

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 3<sup>rd</sup> April, 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 MPEKETONI  
BOYS HIGH SCHOOL, LAMU COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a Communication to make. I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Mpeketoni Boys High School, Lamu County.

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

I thank you.

Kindly proceed, Sen. Loitiptip.

**Sen. Loitiptip:** Mr. Speaker, Sir, I also take this opportunity to welcome visiting students from Mpeketoni Boys National School which happens to be in my home town.

Mr. Speaker, Sir, I take this opportunity to welcome Mpeketoni Boys to this honourable House. This school has been the pride of Lamu County for long. They have shone the academic candle of our great county. I am proud of these boys. The school has a great history. It started from a mixed boarding school. The determination and hard work of the students has seen it being elevated to a Boys National school. To achieve this has not been an easy feat.

Mr. Speaker, Sir, a word of encouragement to the boys: “You can be anything you want, provided you fight hard to be what you want”. I want to challenge these boys today that they should always strive to excel. I stand before this House as an example to these young men that they should always believe in themselves. For me to be who I am today, it not only took effort but self-belief, determination and discipline. To you young men, nothing is impossible to achieve. Set your goals high, manage your time well and, above all, be disciplined. I may seem to emphasize more on discipline but that is because with

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discipline, you will manage your time well, you will be willing to learn from others and then success will be your portion.

Mr Speaker, Sir, I ask you to acknowledge these boys who have travelled close to 1,000 kilometres to be here. That shows the commitment they have and how eager they are to learn. Maybe I should challenge this honourable House to think of ways to help nurture the young men and women who visit the Senate and want to take up leadership positions in future. That would be a great service to this nation. God Bless Kenya, God bless Lamu County.

Thank you.

**Sen. Kinyua:** Asante sana Bw. Spika. Ninaungana nawe kuwakaribisha wanafunzi wa kutoka Lamu na vijana kutoka Kakamega. Awali nilipata fursa ya kuongea nao na kuwapa motisha katika shughuli zao za kuendeleza mambo ya masomo, hasa wale waliotoka upande wa Kakamega kwa kuwa wanasomea kuwa mapadri. Niliwaambia kwamba mimi kama Mkatoliki ninajua kwamba kuna ule ugumu wa kusomea kuwa padri, lakini nikawaambia ya kwamba ni vizuri wajitie moyo na ninahakika kwamba, wakijifunga kibwebwe, wataweza kupasi masomo yao.

Wanafunzi kutoka Lamu nao niliwaambia kwamba ninajua wametoka mbali ndipo waweze kuja hapa kuona vile ambavyo tunajadili mambo hapa Seneti. Niliwaambia kuwa kile ambacho ni cha manufaa kwao ni masomo. Masomo ndio uti wa mgongo wa maendeleo katika nchi yetu ya Kenya. Wao kama vijana ndio---

*(Loud Consultations)*

Bw. Spika ninaomba usaidizi wako. Kuna mashauriano kwa sauti ya juu.

**The Speaker** (Hon. Lusaka): You are protected.

Hiyo ni Kiswahili au Kingereza?

*(Laughter)*

Endelea tafadhali.

**Sen. Kinyua:** Asante sana Bw. Spika kwa kunikinga. Niliongea na vijana hawa na nikawaambia kwamba wakitia bidii katika masomo yao, chochote ambacho wanachotaka kuwa; wahandisi, marubani au mapadri, yote yawezekana. Ninawatakia kila la heri na wapeleke salamu zetu za Seneti kokote watakapoenda.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I also join you in welcoming the school from Mpeketoni, Lamu County. I think that it is the first school to have come to the Senate from Lamu County. It is the first school from Lamu County since the inception of the Senate in 2013. It is monumental and nice to see my colleague, Sen. Anuar Loitiptip here, smartly dressed in his usual manner. We wish you well in all your undertakings.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Ali.

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I also join you in welcoming the team from Lamu County. They are from the northern frontier districts as they used to be called.

They are part of the nomadic communities whether they come from Mpeketoni or not. They are all nomads. I welcome them to the Senate. I know that they have undergone a lot of trouble in the last few years because of Al-Shabaab and other problems. However, they are waking up and this can be seen by them coming all the way to the Senate.

Welcome to the Senate of Kenya. Work hard and ensure that Lamu County becomes united for the benefit of the people of Lamu. We will help you with that. I also welcome the other delegation that is in the Speaker's Gallery. *'Karibuni nyote'*.

**Sen. Seneta:** Mr. Speaker, Sir, on behalf of my colleagues and on my own behalf, I welcome the students from Lamu County and the other students who are seated in the Speaker's Gallery. Just like my other colleagues have said, I would like to encourage them to work hard. We would like to hear of Lamu County in good light rather than insecurity. We would like to hear of good things coming out of Lamu. I know that when they are given a good environment, they can also produce good leaders who can be talked about rather than the insecurity that we have been hearing.

**Sen. Wetangula:** Mr. Speaker, Sir, I join the distinguished Senator for Lamu County, whom I always call my son and, yourself in welcoming the students from Lamu County. Lamu County represents the inequality that is so glaring in this country. Lamu is a county that is supposed to be rich, tranquil and a holiday centre for every Kenyan. However, because of the inadequacies of the Jubilee Government, they have left Lamu County to operations of criminals, thugs, bandits and all manner of negative elements that have made the people of Lamu live very uncomfortable lives.

Mr. Speaker, Sir, we remember the incidents of slaughter of people. When I see students come from such a county to visit the Senate, I feel so elated and happy for the simple reason that those students are going to struggle through education and sit the same examinations with the students in Alliance, Mang'u and other tranquil areas of this country. I pray for them to work hard and succeed in life. I hope that the Government will do everything humanly possible to bring lasting peace and secure Lamu for the people of Lamu to enjoy the life that other people enjoy in this country.

**Sen. Mwaruma:** Mr. Speaker, Sir, thank you for this opportunity to join the rest of my colleagues in welcoming the students from the far-flung County of Lamu who are our neighbours. Being the Senator for Taita Taveta County, Lamu is one of the counties in Taita Taveta, therefore, I would like to encourage them---

*(Loud Consultations)*

Mr. Speaker, Sir, kindly protect me from the loud consultations.

**The Speaker** (Hon. Lusaka): What did you say? That Lamu is in Taita Taveta?

*(Laughter)*

**Sen. Mwaruma:** Mr. Speaker, Sir, I meant that it is part of the former Coast Province or coast region as it is currently known.

I would like to encourage them by saying that education is the only equalizer and that the roots of education could be bitter but the fruits are very sweet. They need to be

very disciplined and remain focused in applying the principle of delayed gratification. When you work very hard and remain focused, there is light at the end of the tunnel, despite the fact that they come from an area that is prone to insecurity. It does not matter the economic background that they come from.

I welcome Mpeketoni Boys High School.

VISITING DELEGATION FROM ST.PETER'S MINOR SEMINARY,  
MUKUMU , KAKAMEGA COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a Communication to make. I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting students and teachers from St. Peter's Minor Seminary, Mukumu, Kakamega County

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

I thank you.

**Sen. (Prof.) Ongeri:** Mr. Speaker, Sir, as a Member of the Committee on Education and having also held the docket of the Minister for Education, I feel extremely delighted to see both the students and teachers from Mpeketoni Boys High School, Lamu County as well as those from St. Peter's Minor Seminary, Mukumu.

As I said earlier in our Policy Statement, the only way we can be able to rationalize and bring normalcy and equality in education is to be able to define the elements that keep those inequalities in our country. I am quite sure that one of the policies that we need to elaborate and work on is the Nomadic Education Policy as it relates to those in the nomadic regions.

Mr. Speaker, Sir, I remember vividly in 2007, 2008 and 2009, I brought out a policy on Nomadic Education. The Ministry should be able to follow through that policy and bring about sanity in our educational system. These are our future leaders and education is an equalizer. It is through education that you can take your rightful place in any fora in this country.

Thank you, Mr. Speaker, Sir.

**Sen. Poghio:** Thank you, Mr. Speaker, Sir. Let me also join you and the Senate in welcoming the students from Kakamega County. Kakamega County is represented in the Senate by a very youthful and active Senator; he is also a leader in the Senate. I would like to wish the students who have come to visit from Mukumu the best. One of the advantages that I have, having been an Assistant Minister for Education myself in the past, is knowing these schools. I am aware that one of the schools that has maintained discipline in this era of problems in secondary schools is this particular school, St. Peter's Minor Seminary, Mukumu.

I want to encourage them to be the example on how a disciplined school performs. This school performs very well in exams and so I want to wish them well. Some of them may proceed to become priests if they go on with their studies. At the moment, since they are in secondary school level, let them be the light and show that we

can have young people go through schools without having the problems of indiscipline that a lot of schools are facing right now. So, I want to encourage them that they can bring the difference that we need in our High Schools.

Thank you, Mr. Speaker, Sir.

**Sen. Wetangula:** Mr. Speaker, Sir, I join you in welcoming the students and teachers from St. Peter's Minor Seminary, Mukumu. This seminary is in the region where I come from and it is the foundation of Catholicism in our region and the seat of our Bishop, Bishop Obanyi. As I welcome the students and their teachers, this is a country where public and private morals are rapidly diminishing. So, when we see students from a seminary where they are being taught to be propagators and custodians of public morality, we feel very happy.

I want to encourage both the students and their teachers that this is the Upper House of the Parliament of Kenya. This is a House where you find, among others, the former long-serving Provincial Commissioner of Western Province, Sen. Yusuf Haji and others. This is a House where debate is guided by reason and not emotion.

So, you have just visited the right place and I hope you will sit here long enough to listen to debates going on here. As you go back being a Seminary, pray for this country so that apart from the work of the DCI and the DPP, for the almighty God to descend on Kenya and strike out all the corrupt elements, to clean up our country.

Thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I want to join you in welcoming these very brilliant Kenyans from Kakamega County. I do so in a separate capacity as the Chairperson of the Caucus of Young Senators, the under-35 and the Senator for Kakamega County happens to belong to that caucus.

On his behalf, I want to welcome these young brilliant Kenyans and to wish them the very best in their life ahead, requesting them to do their best. They should always put their best foot forward and never take "no" for an answer. Let them continue dreaming the impossible and one day they will achieve it.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir. Let me also take this opportunity to congratulate the visiting students from St. Peter's Minor Seminary from Kakamega. I would like to tell them that not everyone receives the calling to be a priest but those in seminaries are also nurtured to become good citizens and leaders. The Senate has also had its share of leadership from the seminary. I was in Pope Paul VI Junior Seminary in Machakos from 1981 to 1984. I did not become a priest but I am a responsible husband. Not all of us receive the calling to be priests; but we are called to be good Christians.

I know a seminary is one of the best areas where good minds are nurtured. Even in the leadership of Parliament since Independence, we have had such good debaters like the late Martin Shikiku who is an ex-seminarian. Yesterday we wound up the confirmation of the new Inspector-General of Police, Mr. Hillary Mutyambai who is also an ex-seminarian of Pope Paul VI Junior Seminary in Machakos. Therefore, this is a trend whereby we are expecting most of you to come and take the top leadership of this

country from doctors, Judges, engineers, teachers and priests. I wish you every bit of success in your studies. Be obedient and above all, pray for yourselves.

May God bless you.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I want to join my colleagues in welcoming the delegation of students from Kakamega. I want to let you know that this is a wonderful institution. The Senate is a nice place to visit and I want to request you to pick two things from the Senate: Here in the Senate we treat one another as family. We may disagree in our perspective of issues, but eventually we remain united and patriotic in the outcome of what we debate.

As a Senate, we would very much be happy if you, as young persons and seminarians were to take over from us and propel this country to better leadership. The future of this country is brighter with you visiting such institutions and do not shy away from politics. Politics is your and our responsibility. As the Senate, we want to encourage you to learn from what we are doing and to be able to do better than what we are doing.

On my behalf and on behalf of Migori County, I welcome you to the Senate.

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

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### THE DECISION OF THE NATIONAL ASSEMBLY ON SENATE AMENDMENTS TO THE KENYA ROADS BILL, 2017

Hon. Senators, I wish to bring to the attention of the Senate that Pursuant to Standing Order No.41 (3) of the Senate, a Message has been received from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate Amendments to the Kenya Roads Bill (National Assembly Bills No.47 of 2017). Pursuant to the Standing Order, I now report the Message:

“Pursuant to the provisions of Standing Order No.41(1) and 149 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

WHEREAS, the amendments to the Kenya Roads Bill (National Assembly Bills No.47 of 2017) were forwarded to the National Assembly for consideration on 21<sup>st</sup> February, 2019, and;

WHEREAS, by a resolution made on 14<sup>th</sup> March, 2019, the National Assembly negated the Motion to consider the said amendments in the Committee of the Whole House;

NOW THEREFORE, in accordance with the provisions of Article 112 of the Constitution and Standing Order No.149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, Article 1(b) of the Constitution provides that if the House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for re-consideration.

Further, Article 112(2)(b) of the Constitution provides that if, after the originating House has reconsidered a Bill referred back to it under Clause 1(b), the House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

Hon. Senators, I would also like to inform the House that I have, vide a Schedule accompanying the message under reference, received Communication that the Speaker of the National Assembly has appointed the following Members to represent the National Assembly in the Mediation Committee that will attempt to develop a version of the said Bill that both Houses will pass:-

- (1) Hon. Aden Duale, EGH, MP
- (2) Hon. Junet Mohammed, MP
- (3) Hon. Cecily Mbarire, MGH, MP
- (4) Hon. David Pkosing, CBS, MP
- (5) Hon. Thomas J. Kajwang' MP

Hon. Senators, I am in the process of appointing Senators to represent the Senate in the Mediation Committee in respect of the Bill in accordance with Article 112(2)(b) of the Constitution and Standing Order No.162 of the Senate and will shortly be communicating the same names. In this respect, I want the Whips to provide these names to the Senate before the end of the day.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### THE DECISION OF THE NATIONAL ASSEMBLY ON SENATE AMENDMENTS TO VARIOUS BILLS

Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order No.41 of the Senate, a Message has been received from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate amendments to the Physical Planning Bill (National Assembly Bill No.34 of 2017); the Irrigation Bill (National Assembly Bill No.46 of 2017) and the Land Value Index Laws (Amendment) Bill, (National Assembly Bill No. 3 of 2018).

