity to be on the table where the cake is shared.

As a result of that, bad legislations are made that do not favour them, yet we have been told, in terms of the rural production, that almost 80 to 100 per cent is done by women, but the economy of that does not trickle to them.

The other reason I like this Bill is because there is a very clear criteria of determining the marginalized areas. It says: "The level of development in the area, standards of service delivery, basic goods necessary, realization of economic and social justice, level of poverty in the county and level of infrastructure in the county and such infrastructure---

Let me give an example that I always like giving. We are going to celebrate 56 years since our Independence, yet there is no tarmac road that links Wajir and Mandera counties to other parts of the country. Actually, before devolution, the people from the northern counties, including Isiolo, Turkana, Wajir and Mandera always used to say that they were going to Kenya whenever they were travelling to Nairobi or other parts of Kenya. This is because the people in those counties were so marginalized that they felt that they were not part of this country.

This was because of the bad decision based on a Sessional Paper that was passed in 1964 that says the resources should go where they are produced. Who says the resources produced in the arid areas are not resources? They also have herds. This country should have taken advantage of the Middle East market to export meat. At that time, people never saw that potential in that part of the country. We could also export meat from the Maasai land and other areas where they rear livestock.

Economic empowerment was only considered if an area was good in agriculture. To me, this was a skewed decision. Even now, most of the resources are going to counties where there is a bigger population.

Madam Temporary Speaker, we miss the fact that those sparsely populated areas have an opportunity to give this economy the boost it needs because they have vast land. If Israel can produce oranges despite the fact that it is a desert, what about a semi-arid land? It can produce more. This is what inequality and injustice in terms of social and economic empowerment can do to counties. People are very poor. I am not saying that all people in big towns are empowered.

Provision of clean water and other basic services is also skewed. Up to now, animals die in northern Kenya, Turkana and Maasailand because of lack of water and pasture. They are vulnerable. If the rain fails, they lose their livelihood all the time.

To me, if this Bill is passed and implemented, this country will be on the right path of growth.

Madam Temporary Speaker, I thank you.

The Temporary Speaker (Sen. Pareno): Let us have, Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker, for this chance. I also make my contribution and share my thoughts about this extremely important Bill. In my opinion, it is one of the best we have ever considered. It is not that there is any Bill brought before this House which is not important, but this speaks to the very core duty of what leadership is all about. Leadership is about making the lives of those that queue on election day and give us a chance to represent them in this House easy.

The true nod in terms of what a leader should aspire to is to guarantee the citizenry the basic rights as they are enshrined in the Constitution and by the operationalization of this Bill.

Madam Temporary Speaker, celebrated human rights activist Martin Luther King Jr. reminded us that our lives begin to end the day we become silent about the things that matter. According to me, social and economic rights rank amongst the very highest needs of any society. Any society that wants to either become great or move on to be better with regards to the things that they do must find a way of guaranteeing its citizens their social and economic rights.

We have a progressive Constitution. That must be said. On many occasions we have been reminded that our Constitution, especially the chapter on the Bill of Rights sits up there with the very best on the planet. Unfortunately, the reality in terms of what happens with the citizenry that are in different parts of this country is quite the opposite.

It is not for lack of good laws that we do not have people living decent lives, getting the best of health care and prospering economically, but lack of implementing our own laws.

You remember about all this hullabaloo that has been going round in the past two days; it is actually an uproar by many of our young people who are looking up to us, as leaders. They said that when you have people gather, pay for very expensive meals and book a huge press conference to launch a strategic plan – like they were doing for the Higher Education Loans Board (HELB) – only to announce to the young people that, “we are coming after you because you have not paid your HELB loans.” This tells you that something is not right at the heart of the people who are supposed to be making some of these decisions.

Therefore, because we are leaders, it is not our duty; it is not in our place to lament or cry foul each and every time we get the Floor in the House of Parliament. However, our duty is to do actual work, like the work that has gone into the thinking of this Bill, where we are now thinking about the ways that we can ensure that we put to task the Executive, because we are the Legislature. It is unfortunate and you cannot blame the citizens of this country. When things do not work, you even do not want to know whether you are speaking to a legislator, a Permanent Secretary or a Managing

Director (MD); all you know is that these are leaders, and leaders are supposed to fix problems.

Therefore, when you get to that point as things are in this country right now, what should be of primary concern to us, as legislators, is how much are we doing our work to the best of our abilities such that we ensure that that which is within our purview, as Members of Parliament, is done? Therefore, it is important that we enact such legislation, with very good proposals being prescribed here in this particular Bill, so that we ensure that the people who sit in these offices know that there is now a law. Perhaps I will be speaking to it later on, because the beauty of the law is that it sets out a framework of what the various levels of Government are supposed to do, but it does not suggest on what will happen to those who do not comply with the recommendations.

Sen. Halake, psychologists have told us that human beings respond to either the carrot or the stick. If they are not responding to the carrot, which is what is being enshrined in our Constitution, then let us put in there a stick so that somebody knows that if I am a head of a county government and I do not ensure that I set in place policies to promote economic and social rights, this is what is likely to happen to me.