Pursuant to the provisions of Standing Order No.41(1) and 149 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

“WHEREAS, the Senate amendments to Physical Planning Bill, (National Assembly No.34 of 2017) and the Land Value Index Laws (Amendment) Bill( National Assembly Bill No.3 of 2018) were forwarded to the National Assembly for consideration on 21<sup>st</sup> February, 2019 while Senate amendments to the Irrigation Bill (National Assembly Bill No.46 of 2017) were forwarded on 5<sup>th</sup> March, 2019, and;

WHEREAS, the National Assembly agreed to part of the Senate’s amendment to the said Bills and rejected part of the said amendments as indicated in the First, Second and Third Schedule accompanying this message;

NOW THEREFORE, in accordance with the provisions of Article 112 of the Constitution and Standing Order No.149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, Article 112 (1)(b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.

Further, Article 112(2)(b) of the Constitution provides that if, after the originating House has reconsidered a Bill referred back to it under Clause 1(b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

Hon Senators, I would like to inform the House that I have, vide a Schedule accompanying the message under reference, received communication that the Speaker of the National Assembly has appointed the following Members to represent the National Assembly in the Mediation Committee that will attempt to develop versions of the said Bills that both Houses will pass.

The Mediation Committee on the Land Value Index Bill Laws (Amendment) Bill, National Assembly Bills No.3 of 2018) and the Physical Planning Bill (National Assembly Bills No. 34 of 2017) will include the following:-

- (1) The Hon. Aden Duale, EGH, MP
- (2) The Hon. John Mbadi, EGH, MP
- (3) The Hon. (Dr.) Rachael Nyamai, MP
- (4) The Hon. Caleb Kositany, MP
- (5) The Hon. Mishi Mboko, MP

The mediation committee on the Irrigation Bill (National Assembly Bills No. 46 of 2017) will include the following:-

- (1) Hon. Aden Ddale, EGH, MP
- (2) Hon. (Dr.) Chris Wamalwa, MP
- (3) Hon. Joseph Wachira Wabinga, MP
- (4) Hon. Daniel Tuitoek Kamuren, MP
- (5) The Hon. Florence Mutua, MP

Hon. Senators, as I communicated in the other Communication, I am in the process of appointing Senators to represent the Senate in the Mediation Committees in respect of the Bills under reference, in accordance with Article 112 (2) (b) of the Constitution and Standing Order No.160 (2) of the Senate and will shortly be communicating the names before closure of the day.

I thank you.

Next Order.

## NOTICES OF MOTION

### ESTABLISHMENT OF NATION-WIDE CENTRES AND SATELLITE CLINICS FOR SICKLE CELL DISEASE

THAT, AWARE THAT Article 43(1)(a) of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

NOTING THAT, Parliament enacted the Health Act (2017) whose objects encompass the need to establish a national health system at the national and county levels, as well as to facilitate, in a progressive and equitable manner, the highest attainable standards of health services;

ACKNOWLEDGING THAT Sickle Cell Disease, a severe hereditary form of anaemia in which a mutated form of haemoglobin distorts the red blood cells into a crescent shape at low oxygen levels, and is prevalent amongst those of African descent, has been acknowledged by World Health Organization (WHO) as a major public health priority which has had devastating effects on populations in many parts of Kenya;

FURTHER ACKNOWLEDGING the lack of comprehensive information and care programs for Sickle Cell Disease is occasioned by the poor public awareness, unavailability of routine health data and nationally recognised treatment guidelines;

CONCERNED by the lack of national screening programmes for Sickle Cell Disease despite the serious health problems it causes, and its contribution to childhood deaths in Kenya;

NOW, THEREFORE, the Senate urges the National and County Governments to establish nation-wide screening at existing medical centres and satellite clinics, and the provision of counselling on the management of sickle cell disease, a lifelong medical condition that has no cure, at the county, sub-county and ward levels.

*(Notice of Motion deferred)*

#### IMPROVING ALLOCATION OF RESEARCH FUNDS TO INSTITUTIONS OF HIGHER LEARNING

AWARE THAT, early childhood education and village polytechnics are a function of the County Governments. Secondary schools, Universities, Tertiary institutions and other institutions of research are a function of the National Government under the Fourth Schedule of the Constitution;

FURTHER AWARE THAT, institutions of higher learning have two basic functions, teaching and conducting research;

CONCERNED THAT, such institutions largely concentrate on “teaching” rather than “research”, as a method of enhancing and imparting the practical application of skills, attitude and knowledge by learners;

NOTING THAT, funds allocated towards community and development oriented academic research are neither sustainable nor adequate;

ACKNOWLEDGING THAT, various national policies on research and innovation are available, but fragmentation in the sector has short-changed the vision of a progressive national research agenda, thereby

emboldening low science culture among the population, low global competitiveness ranking, inadequate funding, and poor linkages between academic research and commercial industry;

NOW THEREFORE, the Senate urgently calls upon the Ministry of Education, Science and Technology:-

(i) To provide a comprehensive report from all institutions of higher learning

on the status and performance of Research & Innovation Programs in the Country;

(ii) Re-assess Sector Policies, and Develop new work-plans towards:-

a. Improving allocation of funds for Academic as well as Sustainable Community Based Research to public institutions of higher learning.

b. Providing subsidies, and frameworks for partnerships between public & private institutions of higher learning to enable collaboration and better organization in research and innovations for community/county development Projects.

*(Notice of Motion deferred)*

#### REPORT ON THE GLOBAL DISABILITY SUMMIT

THAT, this House notes the Report of the Standing Committee on Labour and Social Welfare on the Global Disability Summit held in London, United Kingdom, on 24<sup>th</sup> July, 2018.

*(Notice of Motion deferred)*

#### STATEMENTS

##### RISING CASES OF SUICIDE AND MURDER IN THE COUNTRY

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Milgo is not there. So, the Statement is deferred.

*(Statement deferred)*

Proceed, Sen. (Eng.) Mahamud.

COUNTY GOVERNMENT EXCHEQUER MONTHLY  
RELEASES BY THE CoB

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, pursuant to Standing Order No. 51(1) of the Senate Standing Orders, I wish to make a Statement regarding the County Government Exchequer Monthly Releases by the office of the Controller of Budget (CoB).

On Wednesday, 27<sup>th</sup> March, 2019, during plenary, the matters of Senators receiving the Counties Exchequer Monthly Releases Report was raised.

Mr. Speaker, Sir, I promised to follow up the matter and report to the House as soon as possible. The Public Finance Management Act (2012) Section 17(6) provides that the National Treasury shall, at the beginning of every month and in any event not later than the 15<sup>th</sup> day from the commencement of the month disburse monies to county governments for the expenditure of the whole month.

The Controller of Budget Act, 2016, Section 5 provides the functions of the CoB. Section 5(a) provides that in the performance of his/her functions under Articles 228(4) to 6 and 252 of the Constitution, the CoB shall ensure prudent and efficient use of public funds by authorising withdrawals from the Consolidated Fund, County Revenue Fund and any other public fund which by an Act of Parliament requires approval of the CoB for withdrawal.

Following the resolution of the Senate leadership retreat held on 15<sup>th</sup> to 16<sup>th</sup> February, 2019, the office of the CoB was requested to be sending a copy of the County Government Monthly Exchequer Releases to the respective Senators. The office of the CoB responded indicating that they would be submitting to the Senators accordingly.

Mr. Speaker, Sir, to facilitate the process, I have had consultations with the CoB and she has informed me that she has instructed the County Budget Coordinators under her office to Submit Exchequer Releases Monthly Statements to the office of the respective governors via E-mail.

As Members know, there are 47 county Budget Officers under the CoB in every county. All the Exchequer releases are requisitioned and released through them. So, these are officers who the CoB has instructed.

Mr. Speaker, Sir, I have had contact with the specific Senators and it is, in fact, confirmed that action has already been taken and some Senators, including myself have already started receiving the exchequer releases. I had the releases from the coordinator in my county.

I will appreciate if Members become familiar with the officer in their county because those officers are working for the CoB. Anything dealing with the exchequer releases and matters dealing with budget should be given to the Senators.

Senators should, therefore, follow up with their county offices to access the exchequer releases Statements and appraise themselves accordingly.

I thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I rise pursuant to Standing Order 47 to make a Statement---

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

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

*(Sen. Mutula Kilonzo Jnr. remained standing in his place)*

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. First of all, please, inform Sen. Mutula Kilonzo Jnr. that when someone is on a point of order, he resumes his seat. He cannot just linger around the Dispatch Box.

*(Sen. Mutula Kilonzo Jnr. resumed his Seat)*

On the previous Statement that has been issued by the Chairperson of Committee on Finance and Budget, it was on a question I had raised. I had hoped that you would give me an opportunity to respond. It is very important for the Senate to be able to pronounce itself on the matter of those monthly Exchequer Release Reports from the Controller of Budget.

**The Speaker** (Hon. Lusaka): Order! Sen. Sakaja, nobody had requested to speak on it and that is why I moved on.

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I thank Sen. Mutula Kilonzo Jnr. for refraining from hovering around the Dispatch Box.

I want to thank the Chairperson of the Committee on Finance and Budget. As he promised, he has been very efficient in responding to that issue.

For the sake of the Senators who were not there, we had agreed at the Leadership Retreat of the House-- because the kind of oversight we have been doing is more of historic nature, we insisted every Senator be receiving the monthly Exchequer Release Reports from the Controller of Budget detailing how much money has been released to specific counties and for what purposes. Currently, we have been like pathologists performing postmortems.

The Controller of Budget acceded to our request and asked for individual Senator's email addresses for that purpose. For example, when I go to Mbagathi General Hospital and I am told there is no medicine and yet I can see from the Exchequer release report that money for that purpose was requisitioned and sent on such a date, I will be more effective in my oversight role.

I want to thank the Chairperson of the Committee on Finance and Budget. I want him to commit that on top of us seeking out the County Controller of Budgets, he can at least facilitate that process so that all the Senators can do real time oversight. This is because we are neither historians nor pathologists, but hon. Senators. We need to do it real time.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. This is a very important issue. I must congratulate my Chairperson of the Committee on Finance and Budget for responding to something that is very critical to the operations and work of hon. Senators.

On many occasions, when you have a crafty and cheeky governor, and when you challenge them in a public function why there is no meaningful development in our various counties, they answer that they have not received resources. Unfortunately, the

absence of information provides good ground for misinformation. Therefore, without Senators knowing the exact amount and when it was released to their specific counties, it becomes a great hindrance to our work.

We look forward to a time where in our pigeon holes and even on these tablets, we shall be able to access this information. When I go to Kericho tomorrow, I can confidently ask my governor to tell me what he has done with the money he has received this Financial Year 2018/2019. For example, I would ask him, out of the Kshs7 billion he received, what has he done with it?

Mr. Speaker, Sir, this is how we expect our Committees to work. I look forward to a time where each and every Committee will be responsive to issues that affect the operation of Members.

During our consultations as Members of this House, we felt that the current system being used was not sufficient in terms of holding governors to account. This is because we have to wait for a report from that particular Committee to know the challenges and the issues our counties are facing.

It was a feeling of many of us that if we are to device a better system, where on the particular day when your governor appears before a particular Committee, you take the lead in the process. For instance, my good friend, Sen. Wambua sits in that particular Committee and my governor is giving a defense of things that he has done in Kericho, he will be disadvantaged because he is not conversant with the geographical area. We need to reform on how we can hold individual governor to account, specifically by the Senator of that particular county taking the lead in interrogation.

As it is right now, we are still looking into the operations of 2014/2015 and 2015/2016 financial years. That means that if a governor was elected in 2017, there is a very high likelihood that he will lose his seat in 2022 without coming to this House to answer some audit query bordering on misappropriation of public resources.

In conclusion, Sen. Fatuma Dullo brought up the issue of leased medical equipment. We have heard different stories about it. Are we, as a House, saying that we are unable to resolve this issue? The other day when the Minister came here, we left this House knowing that there were issues to do with that particular programme. Why do we continue to sit here pretty, each and every afternoon without giving a proper justification? That issue needs to be addressed.

With those many remarks, I congratulate the Chairman for the good work.

**Sen. Olekina:** Mr. Speaker, Sir, thank you for this opportunity to congratulate my good friend, the Chairperson of the Committee on Budget and Finance.

I confirm that I have been in touch with the coordinator from the Controller of Budget's office on the ground and he has been able to give me that information. Recently when we travelled to Samburu County, we were told the Controller of Budget had withheld over Kshs6 billion that belongs to the County Government of Samburu. We know the governor now is in trouble. We could not believe that amount was withheld by the Controller of Budget.

This information is very important because it allows us to be able to demystify how budgets are prepared in county governments. There is a huge misconception that so

long as you have overestimated your local revenue collection, then the Controller of Budget owes you that money. This is not the case.

Getting this information for us in a timely manner will help us to be able, not only to carry out our oversight role, but also build the capacity of the MCAs. We are moving in the right direction.

Recently I was impressed by the Auditor General for publishing a list of stalled projects in every county. It is a high time that we looked at these projects and engaged budget coordinators to know what happened. Were these projects budgeted for and were funds released?

When you look at the way the current Government operates, it is mostly on a cash base. However, most counties operate with accrued accounting standards. I would really want to challenge all Senators to compare each county to see whether we can deal with this issue of supplementary budget year in, year out.

Mr. Speaker, Sir, the reason why we have a lot of stalled projects is because there is a huge misconception that so long as you have a big budget which you cannot fund either from your own source, sharable revenue, or even the equalization fund, then somehow you continue having those programmes on paper.

Finally, this information will help us to advise the Controller of Budget on our priorities. Instead of a county overestimating its budget, it must ask itself how much they have been collecting as local revenue collection on a yearly basis. How much has been allocated to these counties so that they can come up with realistic budgets that can help them to stay away from these stalled projects?

**The Speaker** (Hon. Lusaka): Due to time on Statements, I will give two opportunities to Sen. Cherargei and Sen. Ochillo-Ayacko.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I commend the Chairperson of the Committee on Finance, Commerce and Budget for the timely provision of ensuring that we get real time updates on the spending of counties.

We have problems when we try to question the current governors for relying on previously audited accounts that were done by their predecessors. Therefore, I hope that the Controller of Budget will avail the necessary information. It is said that information is power. Therefore, we will have an opportunity to have real time information that will help us to carry out proper oversight.

Mr. Speaker, Sir, I have seen the Presidential Delivery Unit (PDU) led by the county commissioners. As the Senate, we are interested to know which national Government projects are happening in each and every county. For example, I would wish to know the national Government projects that are happening in Nandi County. So, we should divorce the national Government from county government's projects.

Mr. Speaker, Sir, the governors are very mischievous. They take advantage of launching national Government projects. For example, we had a case in Mombasa County during the first term of President Uhuru Kenyatta where the current governor was claiming that he had done a particular project. Therefore, we want to have a proper inventory. The PDU should give us the information on national Government and county government's projects. At the end of the day, this will prevent the governors from hiding

behind such projects and pretending to be the ones who implemented national Government projects.

Mr. Speaker, Sir, the Controller of Budget and the necessary Government agencies should tell us if there are projects that are done by both the county governments and the national Government in terms of costing. This will prevent our people from thinking that a particular project belongs to the county yet it belongs to the national Government and *vice versa*.

Therefore, I thank the Committee and hope that it will share this information across the board and assist our county assemblies and their Members, who are the primary oversight managers in that level. We should give them real time information so that they can be on the lookout and not use historical information to judge the current administration of county governments.

Mr. Speaker, Sir, I support and thank the Committee for the good work. I look forward to real time oversight work.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir, for giving me an opportunity. I thank the Chair of the Committee on Finance, Commerce and Budget, my good friend, Sen. (Eng.) Mahamud, for ensuring that there is flow of information, in good time, on how the exchequer is released to our counties.

Mr. Speaker, Sir, some of us represent counties where the county executive led by the governor, wish that they never had a Senator. So, getting this kind of accurate information from a source other than the Office of the Controller of Budget is a timely decision. It is also a milestone achievement on the part of this Committee.

I request the same Committee to find a way of having similar information shared contemporaneously with the county assemblies who also carry out oversight role. Without this information, they are unable to contribute to our overall oversight activities. Therefore, it is important to share with them the same kind of information that we expect from the Office of the Controller of Budget.

There are also other pieces of information that are important to have. Audit is carried out in our counties. However, we wait for one or two years for these audited accounts to be tabled. That is when we start to interrogate and interact with audit activities. Therefore, it is important for the relevant Committee to equally work with the Office of the Auditor-General so that it is able to share with us their plans and activities. This is because some of us are repository of good information that can be useful for audit.

Otherwise, I conclude by saying that without accurate, timely and adequate information, we as a Senate, are hamstrung and unable to effectively carry out the work that is mandated by the Constitution.

**The Speaker** (Hon. Lusaka): Thank you. The next Statement is by Sen. Mutula Kilonzo Jnr..

#### THE STATUS OF AFFAIRS IN SAMBURU COUNTY

**Sen. Mutula Kilonzo Jnr.:** Thank you Mr. Speaker, Sir. I rise under Standing Order No. 47 to make a Statement on a matter of national concern namely, the status of affairs in Samburu County.

Mr. Speaker, Sir, as the House may be aware, the Governor of Samburu County, Mr. Moses Lenolkulal Kasaine has been under investigation by the Ethics and Anti-Corruption Commission (EACC) over suspected Kshs84 million fraud. He was arrested, charged in court and has been granted an astronomical bail of Kshs100 million in cash.

Mr. Speaker, Sir, the governor was not alone. 13 other senior county officials including his deputy, the county secretary, the chief officers and former chief officers in charge of environment and a host of other chief officers are either to be charged or under active investigation by the EACC.

Mr. Speaker, Sir, should these officials be charged in court, it is expected by law that they will step aside. This case raises a serious concern on the *lacuna* existing in law on the stepping aside of state officers occupying executive positions based on the fact that the governor has been given an order not to step into his county.

The net effect of the afore-going is that there is apprehension over the continuation of delivery of services in the County of Samburu and the risk by *wananchi* to access services which they deserve. This should concern the Senate and the country.

Mr. Speaker, Sir, on behalf of the Senate, I urge, the concerned authorities including the EACC, the Director of Criminal Investigation (DCI), the Director of public Prosecution (DPP) and the courts to handle this matter judiciously and expeditiously, with a view of ensuring that services in Samburu County do not grind to a halt.

More importantly, Mr. Speaker, Sir, the on goings in Samburu County have a potential of precipitating a monumental constitutional crisis. This will fall squarely under the suspension of counties under Article 192 of the Constitution. Therefore, there appears to be possible grounds for instituting a commission of inquiry to investigate whether the suspension of this county in terms of Article 192 will come to pass or has come.

Mr. Speaker, Sir, I urge the Senate to consider this matter seriously so that under Article 96, we can protect this county. Meanwhile, we can also find a formula, because it is available in law, to ensure that Samburu County and its residents do not suffer by virtue of their own senior officials being charged in court in view of the fact that the people in charge of finance have all been charged and cannot, therefore, access or execute any financial functions. Therefore, it is fair to say that the County of Samburu has ground to a halt by virtue of the on goings.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I thank Sen. Mutula Kilonzo Jnr. for raising this important issue of great national concern.

Article 143 of our Constitution only gives immunity to one person from proceedings in court. That is the President of the Republic of Kenya. The only person who cannot be charged in court during the period when he is in office is the President of the Republic of Kenya. We have issues of governors being charged but we need to remember that anybody else can be prosecuted.

Secondly, the fight against corruption is something which is on the minds of Kenyans. Kenyans are frustrated at the rhetoric because it has just become rhetoric where everybody is lamenting. They are just promising to arrest the corrupt individuals and end corruption but we have not seen real action. When a governor or a Cabinet Secretary is charged, majority of Kenyans will be elated because of the frustration.

In our Constitution, we have what we call presumption of innocence before one is found guilty. In this particular case, we cannot define whether somebody is guilty or not but we are glad to see the wheels of justice moving nonetheless. Whether a governor, a Cabinet Secretary or any other person, people should know that they are not above the law. Even the President is not above the law. Once he leaves office, if there was an issue surrounding him about impropriety, he can also be charged. Sen. Mutula Kilonzo Jnr. raised very important questions and there are things we must consider.

Last week, I brought statement seeking to know the constitutional formation of Nairobi City County where we have not had a deputy governor for more than 15 months. There is also no speaker and we have an acting county secretary. Chief Officers (COs) and everybody is acting. You might think Nairobi City County is showbiz of Hollywood because everybody is acting. In fact, we are waiting for their movie so that we see it.

If something happens today, God forbid, and the office of the governor falls vacant in Nairobi City County, there is no deputy to become the governor or the speaker to hold that office for a period of time. So, we might get into the same predicament that Sen. Mutula Kilonzo Jnr. has foreseen.

I would like to urge the Committee on Justice, Legal Affairs and Human Rights to help us fill that gap through proper legislation because our counties must continue operating. No one should imagine that without them as individuals, counties cannot move. Our counties must operate in perpetuity. We must depersonalize our county governments across the country.

I thank Sen. Mutula Kilonzo Jnr. and I hope he will lead the charge in his committee to make sure that we have properly constituted county governments. Even if there is prosecution, nobody should go to court and tell the judge that if they arrested, their county will not move or if a person is not released from custody, the finance department of that county will not work. Counties are bigger than personal properties of any Kenyan.

**Sen. Olekina:** Mr. Speaker, Sir, the crisis in Samburu reminds me of the crisis in Northern Ireland where they have no government but they do have civil servants who are tasked with the daily running of the operations. It is time that we in this House came up with legislation that will ensure that whether or not we politicians are in office, or whether people who are appointed by politicians remain in office, county governments will remain operating.

I support Sen. Mutula Kilonzo Jnr. on the issue of having a lacuna in law in terms of state and public officers stepping aside when they are charged. My biggest concern though is that in the case of Migori County, for instance, although the Governor was charged with murder, when he was freed, he went back and he is now running the county. We now have another situation whereby the governor of Samburu County has been given a cash bail of about Kshs100 million. In the event that that governor pays that money, the case will remain in court but he will go back and continue running the county because nothing stops him from doing so.

There was a case in Nakuru where a court decided that a governor could not fire a County Executive Committee (CEC) member. The situation in Nairobi City County is

very awkward because everybody is in an acting capacity. It is time that we in this House rose to the occasion because we are the defenders of devolution and county governments.

The reason why some people worship governors as if they are everything is because of the power of money. We were in Samburu County and we could see that some people were afraid of talking when the governor was there. However, when the Governor was not there, they gave us more information but the moment the Governor appeared, they retracted everything that they had said. We should take this opportunity and try to come up with legislation that we can expedite.

I think the people who drafted the Constitution failed Kenya because they failed to give this House, which is the defender of counties, original jurisdiction on legislation. We do not have a say even on legislation that affects counties yet we are the defenders of counties. We have to send our legislative proposals to the National Assembly before they can be assented into law. It is about time that we broaden the conversation that we are having. We need to amend the Constitution so that the Senate can have the original jurisdiction on legislation. This is the only way that we can progress.

I also know that this Constitution gives opportunity to the national and county governments to share functions. Where certain functions cannot be delivered by the national Government, with proper arrangements, they can be shared with the county governments. However, with the current situation, I hold a different view and I do not subscribe to the school of thought that a county government can be suspended because that will bring a lot of crises.

I do not believe that whatever is happening right now in Samburu meets the threshold of “exceptional circumstances”. When you read the Constitution, it says that the speaker can take over in the event that there is a vacancy and there is no deputy governor pending an election. I do not think there is anything that stops the current speaker from making sure that every operation in the county continues.

In conclusion, I would like to urge the investigating agencies and also plead with the courts to expedite this. I am a firm believer that by the time such a case is taken to court, a lot of time should not be wasted on it. I urge the courts and investigating agencies such as the Director of Public Prosecutions (DPP) to run this prosecution quickly so that the people of Samburu County get justice.

I thank you.

**The Speaker** (Hon. Lusaka): I can see there is a lot of interest. So, I will limit each Senator to three minutes.

**Sen. Linturi:** Mr. Speaker, Sir, I join my colleagues in thanking Sen. Mutula Kilonzo Jnr. for raising this matter. Whatever happened is a matter of serious concern. This Senate should be seized of this matter, so that we come up with ideas on legislative proposals to address such a thing in the event that it occurs in the future. Nobody would have expected a situation where a governor, the deputy governor, the county secretary and all the other senior officers would face charges and leave a county without an executive.

I do not want to challenge the decision by the learned magistrate when he decided on the kind of bond terms. However, you do not need to be a professor of law to question some of the decisions that are being made. I sometimes ask myself whether people

complain about certain judgments or rulings. Since we have a judicial mechanism, I expect them to challenge such because some people seem not to be interpreting the law as required. The purpose of bail is to enable the system establish as and when one is required to attend court. Even if you were a billionaire, Kshs100 million is not little money that can you just rush to court.

Secondly, Mr. Speaker, Sir, if I have to comment on what the distinguished super Senator for Nairobi City County, Sen. Sakaja, has raised; I have never seen a situation of such impunity exhibited by somebody that the people of Nairobi City County have given the opportunity to lead them. Staying for one-and-a-half years without a deputy--- This is not a private kiosk where you think you will do things the way you want.

There is theft left, right and centre in this county. I have seen the audit report of Nairobi City County. From where I sit, let me tell you that I saw a company associated with me having been given work to the tune of Kshs98 million. The work is said to have been stalled but paid for and yet I had not applied for that kind of a job.

**Hon. Senators:** Shame!

**Sen. Linturi:** The report that has come from the Auditor-General is a disclaimer opinion. What is happening around must concern everyone, and we must rise to the occasion and say no to such impunity---

*(Sen. Linturi's microphone went off)*

**The Speaker** (Hon. Lusaka): As I call the next speaker, please note the following: As you comment on Samburu County, note that the matter is in court so that we also do not start discussing active matters that are already in court. Let us confine ourselves to what was raised in the Statement.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I thank Sen. Mutula Kilonzo Jnr. for raising this important issue regarding Samburu County.

It is a concern to all of us that almost the entire executive will be in for it. We know how long these cases take. It will take so long before these cases are concluded. It is important that the Senate explores alternatives so that the people of Samburu County continue to receive services, including development. I do not know what solution the Senate will give but we need an alternative so that the people do not suffer because of a mistake or looting by the very people that were entrusted with the funds for the people of Samburu County.

I personally felt very sad, as a Maasai, to see some Maasai elders on one hand going to curse the Governor. The next day, another group went to bless him, to try and traditionally reverse a curse. I just wondered. These are people who are deprived and do not have any development like roads and water.

Mr. Speaker, Sir, I have been to Samburu County, and it is just like many of our counties where there are no hospitals or educational institutions. It is even worse than Kajiado and Narok counties and here they are, going to purportedly try to bless somebody who has been accused. We say "accused" because as of now, he is just an accused person and we presume that he is innocent until proven guilty. However, when such an accusation is made against so many of you, there is some truth in it. We are

waiting to see how it will go but, to me, it was a sad day to see people blessing somebody who has been accused of perpetrating the same bad things to the community that he is supposed to have protected.

Slowly, I think we should read the mood in this country. The mood is that all these looters should be behind bars. The mood is that whoever you are, you cannot steal from the people. However, I want to make a plea to our courts; that they cannot release Gov. Obado on a very small bond and then ask Gov. Kasaine to raise a bond Kshs150 million before he is released. Why do we have these kinds of disparities when it comes to bond terms? Surely, can we raise it so high that anybody who will loot in this county shall feel it? When you make it so low, then it also beats the purpose. When you also make it too high, then it also looks like there is something behind these decisions.

Mr. Speaker, Sir, my plea is that if we could have a way to go about it, let us save Samburu County from suffering ---

*(Sen. Pareno's microphone went off)*

**Sen. Poghiso:** Thank you, Mr. Speaker, Sir. I congratulate Sen. Mutula Kilonzo Jnr. for bringing this Statement and also for being careful enough not to get to matters *sub judice*.

I think that we appreciate the situation in Samburu County. If we see this, this will be a common trend. I think that Samburu County will not be the only county, neither is Nairobi City County going to be the only one. This House should be ready to brace itself for more counties facing the same situation. This is because these things are done in groups and the whole administration decides to run the county the way they want to run.

As a Senate, our concern about counties is our responsibility. There is a chance that because of the nature, poverty levels, hunger and the emergency situation in Samburu County, it is important that the operations of the county do not grind to a halt. I hope that as this Statement goes to a particular Committee of the House to be thought through properly, we should begin to think about these situations. Think about the Nairobi City County situation and come up with far reaching decisions and make sure that no governor can operate by himself without the necessary support. Also, the fact that the situation in Samburu County requires reorganization of the county, what are the provisions in the Constitution and the law?

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

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

Mr. Deputy Speaker, Sir, these are the things that we need to worry about. I only worry about the people of Samburu County who have already been subjected to suffering by this looting. However, they are now facing a situation where disbursement of funds and even just the daily governance of issues will not operate.

This is the turning point for us to not only think outside the box, but to also think constitutionally how we will make sure that governors run counties professionally. We

must also – as I said – brace ourselves for more counties because this seems to be the trend in all counties. Lifestyle audits can tell you even just by looking that this is the trend in all counties and we must brace ourselves to deal with this matter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., approach the Chair, please.

*(Sen. Mutula Kilonzo Jnr. approached the Chair)*

Very well. Thank you, Senators. We will leave it at that on this Statement because we have three other Statements and less than 10 minutes to exhaust the Statement Hour. I, therefore, only give the Senator for Samburu County two minutes to say something before I give further directions.