The KNHRC should send in the reports that is being prescribed here, that they need to submit to the Houses of Parliament recommendations. Let them indict various heads of Government and parastatals; that the following head of this particular institution is not complying with the thinking and the recommendations that we are putting forward.

Madam Temporary Speaker, for a society to be cohesive and for you to have a thriving society where people honestly believe that they are living a decent and happy life, economic and social rights must be guaranteed. You do not, as a country, just get to the Mohamed Bouazizi moments, where somebody sets himself up ablaze. It is by the slow by slow nature of denial of economic and social rights that somebody gets to a point where they reconcile with their minds and says that it no longer makes sense to live in this particular country.

If you read from history, we are aware that many of the societies that were a decent franchise and are no longer now living peacefully, it is because it started by the denial of economic and social rights. Therefore, this is a very important Bill because we are talking about something which, if we do not guarantee in the next five to ten years; with a bulging youth population that is hugely under the age of 30, a time will come where it will no longer be possible. People will even begin to see and build internal hate against leaders and those who are thriving in society. This is because members of the public will start to believe – and sometimes justifiably so – that those who are thriving, living a good life, are driving big cars can afford to go to private hospitals can only do so because they have stolen from the members of the public.

I know that many of my colleagues have had the opportunity to travel. Sometimes, you feel challenged, as a leader, when you see how cohesive societies, that have guaranteed social and economic rights to its citizens, operate. There was a time when I was out of the country and I paid for a particular service. Due to the confusion that arises with tabulation when you change currency, I gave more than what was necessary to that particular officer, who was representing the company. He was a low-ranking officer, perhaps the level of a messenger in our country.

A few minutes later, I saw somebody looking for me and he told me; ‘excuse me, Sir, you gave me more than enough. Please, take back your money.’ The biggest question in my mind at that time was; ‘how do such societies get to the place where their citizens live honest and decent lives?’

The truth of the matter is that it is not complicated. That is a society where you are assured that you do not need to have all the money in the world to access the basics of life. That is where the problem begins. You will find people stealing without shame if they get to know that the only way to ensure that their sick child gets proper healthcare is by having all the money in the world.

If people get to know that the only way to ensure that their children get the best education is by taking them to private schools, then those people will begin to think that money is the answer to all problems. Many of us, who are here, went through a properly functioning public education system. However, we have killed our public education system such that it is the pride of everyone, including us who are in leadership, to say that; ‘my kid does not attend a public school right from kindergarten all through to primary, secondary and university.’ That is unfortunate because these are the issues that this Bill is speaking about.

This Bill talks about the basic issues that matter to man. They are the things that ensure that you live a descent life and that your children can prosper and live happily in a particular society. If we do not have a way of guaranteeing it and ensuring that the Government, in all its policies, ensures that these values are inculcated in our people and that development is not just sent out on the whims of how a President feels like, then I am sorry to say that things will not be fair for us, as a society.

Therefore, I agree with the general intention of this Bill. We must have a way, a safety net, of ensuring that we have a reporting mechanism for development programmes like equalisation fund where we can be told that you do not have a one size fits all approach to many of the needs that are being faced by a particular segment of society. It does not make sense that despite Kenya being independent for almost 55 years, almost 70 to 80 per cent of its citizens live in mud houses. All they do is to ensure that there is a roof over their head.

Nutrition is a struggle even for adults. According to the Kenya National Bureau of Statistics (KNBS), not more than 10 per cent of our population can afford a decent meal or even get the very basic three meals per day and it becomes worse when you talk about clean and safe water. In developed counties or what is considered as urban counties like Nairobi, Mombasa and Kisumu, you will find that only a small segment of the population is able to access clean and safe drinking water.

Therefore, when this Bill finally becomes law, it will be important that we get to see the status reports based on the parameters that are before us like social security. How many elderly people are not able to sustain themselves under a social security programme? The current social security programme that we have is only accessible to those who are employed who will then retire and access their benefits. What about the bulk of the population; the 70 to 80 per cent, that never had the chance to have a formal employment?

The *Inua Jamii* Programme is now being rolled out by the Government. The truth of the matter is that that money is too little and inconsistent. Perhaps, the elderly get it three or four times a year, if they are lucky. Many of them have been enrolled to that particular programme.

When you look at Paragraph (5) of Part II of this Bill, perhaps there are seven parameters that are listed. A good place to start from would have been a status report. We need to be told how we are doing based on the seven parameters which are education, social security, clean water, nutrition, freedom from hunger, sanitation and housing. I would be interested to know the status report about my county of Kericho before I see the Budget Policy Statement (BPS) or the County Fiscal Strategy (CFS) for the Financial Year 2019/2020.

It is important for me to be equipped with the tools to interrogate that document and see how the county government is responding to the needs of the citizens based on these parameters. If it is a particular ward where water is the biggest problem, how can Members of the County Assembly (MCAs) be sensitised to understand that they can forego certain programmes in their wards to ensure that they first guarantee these particular rights? Therefore, this is a very important Bill because of the exercises that are enlisted here.

On the functions of the Commission, I am disturbed by the fact that the Commission is supposed to initiate, undertake and participate in the collection, production and dissemination of data or information on how these rights are being guaranteed in the various levels of government. It is impossible without the information being sent out there.

The truth of the matter is that many people who vote for us to come to this House do not have the knowledge to the level of understanding that some of these rights are basic to them. That is why you will find a county government licensing an investor to put up a factory and people are happy that their children will have jobs. As they say, a drowning man will clutch at a straw. Nobody goes to check on the environmental impact of the industries.

Some of them are ruining future generations but the only reason why they are kept going is because they assure the county governments or the local communities that they will have a revenue stream. Since they can see two, three, four or five children from the community having been employed in a particular industry, they no longer care about their environmental rights. They do not know that it is their right to enjoy a clean and safe environment. If it is at night, they should sleep comfortably. Some of the industries are noisy such that people cannot sleep at night.

When you go to developed societies, even operations that are as important as an airport where planes land and people have to arrive, it is known that human rights are non-negotiable. That is why Article 19 of our Constitution clearly states that these rights are not given by the state, so that the citizens do not have the delusions of imagining that they are granted by the state.

You will find that in some countries, no planes are allowed to land in an airport that is closely inhabited after 11.00 p.m. or 12.00 p.m. No matter who you are, if the

plane has not touched the ground, you have to look for another alternative. That is how serious people take the issue of economic and social rights.

For us as a country, many of our young people have to live lives that are secondary, as opposed to enjoying decent lives because of poverty. The Commission should collect, disseminate and let people know their rights. They should know that when I get to the village as a Senator, I can let the people that elected me to know what they are guaranteed constitutionally and nobody should treat it like it is a favour to them. If that is the case, we will make a step as a country.

Madam Temporary Speaker, there are many things that I would have wished to say but in the interest of time, I see the warning is up. I appreciate the good work that has gone into the thinking of this particular Bill. My only hope is that, finally, when this Bill is passed and it becomes law, we shall monitor and ensure that these good thoughts that have been put here, change the lives of our people. Otherwise, it will just be another good piece of legislation, like the many that we have passed but there is no way of enforcing them.

With those very many remarks, I support.

The Temporary Speaker (Sen. Pareno): Sen. Lokorio Petronila Were.

Sen. Were: Thank you, Madam Temporary Speaker, for the opportunity to add my voice and support my colleagues who are contributing to this Bill. I would like to thank the Mover of this Bill, Sen. Abshiro Halake, for bringing it up and doing quite a good job. It is a well researched Bill that seeks to breathe life into Articles 43 and 53 of the Constitution which is a requirement for equality.

The Bill is at the core of humanity. The basic values are respecting each other, caring for each other and trying as much as possible to provide a bare minimum towards human dignity.

As I was going through this Bill, there was a part that says that sanitation is one of the issues that gives us dignity as human beings. It reminded me of somewhere in my county where there is a signpost in a village that says that this village is open defecation free. Every time I pass that signpost, I keep wondering, whose function it is to provide sanitation to our people.

This Bill says that the provision of basic social economic rights is both the role of the national Government and the county government. For us to have, for example, latrines in the village so that we do not have open defecation in our villages, that would be a role that is squarely for the county from this Bill.

Therefore, that alone makes this Bill necessary that we do not just have provisions of the Constitution and yet there is no law or way of operationalizing these articles in the Constitution.

This Bill also provides a framework for infrastructure to be put in place both at the county and national levels, in order to ensure that basic social and economic rights are met. Human dignity is paramount for everyone. When people have some form of dignity even at the bare minimum, even social crimes or social evils will reduce. We have increased cases of suicide right now and most of them are because our people, especially men are feeling inadequate. They are feeling like they are missing out something. They

are not meeting their needs or they are not providing as it is required of them as men. Therefore, they seek the easier way out which is suicide.

If you provided the bare minimum provided by the Government, both at the county and at the national level, people will have reason to struggle and reason for hope. This Bill also provides a framework that includes a monitoring and evaluation policy. This is very important so that people do not take issues for granted, because they are not answerable to anyone. There is a monitoring and evaluation policy within this Bill and, therefore, people will be accountable. The county governments will be accountable to the people, and I would like collaboration also between the Kenya National Human Rights Commission (KNHRC) and the Commission on Administrative Justice (CAJ), the office of the *Ombudsman* as the implementation aspects of this Bill.

I would also like to pass an amendment to this Bill that we provide a feedback mechanism for our citizens to report back what is happening through the KNHRC or the Commission on Administrative Justice. That feedback mechanism is important.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Pareno): I do not see Sen. Cherargei.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to adjourn the business of the House. The Senate, therefore, stands adjourned to tomorrow, Wednesday, 27th February, 2019 at 2.30 p.m.

The Senate rose at 6.30 p.m.