**Sen. (Dr.) Lelegwe:** Thank you, Mr. Deputy Speaker Sir, for this opportunity. I also thank Sen. Mutula Kilonzo Jnr. for bringing this Statement so that, as the Senate, we discuss this matter that affects Samburu County and that will generally affect other counties in future.

As per the tradition and practices of the Senate, I take a non-partisan position in this matter. However, I trust the Senate will take up this matter and ensure that service delivery to the people of Samburu County is not affected. However, I note that it is important that the objective of this Statement is not to invoke Article 192 of the Constitution but rather, to make sure that the Samburu County under this crisis delivers services to her people.

Mr. Deputy Speaker, Sir, that is my contribution to this Statement. Thank you.

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

My directions on that Statement are as follows. One, this is a Statement under Standing Order No. 47(1) hence it is not mandatory for committal. Two, as per yesterday, this matter is still active in court. Therefore, we should not be seen as if we want to pre-empt the court process. We have always respected the judicial processes and the actions that we have taken on matters which are in court, have been justifiable under the law and procedure that guides us.

Notwithstanding what I have said, I am of the opinion that there is a difference between the charges that the Governor of Samburu County is facing and the deep issues of law, procedure and precedence setting in terms of what happens when a governor is charged while in office. Do the provisions on stepping aside apply and if not, why is it so? Thirdly, what are the implications of the directives that have been given by the court with regard to the Governor being able to discharge his responsibilities vis a vis service delivery in that County now that the Governor has been charged with his deputy and almost half of his executive.

For that reason, I direct the Committee on Justice, Legal Affairs and Human Rights, while respecting the principal of *sub judice*, to navigate the legal issues and bring a report that can guide this House in future. The Committee should tell us if they think that there is need to look at legal amendments that can give further clarification so as to avoid creating a legal and constitutional crisis in counties when a governor is charged while in office. The Chairperson of the Committee on Justice, Legal Affairs and Human

Rights should navigate the legal issues and avoid the merits of the charges because that would be contrary to the rule on *sub judice*. It is so directed.

Very well. We have overshot our time. I see that there are other requests for Statements but I do not think that we will handle all of them. I will give Sen. Sakaja the shortest time possible to issue his statement and I will not allow observations because of what I have already said.

THE AUDIT QUERIES RAISED BY THE OAG  
ON NAIROBI CITY COUNTY GOVERNMENT

**Sen. Sakaja:** Thank you Mr. Deputy Speaker, Sir, for your indulgence. I rise to make a Statement on the audit queries raised by the office of the Auditor General on the Nairobi City County Government.

These are audit queries raised for the financial year 2017/2018. The Report of the Auditor General released a few days ago has revealed that the Nairobi City County government has not maintained financial prudence or fiscal discipline as stipulated in Article 201 of the Constitution on the principles of public finance.

It is sad to note that the revenue collection in Nairobi City County has dropped by 7.5 per cent as compared to previous years and this is according to the official annual report released by the Office of the Controller of Budget for the financial year 2017/2018.

The Auditor's Report questions why the County Government has only declared revenue collected via Jambo pay platform of Kshs8.3 billion but failed to disclose about the revenue collected through their 26 other Mpesa paybill numbers.

*(Sen. Kihika consulted Sen. Mutula Kilonzo Jnr.)*

I wish that Sen. Kihika would listen because I know that her County has the same problem or this is also a problem that is affecting other counties. The question many Nairobi residents are asking is why and where is the money going? The only revenue declared is that of Jambo pay of Kshs8.3 billion yet there are 26 other Mpesa paybills whose revenue was not declared.

It is important to note that only Kshs1.4 billion out of a budget of Kshs33.6 billion that was passed by the County Assembly was used on development activities. The rest was used on recurrent expenditure. I wish that the Committee on County Public Accounts and Investment can look at the famous confidential budget account of Kshs96 million allocated to the office of the Governor. This is completely unfair to the residents of Nairobi who get the highest allocation from the national Government and as a Senate, we have given them more than Kshs15 billion in the last division of revenue and allocation of revenue.

When a county government has missing payment vouchers of expenditure totaling to Kshs2.4 billion, we are in trouble. When a county government has more than Kshs865 million payment vouchers not supported by documentation, we are in trouble. When suppliers have been paid in cash to the tune of more than Kshs300 million and over Kshs209million unaccounted for cash withdrawals for unspecified payments, then we can

only conclude that there is massive rot within the county and Nairobi residents are not getting value for their money.

The entire Auditor's Report has revealed blatant contravention of the Public Finance Management (County Government) Regulations, 2015, and there are numerous queries that point at possible huge losses of public money which has negatively impacted on service delivery to the residents of Nairobi City County. We are fortunate that the national Government, through the Nairobi Regeneration Team, has supported the roads that we are seeing in Eastlands and in many parts of the city. We are grateful for that relationship. However, we need to see more being done by the county government.

I, therefore, urge that the Sessional Committee on County Public Accounts and Investments gets hold of these reports. It should not bring us the county report for 2014/2015 or 2015/2016; they now have the 2017/2018 audit reports of Nairobi. They should go to that one and act accordingly by getting satisfactory explanations to the raised queries. The county government must be held accountable and resources belonging to the residents of Nairobi be safeguarded because people in Nairobi deserve proper service delivery.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you Sen. Sakaja. Is there any Senator who has a quick comment? Could we hear from Sen. Seneta?

*(Sen. Seneta spoke off record)*

Not on that one.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. The issues that have been raised by Sen. Sakaja are very serious. This is a violation of the Public Finance Management (PFM) Act. I want to assure Sen. Sakaja that the Committee that I sit in will take up this matter and we will invite the Governor of Nairobi City County to appear before us tentatively around 16<sup>th</sup> or 17<sup>th</sup> May, 2019.

This is a very serious matter because the method used by the county governments to identify or give authority to people to collect money on their behalf is normally flawed and it violates the PFM Act. The PFM Act states that all money collected by these agencies should be sent directly to the County Revenue Account. In Nairobi City County, you hear that the county has only declared the money that was collected via Jambo pay platform and failed to disclose the revenue collected through their 26 other Mpesa pay bill numbers. This is a serious crisis.

This is a matter that we have to take seriously. I hope that the Senators who are hearing this can look at their own counties so as to see if certain traits are being dealt with.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Could we hear from Sen. Chebeni?

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, I did not have my card, so we agree that---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You know what to do when you do not have your card.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Did you want to make an observation?

**Sen. Nyamunga:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have no more than two minutes.

**Sen. Nyamunga:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity just to make a brief comment on the Statement by Sen. Sakaja. This is not a matter of Nairobi City County alone; it is one that covers and affects most of our counties. We can see what has happened to Samburu, and many others should actually follow.

Therefore, Mr. Deputy Speaker, Sir, when we talk of current reports coming from the Auditor-General or the Controller of Budget, it is very important that it should be looked at as matter of urgency. This is because I believe it is affecting so many counties, where we have had a lot of losses affecting most of them.

Mr. Deputy Speaker, Sir, this is a very timely Statement which should be acted upon appropriately. We are looking forward to getting the current reports because we do want to be addressing history. We have been addressing the Auditor-General's Reports for the Financial Year 2013/ 2014, but we at least now have the current reports. This should help us to help our counties instead of leaving them to sink.

Thank you, Mr. Deputy Speaker, Sir.

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

Proceed, Sen. Cherargei.

Sen. Ochillo- Ayacko, approach the Chair.

*(Sen. Ochillo-Ayacko approached the Chair)*

## STATEMENT

### DANGERS OF USING ROUNDUP HERBICIDE

**Sen. Cherargei:** I rise, pursuant to Standing Order No. 48 to seek a Statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries. In the Statement, the Chairperson should:-

(1) State whether he is aware that farmers in Kenya commonly use Roundup Herbicide in weeding their farms, yet it contains glyphosate, which is an active chemical ingredient which causes cancer.

(2) Explain whether the Ministry, through the Pest Control Products Board, has done any research on the herbicide to caution farmers on the danger they are exposing themselves to with the continued use of the herbicide.

(3) State whether preventive measures have been set to enable farmers have protective gear, since the World Health Organisation (WHO), on their latest research, indicates that the cancer of the windpipe is the top killer in Kenya, yet Roundup Herbicide contains glyphosate, which is carcinogenic to human beings.

(4) State what the Ministry of Agriculture, Livestock and Fisheries in collaboration with the Ministry of Health will do to ensure minimum or no cause of alarm or panic from the Kenyan farmers as a result of the use of this harmful herbicide that has been proven to cause cancer by other countries such as the United States Of America (USA).

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are there any burning observations? Proceed, Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Deputy Speaker, Sir. It is a dangerous situation when we are carelessly using any herbicides, whether in the agricultural farm inputs or in the households. This is particularly so when these chemicals are at the whims of the sales people of the respective companies. Indeed, if you have looked at the records and health statistics, it is quite clear that cancer is on the rise; whether we are talking of cancer of the throat, colon, Gastro-Intestinal Tract (GIT), liver or pancreas. Many of our people are succumbing to these cancers and, obviously, it is as a result of the carcinogenic agents that are in some of these drugs or herbicides, more so the Roundup Herbicide, which has been quoted.

Therefore, Mr. Deputy Speaker, Sir, we now need to look at it more closely or clearly. The Ministry must now come up with a new catalogue of the insecticides which are not harmful or injurious to human use. I know that they will come up with excuses, saying that we must wear protective gear and A, B, C, or D, so as to come out of that thing. However, we can no longer continue exposing our people through these harmful agents, which can also be absorbed through the nostrils, gums or mucous membrane and also through the skin itself. We are, therefore, exposed.

This also includes the hazardous environment, where we are inhaling all sort of chemicals out of the very bad and awkward environment that we have. More so, when we have this very hot sunshine, which interacts with some of the plastics and elements to create new elements and products which are harmful to the body.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Ongeru. Proceed, Senator Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. This is a very serious issue that the Senator for Nandi is raising.

Mr. Deputy Speaker, Sir, it will be of great interest to us, being representatives of our people, considering that many of them either do not have the capacity or resources to file petitions. Therefore, this House should, for once, address this issue, because it is an issue of concern. There has been a lot of information and misinformation on this issue. In these days of fake news, only a proper confirmation from the Ministry will help us in understanding the true position of the Government on this issue.

Mr. Deputy Speaker, Sir, I come from a county that has multi-national tea estates. On many occasions, we find the tea farms doing aerial spraying in a way that leaves many of our residents in a very bad state. This is because the wind does not choose which direction to blow when they are carrying out these exercises. I have heard the residents complaining that every time the multi-national tea estates carry out this exercise, many of

our children either catch a cold or many other things. What we do not know is what further damages is caused to their health arising out of this situation.

Therefore, Mr. Deputy Speaker, Sir, I request that you direct the Committee to respond to this issue quickly. It should, first, take time to listen to the response from the Ministry and also the victims. They should take their statements so that when they eventually bring a report to this House, we shall be able to make a firm decision. This report should enable us to even issue very strong sanctions to those who will be found culpable, be it the National Environmental Management Authority (NEMA) or the Ministry of Health officials who have not guided this country appropriately.

Thank you, Mr. Deputy Speaker, Sir.

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

Sen. Cherargei, the Senate Majority and Minority Whips, approach the Chair.

*(Sen. Cherargei approached the Chair)*

Very well! This is the end of Statement. I make the following directive concerning the Statement by Sen. Cherargei---

What is it Sen. Dullo?

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I do not know whether you have forgotten the Statement on the Business of the Week Commencing Tuesday, 9<sup>th</sup> April, 2019, by the Senate Majority Leader?

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You do not know whether I have forgotten? Why do you not just say that you have forgotten? The statement on the business of the week is supposed to come tomorrow. However, tomorrow being a joint sitting, we shall allow the Deputy Senate Majority Leader to issue the Statement on the business of next week. Before that, the matter on the use of Roundup is a grave matter touching on public health. Herbicides and pesticides are widely used in agriculture which is a devolved function. Therefore, I direct that the Committee on Agriculture, Livestock and Fisheries engages Sen. Cherargei on this matter with regard to the issues raised by that Statement and file a report in two weeks time. It is so ordered.

I request the Senate Majority and Minority Whips to approach the Chair.

Proceed, Deputy Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 9<sup>TH</sup> APRIL, 2019

**Sen. Dullo:** Thank you Mr. Deputy Speaker, Sir. Pursuant to Standing Order 52(1), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 9<sup>th</sup> April, 2019.

As you are aware, pursuant to Article 132 (1) (b) of the Constitution of Kenya, the President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces is scheduled to address a joint sitting of Parliament tomorrow, Thursday, 4<sup>th</sup>

April, 2019 at 2:30 p.m. in the National Assembly Chamber. In this regard, the Senate Business Committee (SBC) has not scheduled regular business of the Senate.

On Tuesday, 9<sup>th</sup> April, 2019, SBC will meet to schedule the business of the Senate for the week. Subject to further directions by the SBC, the Senate will, on Tuesday, 9<sup>th</sup> April, 2019, consider Bills scheduled for Second Reading and those at the Committee of the Whole. The Senate will also continue with consideration of business that will not be concluded in today's Order Paper.

On Wednesday, 10<sup>th</sup> and Thursday, 11<sup>th</sup> April, 2019, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Hon. Senators, There are 14 Bills due for Second Reading and 20 Bills at the Committee of the Whole Stage. Additionally, there are a number of Petitions which are still pending before the Standing Committees. I urge respective Movers of Bills at Second Reading, chairpersons of Committees and Senators with amendments to Bills at the Committee of the Whole, to avail themselves when the Bills are scheduled on the Order Paper.

Finally, pursuant to Standing Order 51(1)(b), Committee chairpersons are required, at least once in every three months, on such day as shall be assigned by the, SBC and at any other time if so required by the Speaker, make a statement relating to the activities of the Committee. The reports under this Standing Order are due and the schedule of reporting by Committee chairpersons will be availed in due course to facilitate the same.

Mr. Speaker, Sir, I thank you and hereby lay the Statement on the Table of the Senate.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Deputy Senate Majority Leader.

I have not once but twice asked the Whips to approach the Chair and they have failed to do so. Therefore, I make the following directives. We will reorganize the Order Paper to accommodate the numbers that we have. Therefore, we will defer Order Nos. 8,9,10,11,12,13,14,15,16,17,18,19 and 20 in today's Order Paper to next week. These items are deferred for various reasons including the reason why I had asked the Whips to approach the Chair. The approach is now overtaken by events.

## **BILL**

### *Second Reading*

#### THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 31 OF 2018)

*(Bill deferred)*

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**MOTION****ADOPTION OF REPORT ON THE COUNTY GOVERNMENTS'  
INFRASTRUCTURE PROJECTS**

THAT, this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments' infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers' residences, laid on the Table of the Senate on Thursday, 29th November, 2018.

*(Motion deferred)*

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

*(Committee of the Whole deferred)*

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

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE****THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL  
(SENATE BILLS NO. 22 OF 2018)**

*(Committee of the Whole deferred)*

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

*(Committee of the Whole deferred)*

**MOTION**

CONSIDERATION OF NATIONAL ASSEMBLY AMENDMENTS TO  
THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL

THAT pursuant to Standing Order 159, the amendments by the  
National Assembly to the County Governments (Amendment) (No.2) Bill  
(Senate Bills No. 7 of 2017) be now considered.

*(Motion deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO. 11 OF 2017)

*Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND  
DESIGNATED STATE OFFICERS) (AMENDMENT) BILL  
(SENATE BILLS NO. 2 OF 2018)

*Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

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

*Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

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

*Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL

(SENATE BILLS NO. 19 OF 2018)

*Committee of the Whole deferred)*

### COMMITTEE OF THE WHOLE

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

*Committee of the Whole deferred)*

Next Order.

### BILL

*Second Reading*

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL  
(SENATE BILLS NO.28 OF 2018)

*(Sen. Olekina on 27.03.2019)*

*(Resumption of debate interrupted on 02.04.2019)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, this is resumption of debate. When this matter was last debated here, Sen. Pareno had a remainder of 16 minutes. Sen. Pareno, would you like to utilize your remaining time?

**Sen. Pareno:** Yes, Mr. Deputy Speaker, Sir. I will add a little bit. I had done much of my talking and was about to conclude. Therefore, I will take less than five minutes to conclude what I was saying.

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

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. I am in support of this Bill. As I had said, the principle on public participation is enshrined in our Constitution. This Bill is one of those Bills that have come up to further put structures in place to ensure that the public is able to do public participation in good time and in the right manner. This Bill creates a facility for public participation. Therefore, people are able to participate and give their views.

Mr. Deputy Speaker, Sir, this Bill has gone ahead to suggest that we can renovate already existing structures for purposes of public participation. That way, people will not have to sit under trees. We have been told that for people to conduct public participation in some areas, they sit under a tree and give their views. That is not a conducive environment for people to properly engage, make decisions and oversight what the counties are doing.

Mr. Deputy Speaker, Sir, I wish to repeat that we cannot afford to have our governors build Kshs200 or 300 million palatial residences and construct over Kshs500 or 300 million chambers but are unable to provide a shilling for purposes of building a hall for the citizens who elected them and whom they represent to sit, engage and give their views in an orderly and comfortable manner. So, if they can afford to construct those residences and other bit of development, public participation is equally as important as the rest of the development in the county.

Mr. Deputy Speaker, Sir, I support this Bill which suggests ways in which this particular item will be budgeted for and how the infrastructure should look like. This is a necessary tool and facility for the citizens to have their say and have an accessible place to make meaningful contributions.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Proceed, Sen. (Dr.) Langat.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir. I also stand to support this particular Bill which provides a well structured framework that will guide public participation programmes in our counties.

It is interesting to see how it is done under the current situation. I went through the document from the Controller of Budget. It is interesting to see how money is used in a reckless way in the so called public participation. I saw a county that has spent Kshs40 million in public participation while in medicine it has spent Kshs32 million.

I believe that this Bill will provide a good structure that will ensure effective public participation and that every member will be represented and their say will be taken into account. Rarely do some governors attend public participation programmes. They simply assign some administrators to assembly people to sit under a tree and a lot of money which cannot be accounted for is given.

This Bill seeks to ensure effective public participations facilities. There is also a provision on criteria for the infrastructure and an assessment of infrastructural needs. Therefore the Bill is important to our counties and that is why we need to support it.

I have gone through this Bill. What I can say is that it is timely and it will save our counties irregular expenditures because it provides a well laid down procedure on accounting for any expense during public participation. Therefore, I support this Bill fully because it is timely.

I thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, this Bill has come at an important time, particularly in view of the ongoing events. The oversight that we take pride in under Article 96 of the Constitution has given not only the Senate but also individual Senators nightmares. The reason it has given us nightmares is that although the County Public Accounts and Investments Committee (CPAIC) sits throughout the week and 94 times a year, we have been unable to stem the corruption in the counties. The more the Committee sits, the more the governors steal. Therefore, we appear almost extremely helpless as a Senate in terms of oversight---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., are you saying that there is a correlation between the frequency of committee meetings and the theft in the counties?

**Sen. Mutula Kilonzo Jnr.:** I am just saying in many words that the frequency of meetings is not stemming the theft. The theft in 2013 is not the same as that in 2018 because it has increased as their sittings have increased.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, as the meetings increase, the theft is increasing.

**Sen. Mutula Kilonzo Jnr.:** Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, there is a correlation!

*(Laughter)*

**Sen. M. Kajwang':** On a point of order, Mr. Deputy Speaker, Sir. This being a House of record, we need to be very careful with the kind of comments we make, whether in jest, on a light note or with seriousness.

It would be unfortunate for a leader in this House to attempt to make a correlation between the frequency of meetings of committee sittings---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang'! Is there a correlation? Is the statement by Sen. Mutula Kilonzo Jnr. factual or not?

**Sen. M. Kajwang':** Mr. Deputy Speaker, Sir, that is a point of order I want to raise. It is unfortunate if the Chair then hijacks my point of order.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator! The Chair cannot hijack anything. He can only facilitate and guide. Is there a correlation? That was the statement by Sen. Mutula Kilonzo Jnr.

**Sen. M. Kajwang':** Mr. Deputy Speaker, Sir, is it in order for the Senator for Makueni County to attempt to make a correlation between the number of meetings of a committee that has been mandated by this House to undertake certain actions with the corruption that is happening in the counties? There is absolutely no relationship between the Senate and the illegal or criminal activities or irregularities and illegalities carried out by governors.

Is the Senator for Makueni County in order to attempt to draw this House into the corruption in the counties? The CPAIC is a committee of this House. Therefore, by making that conclusion, it is an indictment of the entire House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., you have heard the concerns of Sen. M. Kajwang'.

**Sen. Mutula Kilonzo Jnr.:** I am sorry, Mr. Deputy Speaker, Sir, that I am expressing some frustration. We all have faith in the CPAIC other than God. What I mean is that I feel helpless as a Senator of this Republic because we have given work to the Committee but we have to find ingenious methods to stop the corruption in the counties. It is true that Members of that committee sit on our behalf.

Members of the CPAIC have never missed a meeting and they have never failed to summon governors. In as much as they have been having meetings, there appears to be a problem because governors continue doing what they feel and pilferage is on the rise.

Sen. Sakaja talked about the case of confidential accounts in Nairobi City County. The Governor of Samburu County and his entire government are in court because they were charged of pilferage. The Governor bought houses like he is running out of fashion. I am just expressing frustration.

**Sen. Sakaja:** On a point of order, Mr. Deputy Speaker, Sir. You have heard the Senator for Makueni County, my friend Sen. Mutula Kilonzo Jnr. and also the Senator for Homa Bay County, who is the Chairperson of the CPAIC, exchanging on the issue of correlation. In fact, it is what we call a direct proportion.

Correlation points to either causation by one event relating to or causing another event to happen. Maybe it will be in order to replace the word “correlation” and substitute it with “proportion” such that the frequency of the meetings are in direct proportion to the increase of corruption cases but it is not related and neither is one a causation of the other event.

**Sen. (Prof.) Onger:** On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Sakaja, you have muddied the waters. What is it, Sen. (Prof.) Onger?

**Sen. (Prof.) Onger:** Mr. Deputy Speaker, Sir, the idea being suggested by Sen. Sakaja of being proportionate creates an element of collusion. Is he in order to think that the CPAIC is in collusion with the governors who steal public resources in this nation?

The CPAIC is a creation of this House. I a Member of the Committee and I enjoy my job in trying to find out why governors and other people misuse public resources.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I believe I need to clarify. If anything, this is a committee I respect and I have sought refuge on the issue of Nairobi City County. In fact, I was saving the Committee from the use of the word “correlation”.

I am talking about mathematical words, that these are two unrelated events. That is why I said direct proportion. “Proportion” means that it is a fact that two events have moved in linear progression in a similar fashion. The number of meetings have moved upwards and so is corruption but the two are not related.

Actually, I am protecting the Committee and I even brought a statement to the same committee. We would like to see the correlation between the increased frequency of the meetings with the reduction of plunder and malfeasance in our counties.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Sakaja. Not everybody is an actuarial scientist like you. You are making those of us who studied other things remain at sea. I can see the Senator for Bomet County, who may have studied Kiswahili, Anthropology or some other subjects is at sea.

If I heard Sen. Mutula Kilonzo Jnr. well, I do not think he imputed any improper motives on the Committee. He was trying to say that the Committee is meeting more frequently but that is not solving the problem and perhaps we need to look for other ways of supporting the Committee which is otherwise doing a good job. I hope that assuages the Chairperson, Sen. M. Kajwang' and the senior Member, Sen. (Prof.) Onger.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. M. Kajwang', I thought I have acquitted you.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, you have done very well. I want to state that the Committee does not need protection from Sen. Sakaja, but support from him.

Finally, the duty of the Senate in dealing and fighting matters corruption, will not be fully actualised if the investigative and prosecuting agencies do not take action on the recommendations of this Senate.

I encourage the Senator for Makueni County that as he makes the correlations and the direct proportions, we also reflect on the role of the Director of Public Prosecutions (DPP), the Ethics and Anti-Corruption Commission (EACC) and the Director of Criminal Prosecutions (DCI) in making sure that recommendations of this House are taken seriously and also making sure that they proactively implement the findings of the Attorney-General. This House is not a House of audit, investigation or prosecution. We have agencies that are funded to do so.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is a House of oversight and recommendation.

**Sen. Mutula Kilonzo Jnr.**: Mr. Deputy Speaker, Sir, I hope you are holding my time.

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

**Sen. Mutula Kilonzo Jnr.**: Mr. Deputy Speaker, Sir, I am actually trying to find a good way of communicating my point so that we understand one another.

The work of the CPAIC is firmly anchored under in Article 229 of the Constitution. At the onset of this Senate, the Committee on Finance and Budget, where I used to sit, was performing two functions. Let me bring my colleagues to speed on what exactly I am aiming at. It used to do audit and, at the same time, dealt with the quarterly reports of the Controller of Budget. I want Sen. Sakaja to listen to this because this issue touched on Nairobi City County. This meant that, at the end of the year, we were dealing with financial issues and also quarterly we dealt with counties.

Mr. Deputy Speaker, Sir, you and I, were here when we passed a Motion. We were accused of being very drastic when we caused for the suspension of the funds being issued to four counties. Murang'a was included at the time. Had the Cabinet Secretary (CS) followed our recommendations because they were based on quarterly reports, then part of the pilferage would have been handled. It is time for this Senate to consider an amendment to the Standing Orders so that reports of the Controller of Budget are submitted on a quarterly basis.

Currently, the CPAIC is driving the agenda of audit using a rare view mirror because they are looking at the back. We need to have another Committee that is looking at the front through the wind screen so that we can deal with both simultaneously to avoid issues of pilferage. We cannot help, but deal with questions that are current both with the questions that are behind us. The CPAIC should either be empowered or we insist that another Committee deal with the questions of quarterly reports.

Mr. Deputy Speaker, Sir, let me comment on the Statement on Revenue by Sen. Sakaja. Whilst the COB sends us reports when there are disputes on budgets, the COB does not send every Senator a quarterly reports on budget implementation and the use of funds on a quarterly basis. What appears on the Budget Implementation Report that we

get quarterly – I have the one for the first quarter of 2018 – is two pages of a summary of how the budget implementation is being done.

However, we, Senators, would be in a position to know some funds were allocation to Mbagathi Hospital by Nairobi County as Sen. Sakaja was asking, but they were unable to spend because of this and that. This is because County Executive Committee (CEC) member for finance is supposed to do so under Sections 163, 164, 165 and 166 of the Public Finance Management (PFM) Act. In case of Tharaka Nithi County, for example, the Chair will not need to ask the question when you go to a meeting in Chuka because he will have the report.

Mr. Deputy Speaker, Sir, Sen. M. Kajwang' and I, went to National Conference of State Legislatures (NCSL) on something we call legislative audit. I have severally asked this question; why do we have a Parliamentary Budget Office, yet we do not have a Parliamentary Audit Office? This Senate should be having auditors that we can send to Nairobi City County by virtue of a decision we have made to give us a special audit. Now, in the case of Nairobi City County, we rely on the Committee to sit in a meeting and ask for a special audit.

Mr. Deputy Speaker, Sir, you are aware I sat in a Committee that was dealing with non-banking of money collected by Narok County from Maasai Mara Game Reserve for seven months. We ended up in a quagmire because we did not have the expertise. We had to rely on the Auditor-General. When they came to us, they whitewashed the whole issue. The governor then brought the report. He said they had forgotten to tell the Auditor-General that they changed their bank accounts and that they were banking money in another account. That is what happened.

If this Senate had a Parliamentary Budget Office, we would have legal expertise. Yesterday, Sen. Sakaja challenged me here about how to use the funds that we have been given for audit. I have said that even if we offer all Senators whatever they want, including a car and everything, until the time we have expertise on audit, my dear colleagues, we can only do what is called politics of audit. We will go, look around and say: "This hospital does not look as if it was constructed using Kshs18 million." At what point will we say it should have been Kshs3 million, Kshs4 million or Kshs10 million? Unless you have an auditor in your meeting and unless you can compel your county to give you documents, how are we going to do our oversight?

Mr. Deputy Speaker, Sir, little wonder that this Bill is proposed by a Member of the CPAIC. Sen. Olekina is as frustrated like I am. He seats in the Committee where we rely on them entirely, to put somebody in jail.

I am afraid that 26 governors will hand over office in their second terms. Now, if the Governor of Samburu County is an example, I shudder to think what will happen when 26 new governors get into office. The Governor for Nandi, Sen. Sang, only discovered somewhere along the line that the former governor had another 26 accounts which he was not aware of. Further, he discovered that there are members of the executive who took a loan and guaranteed by a bank account of the county.

These counties will steal as we sit here, as we watch, as we go for conference as we talk. Unless we change oversight to expertise oversight – not going to oversee by looking – we will not achieve anything. When the sword of corruption falls on counties

because it will fall, we will be equally to blame as a House. We will take responsibility 100 per cent.

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

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

What will it take for all 47 counties to replicate what Makueni and Nyandarua counties have done; unqualified reports? What will it take?

What will it take for us to check the city counties such as Nairobi, Mombasa, Kisumu and Nakuru so as to know if they are correctly reporting their own source revenue? A meeting called at Kenyatta International Convention Centre (KICC) would not explain that. In the last Senate, the Governor was accused of not banking Kshs7 billion.

*(A Member spoke off record)*

The Governor of Nairobi.

For the first time in the history of this country, the Kenya Revenue Authority (KRA) surcharged the account of a county. Where did that case go to? It just went quiet because we do not have the expertise. While I support this Bill, I do at times feel that as a Senate, we are helpless. We are not going to help our counties by doing the oversight that you and I are thinking of; making noise on public platforms. Governors are laughing at us.

Recently, somebody told me that governors have identified us. They know the noise makers and the people who they can talk to. He told me that the governors will continue with their trade because we appear to do nothing other than make noise and that is a fact. We have to rely on Mr. Twalib Mbarak or Mr. Kinoti to do our work of identifying a governor who has bought ten homes or one who has been doing whatever he feels like. The Senate does not have a method of finding out that information before the Directorate of Criminal Investigations (DCI) yet we are ones who should be giving that information to the DCI. That paints a very bad picture about oversight in this country.

The Division of Revenue Bill has a reduction of Kshs9 billion. How are you going to convince this country that we are not giving counties more than enough? If they do the cost of corruption in the 47 counties, it is equivalent to an economy of two counties. You can have Kshs2 billion in Samburu, Kshsx billion in Nairobi City County and a few in Mombasa County. When they come here, we clap, shake hands and laugh with them just for them to walk out of the Senate and do what they do best; business as usual. They open accounts where they feel like. They open commercial bank accounts. The Senators have not stopped the governors from opening 17 or 18 accounts in commercial enterprises. Why have we not regulated where they should bank their money? We should do that.

I sat here and one lady from Bungoma County had withdrawn Kshs314 million from her personal account. We made noise but nothing happened. Shakespeare called this; much ado about nothing. That is what we have been reduced to.

I beg to support.

**Sen. Sakaja:** Thank you, Madam Temporary Speaker, for the opportunity to support the Bill on the County Oversight and Accountability Bill (Senate Bills No. 28 of 2018).

The Senator who has proposed this Bill, Sen. Olekina, is fast rising to get into the history books as one of the most effective legislators. He is my junior, legislatively, because this is a House that acknowledges seniority based on the terms that one has served. I advise him to keep at it. He should keep moving towards that direction. Kenyans are beginning to see him as a beacon of hope in a Parliament that is filled with complacency. I watched him yesterday, on television; passionately talk about the Ruaraka Report, which I happened to have the honour or the dishonour of being the only Member from this side of the aisle who supported it. I supported it because it was a matter in Nairobi and it was also a matter of integrity, conscious and it was guaranteeing our children a future in schools. Thank you so much, Sen. Olekina.

When you look at this Bill, there is a lot of creativity and thought that has been put in it. It is about the fulfilment of our cardinal function in this House, which is oversight of county governments, public purse and monies that are sent for development and growth of this country.

Next year will mark 10 year anniversary of the Constitution of Kenya and I hope that Kenyans will stop calling it the new Constitution. In many of our cultures, a 10 year old is not called a new born. The outstanding factor of our Constitution is the expansive bill or rights. Other nations have noted our Constitution because of the shift from a deeply centralised system to one of fiscal decentralisation where we have sent power and resources to counties through devolution.

Devolution is the shining arm of our Constitution. It is the cherry on the cake and it is what made Kenyans to overwhelmingly support this Constitution. This Constitution brought a ray of hope to the areas that had been left to the back-burner of development in this country. We had some regions that had never seen tarmacked roads, hospitals and had no hope of getting water for their children. They now had the hope that every part of this country would get their equitable share of the national cake and that everybody would be able to thrive. It is because of that reason that we all went to the ballot in 2010 to vote in this Constitution.

A hallmark of this Constitution is Article 10 that talks about values and principles. The previous Constitution was very light on values, principles and philosophy but this Constitution talked about it. One of the biggest points in Article 10 is Public participation. You cannot have oversight without the participation of the public. It is sad that in as much as those who had fallen back have started crawling and walking with feeble limbs, some of the areas that were doing well are now doing badly.

Sen. M. Kajwang', who is the only Member in the Chamber who is serving his second term, will remember that many of our town councils and municipal councils were collecting more revenue in proportion to what the budgets were than the successive county governments. That begs a lot of questions. Did we devolve inefficiencies and corruption or what is happening? Nairobi County was cleaner under Mr. Gakuo and Mr.

Aladwa before Dr. Kidero came and it has slowly deteriorated to what we have today under the current Governor.

Is this what we call a promise? Was it a poisoned chalice? That is the question that we ask ourselves though we can also answer ourselves, as a House. The reason as to why devolution has not lived up to what it was expected to be is because we have not used the appropriate mechanism of oversight to follow up on the resources that we have sent to the counties. That is the reason as to why this Bill is important. We need to consider it and pass it.

When the Senator for Makueni County talked about the Committee on County Public Accounts and Investment with a lot of frustration, many Members, including those in that Committee, shared the same frustrations. We are more of a dog that was given a loud voice with very soft teeth. Our barking is loud but our biting is weak. As we look at how to recalibrate the legislative framework of this country, we must make sure that the Senate has the tooth that goes hand in hand with the voice. We should be able to bite harder than we bark. Therefore, we must have the oversight tools that we require.

If you look at the provisions of this Bill, they are talking about having public participation facilities. As it is, there is fatigue and apathy, not just in Kenya but across the world, when it comes to the systems and the institutions of governance.

Madam Temporary Speaker, many people are apathetic. If you call them for a public participation meeting, they will say, because I cannot speak in Kiswahili, “*Si hao huwa wanakuja kuongea, kutuuliza mambo na hawatwambii.*” They will, therefore, not come.

We have failed to be creative enough to design a model of governance that is in tune with the immediacy of the 21<sup>st</sup> Century. The institutions of governance we have today were designed in the 15<sup>th</sup> Century to move along with communication technology--  
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**The Temporary Speaker** (Sen. Nyamunga): Hon. Senator, I think you are in a position to make all the difference.

**Sen. Sakaja:** Madam Temporary Speaker, that is why I am supporting the Bill.

The institutions of governance then were designed to move with the information technology of the 15<sup>th</sup> Century, which was the printing press; to support a fast growing, young dynamic population of the 21<sup>st</sup> Century that is savvy and online.

When you call people for public participation on a Tuesday afternoon, one, you are insinuating that they are jobless. Secondly, they will say, “even if I come, what impact will my contribution have on the policy-making process?” That is why we need to be creative enough to even include the use of technology in public participation. Counties need to provide the physical facilities. They should also move beyond that to create space for the use of technology such as WhatsApp, Tweeter and Facebook for people to send in memoranda and to see a participatory budget-making process.

I am very passionate about devolution. In the year 2009, I wrote a book together with the International Commission of Jurists (ICJ). It was probably the first book that was talking about our current operational framework for fiscal decentralisation. The book is available to Senators. We outlined the principles of devolution in that book.

I know Senators are very much aware that the first principle is that devolution is principled around the principle of subsidiarity. That means that a service is best offered within the smallest or lowest benefit area compatible with that service. That is why there are certain functions that are devolved to the smallest unit. As we have devolved, we have left things hanging at the county. If you go to the wards and villages, many will tell you they do not feel the difference between how things were before devolution and today.

Madam Temporary Speaker, the way they would feel a difference is if a huge chunk of their discussions actually make it to the budget making in a county such that people in Narok North once they have sat through a budget-making participatory process and agreed that their priority is a road in Nairegi Enkare, Suswa or wherever it is, then they see it, they would believe in devolution and public participation.

I am sure, Madam Temporary Speaker, you have participated in public participation platforms and seen the fatigue of *wananchi*. When you go there, they say, “but Just last week, there was another committee that came and asked us about what we need and we said it was water.” You have gone there to ask them about a Bill on county oversight yet, they are saying, “You, people, come too many times. You are only coming here because of *per diems*.” We need to redesign how we do that form of public participation.

Secondly, you cannot have proper oversight without information. Majority of our people do not know how much money has been budgeted for their counties and wards. That is why I had a very passionate appeal that we do not treat the money that we have secured for county oversight as just money to go around. It must translate to actually giving proper information to the citizens.

Madam Temporary Speaker, I had already, and will still do it- designed an interface where if you are in Nairobi in Roysambu Ward, you will go to your phone, click Roysambu and see the number of projects that the county government is claiming to have done or that are budgeted for. This is because we have programme based budgets. You will see the amount of money put in there and the progress. It can be done by *mwananchi* because of GPS location. It is very easy, and I am ready to help other Senators do it in their counties.

We will be able to say, “No, that hospital ward you are saying was build does not exist. In fact, this is the uploaded picture of the hospital or the sight.” This is so that we have a public interface where *mwananchi* can integrate and do oversight. Individual Senators will not be able to do oversight on their own. We need to empower the *mwananchi* who is living in Kasarani, Kibra, Laini Saba, Lindi or Kilimani ward to participate by telling us what the county government has done. However, they do not know.

If, today I am able to go a ward in Bushang’ala in Ikolomani Kakamega County, and tell them, “For the last five years, Kshs200 million has been set aside for this water project. Have you seen it?” *Wananchi* will start chasing away even governors from those meetings. They will start saying, “No, No! Before you speak, tell us. We have been shown that you have been allocating millions of shillings to a water project or an early childhood development education (ECDE) claiming it is in this ward yet we have not seen it.” Oversight without information is dead, Sen. Olekina.

Madam Temporary Speaker, as we develop this Bill, let us put some emphasis on access to information and its provision. The reason why we moved from the regime of budget to programme-based budgeting was specifically for that so, that one does not just tell us that this is the budget for this Ministry or docket in the county. However, you are telling us that this budget in Machakos County in Katangi Ward is for this project. Let us give mwananchi that information and our work will be much easier.

Sen. Mutula Kilonzo Jnr. said that we do not have capacity to measure the value of the project. However, we are not even at a place of value. There are fake projects that are being budgeted for year after year that are not on the ground. Who is better placed to tell you about value? Is it the engineer or mwananchi whose car is hitting potholes every day? It is not about telling me the depth of the tarmac but you are telling me it is not there at all and you have allocated money to it. We, therefore, need to take our oversight fund very seriously.

We are still insisting that the unit of distribution must be the ward. Subsidiarity means the smallest unit possible in devolution which is the ward. It cannot be that Nairobi City County with 85 wards is being given the same budget to oversight with Isiolo County with 10 wards. Yes, we are equal in voting here but even if we were to do the same things, it will not cost the same to look at 85 wards versus 30 or 40. It is a matter of equity, not equality.

I am seeing that my time is going but let me just move on. In the closing parts of this Bill in Part II, Clause 16(2), Sen. Olekina has spoken about oversight of the county revenue allocation by the national Government and the county. I think this should inform what we are talking about with respect to our intentions to play a direct oversight role. It says”-

“Each Senator shall exercise power of oversight over their respective county.”

Yes, as it has been, we oversight on wholesale; we all go and look at the report on Homa Bay or Machakos County. However, the people on the ground in Nairobi are asking where Sen. Sakaja is yet they have seen the audit report. In Kisii County, they are asking whether Sen. (Prof.) Ongeru has started working too closely with Gov. Ongwae because they are not hearing his voice. However, you cannot expect him, without any resources, to put to task a budget of billions yet, he has an allocation for an office similar to a Member of Parliament with 10,000 people. It is impractical. In fact, we are killing ourselves.

The Senators who survived the last election have done so because of their political parties, personal charisma and political knowledge but not because of playing oversight role effectively. I can say that as a matter of fact. Many who were there in the last Senate have come because their parties were the popular ones in their counties. In fact, the one who had a strategic plan for his county about oversight was the Senator of Mombasa. However, he was not even elected to be a governor.

Madam Temporary Speaker, unless we have a proper way to measure the role we are playing-I think this Bill is a good beginning- then we will be lost. Let us therefore, strengthen this and relook at that issue of the local arrangement we are making for us to oversight. This is because the rest of us will resist it.

It is of no value to create a perception to the public that we will do this work yet we know that we will not go to 58 wards or 17 constituencies. Let us be fair in this House. We are representing people who have a lot of concerns and hope in us. For example, when the people of Narok County see Sen. Olekina, they know he can speak against the ills in the county. I will not mention a few Senators who have been pocketed by their governors. I will not mention anyone individually. However, you see them fraternizing and always looking for an opportunity for a *selfie* yet they cannot speak about an ill in their counties. People in their counties are dying and things are going wrong but they cannot talk about it. The only thing we can assume is that they participate in the pilferage and public malfeasance that is happening in the county.

*(The red timer went on)*

Madam Temporary Speaker, how many more minutes do I have? I will ask that we take this a bit more seriously. I would have expected more Senators here. The role of the Senate is to oversight and this is the Bill that we need to strengthen. For example, if we strengthen it, Sen. (Dr.) Musuruve will be felt across the country. This is because she is a national Senator. She is not from Kakamega; she is a Senator representing Persons Living with Disabilities (PWDs) across the country. Therefore, she can call the National Council for Persons with Disabilities (NCPWD) with fact, figures and data and tell them that they are not doing what they should be doing.

Thank you, Madam Temporary Speaker. I thank Sen. Olekina and I urge him to keep up that spirit. I hope he will be my running mate one day.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen. Sakaja. Proceed, Sen. M. Kajwang.

**Sen. M. Kajwang:** Thank you, Madam Temporary Speaker. I beg to support this Bill which is before the House today. I congratulate the Mover of the Bill, the Senator for Narok, Sen. Olekina, for bring it. It is something that we have been discussing offline for quite some time. I am glad that today, we have seen it fit to allocate time to go into it and make sure that it becomes law.

Madam Temporary Speaker, as they say, there is usually the good, the bad and the ugly in everything that we do. When I look at this Bill, there is a lot of good. However, the good outstrips the bad and the ugly. Allow me to start with the bad and the ugly for two minutes so that I can spend the rest of my 13 minutes to talk about the good.

Madam Temporary Speaker, before getting into the bad, there are two distinct things from my reading of this Bill that the Mover is trying to achieve. One, is to compel counties to provide facilities for public participation. I believe that the intention is where those facilities do not exist. I do not expect that a county shall build a hall that will be used as a theater for public participation next to a National Government-Constituency Development Fund (NG-CDF) hall, public hall, a cinema or a church.

Madam Temporary Speaker, there are areas where people traditionally sit under a Mugumu, Ng'ou or Otho trees. That can still form a venue for public participation. However, I believe that Sen. Olekina is encouraging counties to ensure that for effective public participation, facilities ought to be provided.

Madam Temporary Speaker, it could be that sometimes it might be cost-effective for counties to outsource those facilities. That is a discussion and latitude that counties should be given. Where they find it more expensive to put up the physical facilities and already the facilities that can be outsourced, they need to be given that latitude.

The second objective of this Bill from what I can discern is to provide a clear role for the Senators to exercise their oversight role pursuant to Article 96 of the Constitution. This is bold because as a House in the Legislature, it is unfortunate that we stand in the table or wherever we stand and talk about helplessness and laws that do not favour us yet we are the Legislature. Part of our duty is make laws. We should not expect county assemblies or the National Assembly to make laws that will give effect to Article 96. It is the duty of this Senate to be innovative.

This House has got the highest number of senior counsels in this Republic. There are only three of them in Parliament and all of them sit in the Senate. We have people like Sen. (Dr.) Kabaka , who are great minds, not just in law, but people who can apply themselves in public finance management and different fields. It cannot be that we complain perpetually about the limited legislative powers of the Senate when we have not made that effort. Therefore, I congratulate Sen. Olekina for making an effort to give effect to Article 96.

Madam Temporary Speaker, the bad and the ugly is that Clause 19(2) of this Bill talks about logistics. It states that:-

“ The Clerk of the county assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise”

That should be the responsibility of the Clerk of the county assembly with respect to Members of County Assemblies (MCAs) and not the Senator. There is absolutely no way that the activities of the Senator in oversight and public participation shall be facilitated logistically by the Clerk of the county assembly. It should be the Clerk of the Senate.

Madam Temporary Speaker, ugly number two is Clause 20(1) of the Bill that states that:-

“The county executive committee member, with the approval of the county assembly, shall make regulations generally for the better carrying out of the provisions of this Act”

It this Bill intends to give effect to Article 96 and particularly to entrench the role of the Senator in oversight, public participation and in consolidation of the views of the people, and make the County Executive Committee (CEC) Member for Finance responsible for coming up with regulations, then it is dead on arrival. This is because they will not make regulations that will empower the Senate. They will make regulations that will cripple the Senate and the Senator will be frustrated from day one because logistics will be from the clerk and regulations will be from the CEC, Member.

Madam Temporary Speaker, ugly number three is Clause 19 (1) which talks of the role of the county assembly. I was having a conversation with my elder and senior Sen. (Prof.) Ongeru and we asked ourselves where this put the county assembly as far as public participation is concerned.

It states that-

“The county executive committee member and the the clerk of the respective county assembly shall keep and maintain the information relevant to the allocation of monies, collection of revenue and such other information on the finances of respective county and shall upon request, avail the information to a member of the public”

That is correct and good. However, we need to have a clause that compels someone to provide that information to the Senator. We need to look at the Public Finance Management Act and the budget process. There a lot of documents and records that are sent to the Controller of Budget, the Auditor-General, the National Treasury and the Central Bank of Kenya (CBK) and all sorts of stakeholders but the Senator or the Senate as an institution is never involved.

We probably need to revisit the Public Finance Management Act and the relevant pieces of legislation and regulation. We need to make it mandatory that if a budget is approved by the county assembly, a copy of it shall be brought to the House and, may be, tabled for noting. The person who has the responsibility of keeping and maintaining information relevant to allocation monies, collection of revenue and such other information of finances of respective county, for purposes of the Senator should becomes the clerk of the senate rather than the clerk of the assembly and the CEC, Member.

Madam Temporary Speaker, I said that the bad and ugly could just be three but the good outstrip the bad and the ugly. I believe that these are provisions that we can look at and amend before we enact this piece of legislation.

We recently processed the Public Participation Bill and it would be important to find ways of synergizing these proposals with those carried out in the Public Participation Bill.

Madam Temporary Speaker, we had an early debate which presupposed that the oversight role of this House has been delegated fully to the County Public Accounts and Investment Committee.

Having chaired this Committee for three years, out of experience, exposure and research, I beg that we need to adopt a different perspective. Each Senator in this House individually has an oversight role.

When something is going bad in my Homa Bay County, I should run and cry to a committee of the House. I should be the first one to respond by going to check what is going wrong.

Indeed, last week, I went to Homa Bay County and I visited the Homa Bay Teaching and Referral Hospital. I am not a Member of the Committee on Health and I did not go there as the Chairperson of the CPAIC but I went there as the Senator for Homa Bay County. In that process, I uncovered many things.

For example, the equipment scheme is not fully utilised. That is something that I will escalate to the Committee on Health. We also have issues of internet connectivity and that is something I will escalate to the Committee on Information, Communication and Technology. We have erratic electric supplies which threatens the equipment that has been supplied to that hospital. It is something that I will escalate to the Committee on Energy. There are several other things such as the oxygen plant and the blood unit that I

will escalate to the Committee on Health. The first line of oversight is an individually Senator.

Every committee of this House has got an oversight duty and mandate particularly on sectorial issues. If a road project is not going well in your county, you should first to go there as a Senator and escalate the issue to the Committee on Roads and Transportation. If the matter persistently recurs and the Auditor-General points it out, the CPAIC comes in to make punitive recommendations on those who are guilty or found culpable of flouting rules.

Madam Temporary Speaker, I encourage this House to take its oversight role collectively and every Senator to take their oversight role individually. Let us not live in the world where we believe that once we have been elected, legislating, representation and oversight are the sole responsibility of one committee. If you look at the Standing Orders, you will see that the mandate of the CPAIC is very postmortem. We are struggling to become proactive.

Indeed, just this morning, we had a meeting as a committee to come up with a schedule of appearances for the next two months. We have adopted the approach that counties that attracted disclaimer and adverse opinions in the FY 2017/2018 shall be in our list of counties to be considered. I want to inform the Senator for Nairobi City County that we have scheduled for two days because Nairobi City is a complex county with serious issues. We would like to ensure that we do discussions on the first day and go out to tour projects on the second day. We will take a much more proactive approach because we also realised that Article 229(8) of the Constitution is clear. It states that-

“Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.”

Anything we do after three months after tabling of the reports is unconstitutional and one day it will catch up with us.

What stops the Directorate of Criminal Investigations (DCI), the Ethics and Anti-Corruption Commission (EACC) and the Director of Public Prosecutions (DPP) from taking further some of the findings of the Auditor-General? The Auditor-General is an expert. That is why the qualifications of the Auditor-General are stated in the Constitution and their duties are constitutional. When the Auditor-General goes through an audit process that last six months and says that there was loss of funds in county “X”, what capacity does the Senate have to repudiate the findings of the Auditor-General?

Sen. Mutula Kilonzo Jnr. talked about Parliamentary Audit Office. Until we develop competencies internally to carry out investigations, oversight, audit and forensics, the actions of the CPAIC shall be actions of political responsibility rather than professional scrutiny of the Auditor-General’s reports. I encourage the investigative agencies to continue with the gusto with which we have seen them taking up certain cases such as the one for Samburu County.

I would like to inform the House that last week on Thursday and Friday, with the leave of the Speaker, the CPAIC sat in Samburu. On Thursday last week, we had engagement with Members of County Assembly (MCAs) of Samburu where we put them to task and asked where they were when things were going wrong in the county. We also

had a session with the Governor in an open sitting where members of the public were involved and contributed. We talked about the stalled projects and the state of affairs in Samburu County. As we were flying out of Samburu, officers of the EACC also flew in. I want to confirm that there was no connection between the CPAIC and the EACC.

From our discussions, it was obvious that something was not right. Samburu is no exception. This problem replicates across 45 counties. In the last the Auditor-General's reports, only two counties got unqualified opinions. The rest were between disclaimers, adverse and qualified opinions. There is nothing that stops the EACC from taking up these issues once they have been identified by the Auditor-General because the Senate is not a Chamber for sanitization.

I heard one of the governors, who run one of the cities, saying that he is ready to come to the Senate and explain himself. I want to caution governors that if they do not cooperate with the Auditor-General, let them not expect a soft landing in the Senate. Let them not expect that the Senate shall be a laundromat for their illegalities and irregularities. As long as I am the Chairman, we shall insist that the default truth is that which is reported by the Auditor-General. Anything else that the governors come to do is a privilege for them to be heard. However, if they did not cooperate with the Auditor-General, then they have no business bringing loads of paper before the Senate, because the Senate does not have capacity to process all that.

As I finalise, Madam Temporary Speaker, the question that begs is what public participation. Public participation is one of the things that have been mentioned many times in our Constitution. If you do a word-count, public participation has been mentioned many times than integrity.

In the budget-making process, there are several documents that must be subjected to public participation. They include; the County Integrated Development Plan (CIDP), the Annual Development Plan (ADP), the County Budget and Review Outlook Paper (CBROP), the County Fiscal Strategy Paper (CFSP), the County Appropriations Bill and the County Finance Bill. However, you will still hear people talking of exclusion and MCAs saying that they want a County Development Fund because the budgets and county ADPs do not take the wards into consideration. Where are MCAs when those documents are taken through public participation?

In the past one or two weeks, we have seen advertisements for public participation on the CFSPs. Unfortunately, whereas our colleagues in the county assemblies want developments to go to the lowest levels, which is the principle of subsidiarity that Sen. Sakaja talked about, public participation does not go to the lowest level in most counties. In my county, public participation is limited at the sub-county level; a level that is not recognised under the structures of devolution.

Our county assemblies and executives at the grassroots must make sure that public participation is done at the most atomic level of devolution which is the village. If that was done faithfully and properly, we would not be talking about pockets of exclusion that continue to exist in our counties.

There is also a growing feeling that public participation is for goons and villagers. Each county has got a huge diaspora here in Nairobi. To what extent do professionals

with local and international experience involve themselves in planning in their respective counties? They are the loudest when it comes to criticising things on social media.

There is a county that bought a cow valued at Kshs3 million. The question was whether that was in the budget. Some people thought the county bought a buffalo and that the Attorney-General was not very sure in his assessment.

The clever people in Nairobi and other cities should not think that public participation is a job of *boda boda* riders and the *hoi polloi* at the grassroot level. They are letting the counties down. Sometimes the elite are the loudest when it comes to complaining about inadequate planning in the counties.

I also urge the Parliamentary Service Commission and the Senate – this is an issue that I have shared with the Senate Business Committee (SBC) – to ensure that alongside the Parliamentary Budget Office (PBO), we establish a Parliamentary Audit Office. We do not have to amend the Public Finance Management (PFM) Act that entrenches the PBO. The PBO can play a budget role and an audit role. Therefore we should staff it with forensic experts and investigators and other people with critical skills, so that they provide the much needed support to our committees.

With those many remarks, I comment the “Duke of Narok” and the “undisputed king of Maasailand” in this particular Senate, Sen. Olekina. Apart from the few amendments that we have pointed out, I hope that this is one of the Bills that the President will sign into law before the end of this financial year.

I support.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina, are you in agreement with all the titles that you have just been given by the Senator for Homa Bay County?

**Sen. Olekina:** Madam Temporary Speaker, I am honoured.

**The Temporary Speaker** (Sen. Nyamunga): You are honored?

**Sen. Olekina:** I am, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Okay.

Proceed, Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Thank you Madam Temporary Speaker for giving me this opportunity. Let me start by thanking our dear brother and colleague. He has been given very many names, but I thank him for coming up with this timely Bill. It is timely because we have been talking about our oversight fund and we have been asking ourselves questions about what oversight is. I congratulate him for being extremely active and working on this with a lot of detail.

Madam Temporary Speaker, I will be brief and only say a bit about public participation. Public participation has been totally abused. We have had opportunities to attend public participation forums. I have attended some myself where a CEC member or Ward Administrator is addressing the public on budget issues. When you sit there and listen, there is no public participation because nobody is actually participating. There is a lot of dictation; “This is what it is; that is in the budget.” I was shocked when I heard one administrator say: “If you do not want the money, it will go back.” In fact, I called him aside and asked him: “Did you hear what you said yourself?”

Madam Temporary Speaker, public participation has been totally abused. I like the way Sen. Olekina has articulated and broken it down to what we must do during

public participation. Unless we do it, we have a very honourable statement in the Constitution that Kenyans must have a say in what is being done for them. This is very important; it is good for Kenyans to say: “I want a water project and not electricity this time round, if they are going to use their money for that.” Or, “Let us have a road and survive without water for a period of time.”

This is because we know that devolution is here to stay and we better start planning for it. We must have a plan that will go beyond the five years of one governor. This is a plan that will say that this year we will do this to make sure that we accomplish what touches on the needs of the community. I am a real supporter of the principle that devolution must go to the lowest unit; that we must devolve the funding to even beyond the ward. This is because, once again, we have found situations where if a governor was not voted in by people from a certain place, then they do not get any development there. We, therefore, need to cure that.

As we do that, Madam Temporary Speaker, I am happy that this Bill is talking of ‘information being availed.’ I know I questioned one of them, which is Clause 17(2)(c) which says-

“For the purpose of subsection (1), the Senator shall –

(c) facilitate access to information held by the county government.”

We need to ask whether we are able to facilitate or do we need to modify that statement to make a demand on how the information comes? This is because the biggest problem that we have had is lack of information. Even as we sit here now, we have been unable to access information on the public participation that we have done on our own. The reason we had the debate about Samburu was because the Senator here said you cannot access information, yet we are seeing things going wrong. Therefore, for us to determine, I agree that we must have this information. I like the way the word “information” has been articulated in the Bill. However, my biggest question is: “Are we able to actually facilitate access to that information?” I, therefore, beg the Senator to re-word it so that we make a demand on how that information is availed.

Madam Temporary Speaker, we have been receiving very nice and forward looking reports from the Controller of Budget. I agree with Sen. Mutula Kilonzo Jnr. that we need to start looking at oversight with the rear and front mirrors. Otherwise, we will be doing postmortem until we have governors becoming Senators before we finish the audits. Although I was hoping that, at some point, one of the oversight items is to say that no governor becomes a Senator too fast before we finish auditing the books. However, maybe that will come in another Bill. I think we have discussed that elsewhere, because it is very important.

Therefore, Madam Temporary Speaker, for me, it is important that we get this information; but how do we get it? The information that the Controller of Budget has been giving us is on the dot. In fact, I was very delighted when she said that we should give her our e-mail addresses and she will give us information as and when events are taking place. It, therefore, means we are heading somewhere, because we are getting that information from a third, independent party. However, there will also be information that we may want to get directly.

I, therefore, recommend that rather than saying that we will facilitate the access, we will look for a way in which somebody else will facilitate, and we demand that we receive that information. Whether it is within the annual report, which is lengthy and takes a whole year for us to get, but if we want to set this country on a path of development, we need to get information faster than in an annual report.

Therefore, Madam Temporary Speaker, we may want to have, in one of the sub-clauses, a statement that demands that as they give their expenditures to the Controller of Budget, they also give it to us in raw form. We will then get the analysed one that comes from the Controller of Budget. That way, we will compare what has been analysed and what we receive raw. It is only then that we can talk of proper public participation. I like the way public participation has been translated here to mean taking information back to the people. It is not necessarily saying: "Give us information." I mean, if you go to some of the communities and ask them to look at your budget where you talk of millions and they have never seen the millions. The minute they see millions, they think you are okay and you are doing very well, unless it gets lost.

It is very important, however, that as we analyse that, we talk of public participation as provided here, where you will call the public to give a report card. In fact, it says the Senator "may give a report." I do not think it should be "may;" we must do it as part of our duty. We must also have a meeting to give reports. Even if the quarterly reports have to come from the Senator, we must go for public participation to say exactly what has happened. Consequently, we must have public participation on the budget and on the fiscal plan. The Senate then takes over public participation as part of oversight from then on. That way, we will help Kenyans.

Madam Temporary Speaker, devolution is here to stay, as I said earlier. We must, therefore, plan for it. We should not behave as though it is something that has just happened; we must plan for it. Secondly, oversight must be systematic. Although the Bill says that the Senator will do oversight in their county, I want to add that, that is the first point of oversight. The other point of oversight is actually between the County Senator and the relevant Committee of this House. I mentioned it yesterday, that the relevant Committee is very important when it comes to oversight because they are the ones who have the details and the facts. It is important for us to follow up, which can only be done by the Committee itself. Therefore, whatever we get from the ground comes to the Committee and this will reduce the questions, time and the petitions.

Madam Temporary Speaker, many of us have been receiving petitions and we begin negotiating with some of the people, because they do not even know how to write petitions. I hope that as we talk of public participation, one of the items that should come our clearly is training the public on how to do petitions. What do we do after the petitions have come here, so that the people feel that we are doing service to them and responding to their needs?

I want to wind up with the issue of experts. The Bill has identified three individuals who should be employed and I agree with that. However, I hope that it will not limit the number to three because we may need to have two or more people to offer secretariat services. However, I agree that we need experts in these offices. Those experts

will have to relate to some experts in the Senate. Therefore, we need a monitoring and evaluation group in the Senate.

As much as we need an audit and accounts office, we also need a monitoring and evaluation office. It will be a caucus on monitoring and evaluation. We went for a workshop sometime back and we learnt that a Senate that has monitoring and evaluation offices gets real time evaluation of projects. It is important for us to have a monitoring and evaluation office. That is an additional office that needs to come out for it to be established. We can have it recorded in the Bill.

We can have three offices in the Senate that will oversight. They will be; the budget office, audit office and a monitoring and evaluations office. That way, we will be in a position to relate with the bodies that we are hiring on the ground and when we do that, we will make this country proud. As the Second Senate after the promulgation of the 2010 Constitution, we must have structures that will help us oversight before doing anything else.

With those remarks, I support and I congratulate Sen. Olekina.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, professor, for the contribution.

**Sen. (Dr.) Kabaka:** Thank you, Madam Temporary Speaker, for giving me this opportunity to support the County Oversight and Accountability Bill (Senate Bills No. 28 of 2018).

I have heard a lot from my fellow Senators. I have looked at the 20 clauses of the Bill and as much as I am supporting it, I have not seen a place where these two phraseologies are defined especially Clause 2 which defines phraseologies in law unless the Mover of the Bill, Sen. Olekina, who I have tremendous respect for, wants us to refer to other interpretive statutes like the Interpretation and General Provisions Act. The requisite provision that defines terms and legal phraseology in the Constitution does not show that definition. That is an area that I would like him to perfect.

There are two limbs in this Bill. The first limb is the cracks of the matter and the reason we are in the Senate; the oversight role as envisaged under Article 96 of the Constitution, 2010. The other limb is public participation which is also pronounced in the same Constitution. This Bill will certainly go a long way to attempt to cure the deficiencies on the oversight role that is cardinal for Senators.

From time to time, we have exclusively relied on the Auditor-General's report. I represent Machakos County and this is my first time in the Senate. I have been faced with huge workload because I have had to look at the Auditor-General's report for the financial years 2013/2014, 2014/2015, 2015/2016, 2016/2017 and 2017/2018. Interestingly, in all the reports, the Auditor-General has raised questions, what we refer to as disclaimers. A disclaimer means that those accounts have questions hence there is misappropriation of public funds.

As Senators, we at times feel frustrated by the Senate's inability to enforce these reports especially after they have been tabled in the House. The Senate does not have any role to play after tabling and that is why you have seen me canvassing with the Chairperson of the Committee on County Public Accounts and Investment (CPAIC), the

Senator for Homa Bay County and Sen. Olekina. I have always wanted to know what can be done now that the Auditor-General has put a disclaimer.

There is a schedule that has been presented and other than Makueni and Nyandarua counties, all the other counties have been found wanting. That means that billions have been stolen as we debate here and ask for more money in the Committee of Finance and Budget. That is why we are a frustrated lot. There is a lacuna and we should have a law to direct the investigative arms of the Government such as the office of Directorate of Criminal Investigations (DCI), the Director of Public Prosecutions (DPP) and the Ethics and Anti-Corruption Commission (EACC) to undertake investigations, arrest and prosecute within a given time. It is not enough for these matters to be rushed to court just for them to delay there indefinitely. We have a law that gives timelines for the determination of election petitions and we should borrow some leaf for these governors to be tried with their cohorts and be convicted during our time in the Senate.

I am also aware of Clause 18(2) which talks of professionals who are supposed to work in tandem with the Senator. I am happy that the Senator understands the importance of professionals in a parliamentary committee. Sen. (Prof.) Kamar and I went to Sri Lanka. Some people think we go for trips just for the sake of it. We attended what they refer to as Eval Colombo Session in Sri Lanka. They have an international committee or caucus which deals with the monitoring and evaluation of projects, especially Government projects. This is meant to ensure value for money. In such a committee, there is a need to ensure professionals serve in it. We do not have to limit the number to that committee because we do not want it have a bloated personnel, but we must have two or three individuals.

Madam Temporary Speaker, as said by the distinguished Senator for Makueni County, I want to emphasize the fact that we will be sitting here doing nothing if we do not establish a parliamentary audit office as it is in the United Kingdom (UK), Australia and other jurisdictions. The presiding Chair and I were in Australia and we saw that system working very well. Parliamentary auditors work hand in hand with Office of the Auditor-General and the Senate office in Sri Lanka. Therefore, for us to fortify the oversight role of the Senate, it is imperative we establish that office. Internal or external auditors are professionals trained in auditing. Their reports are timely and can be relied on in a court of law or in any fora addressing questions of misappropriation of funds. This is a serious office.

Madam Temporary Speaker, when this office is established, the officers who will serve in it should be beyond reproach. This is because we have heard of cases where rogue governors when being investigated by the DCI, DPP or EACC officers end up bribing them with the money they have looted from the public coffers. They walk around carrying brief cases containing the loot---

**The Temporary Speaker** (Sen. Nyamunga): Order! Hon. Senator, can you substantiate those claims?

**Sen. (Dr.) Kabaka:** Madam Temporary Speaker, I promise to substantiate.

They bribe them to come up with defective charges so that cases are dismissed for lack of merit. Their lawyers are able to identify some gaps that make those charges dismissed at the preliminary level.

Madam Temporary Speaker, I have no apologies to make. It is not that I am abusing the privileges of this House. I would be the last person to do so. However, when I raised the same issue with the Auditor-General during the Devolution Conference that took place in Kirinyaga, he indeed admitted that there are some rotten eggs in his department.

Further, when I sat next to you in the Committee on Finance and Budget recently I also raised the same concern with the newly appointed CEO of the EACC. He also admitted that there some rogue officers in departments in counties who will do what it takes to circumvent justice. In fact, on that day that he appeared before that Committee, he came with one of the officers he has appointed as the head of the EACC department in the counties to closely oversight of the officers who are complacent and being bribed by the governors in the counties.

I have substantiated clearly because these offices are run by human beings who are bound to be tempted and compromised. As I said, the office of the parliamentary auditors must be beyond reproach.

With regard to the misappropriation of funds, some governors are playing to the public gallery. We have seen them even in political arenas where they hoodwink Kenyans that they know officers in their counties who are misappropriating funds and that they will expose them. However, up to date, they have not done so. I am not mentioning any names, but it is in the public domain that some of those governors have not told Kenyans who those corrupt officers in their county departments are.

What does that tell you? It is a question of adding or deducing one plus one which does not always lead to two depending on the base. It can lead to ten. Some of these governors use their juniors to steal or misappropriate funds. More so, you will find that wherever the documents are produced in court, it is not the governors who have signed them. They are normally signed on their behalf by their employees in charge of finances.

Madam Temporary Speaker, as I wind up, I need to mention something with regard to public participation. Article 96 of the Constitution empowers us, as the Senators, to play our oversight role. Hence in this Bill, we are called to popularize the exercise. However, there is a total disconnect with regard to this important role, which was brought about by politics during the Eleventh Parliament as well in the current Parliament. Up to date, we have not been given oversight money for facilitation. Therefore, if this Bill is passed, it will assist the Senate to push for public participation properly.

Madam Temporary Speaker, public participation should be carried out professionally and in a structured manner. More often than not, you will find that any time people enter in an auditorium or any venue, they have no clue what they will speak about. First, they should be given reasonable notice. I appreciate the fact that there is always advertisement in the local dailies. However, there should be more than that. They should go and even email or send some questionnaires in a structured way. That way, the participants would be in a position to clearly interrogate the issue at hand and determine their merits and demerits. With that, they can allow the project to proceed.

Madam Temporary Speaker, as I have said, the questionnaires should be given at least two weeks in advance to avoid ambush. Members of the public should also be given

reasonable time so that they can be in a position to also carry out some research on the issue and contribute from an informed point of view.

Madam Temporary Speaker, as I close, I wish to support this Bill and say it is timely and well done. It may require a little polishing and it will go through.

**Sen. (Prof.) Onger:** Thank you, Madam Temporary Speaker. First of all, I rise to compliment my friend Sen. Olekina for coming up with this Bill. Like the previous speakers, there are two main features in this Bill.

One, this Bill is prescribing the manner and method to create the infrastructure necessary for public participation. Two, this Bill is putting into focus the role of the Senator in matters of oversight at the county level. I believe this Bill has drawn its inspiration from Article 174 of our Constitution about devolution. One of such elements I want to quote in Article 174 (d) to (f) on the Objects of Devolution is-

“The objects of devolution of government are-

(d) to recognize the rights of communities to manage their own affairs and to further their development.

(e) to protect and promote the interest and rights of minorities and marginalized communities.

(f) to promote social and economic development in the provision of proximate, easily accessible services throughout Kenya.”

Madam Temporary Speaker, just as we argued about the sharing of the national resources, we said there must be equitable resource sharing at the devolved systems; the county governments. Similarly, a situation obtains analogous to what has been obtaining at the national level, namely that when it gets at the county level, some of the areas within the county have either been marginalized or ignored. Even if they have been ignored, nobody pays any particular attention and there is no avenue through which they can raise this pertinent issue of marginalization that happens quite obviously without any recourse.

Not only does this Bill prescribe the manner in which the infrastructure should be set up; we can use the existing laws, innovate them and ensure it is structured. I have in mind that devolution goes to the smallest unit. The smallest unit in my own reckoning is the village councils.

There is need for our village councils to be able to deliberate and debate on matters that affect them on a day-to-day basis. What happens currently is that the so-called public participation is so hurried up and is strategically placed in markets so that the communication department will go and take the photographs of the people in the market and they will say there was huge public participation and say what was decided upon.

More often than not, you will find that these issues have been choreographed from the office of the Executive and are presented before the county assembly for necessary legislation that there was adequate public participation. We now need to innovate so that there is complete participation at the village level.

I would like to feel that somebody in Magena in Bomachoge-Borabu Constituency or somebody somewhere in Nyamarambe, Gesusu or Masimba is listening, being heard and there is a structured meeting which has been properly convened. They

present their programmes and ideas and that member of the public has an input to what they think should be the way forward in as far as their ward or village is concerned.

Madam Temporary Speaker, often, most of the County Integrated Development Plans (CIDPs), which are five-year plans are office documents. They may have very good intentions but they have never gone to the people for them to appreciate that this is what their county will be doing for the next five years. They are told the county has a CIDP which is meant to run for five years; that is all they know.

When it comes to annual development plans, when they know that the budgets are a cycle and there is a budget-making process, you will see a lot of advertisements on radio and other places announcing that there will be public hearings for public participation. They will come with vehicles and stand at a place and then say the public is not interested in giving their views. Therefore, they will indicate in their report that the public is either in agreement or they do not know what it is.

Madam Temporary Speaker, this Bill now puts these issues into perspective because one of the oversight personalities is the Senator of the area. I would have liked to see in this Bill, participation by the ward MCA. This is because they have also been given the function of oversight. I would have liked to see - if we are going to a ward for public participation - that the ward MCA will have an opportunity to ventilate their views at such a type of gathering.

What is the need for this public participation? You synthesize and prioritize information. You also take into account the most important element that affects that community at that particular moment in time. Without that, it is lost in the offices, when the officers go and create new thinking and say: "This is the representative thinking of the county people" when they have had no idea whatsoever what is contained in that document. That is one element that will cure this problem.

Madam Temporary Speaker, when it comes to project identification more than often, these projects are created because somebody wants to get a tender. Therefore, they will create a multiplicity of projects everywhere within the county without knowing whether those people are interested or not.

It may be that in one area, one of the things they are interested in is water provision. Water has become one of the most acute resources in this country. People want to talk about it. We have diminishing returns in our water resources and therefore, we should be very careful. These plans can only have a meaning to avoid the kind of catastrophe we are seeing in Turkana, West Pokot and the so-called marginalized areas where we are seeing drought and hunger taking effect because the people were never sensitized of the impending calamity that was likely to affect them.

The meteorologists were giving weather reports but people did not absorb them. I think that this is an important element of public participation that will cure some of the problems and mis-happenings that are taking place in our county governments.

I have also looked at Clause 3 of the Bill, it is creating efficiency and effectiveness to govern the county because once you know what the issues are then you create efficiency and prioritize some of these elements.

Those of us who are Members of the Committee on County Public Accounts and Investments (CPAIC), one of the things we have come across, which has created a huge

gap is the issue of assets and liabilities. Many ordinary people know where the assets of the county reside. Many of the people at the county level know that a particular parcel of land in a particular market is a county resource or property. Through dubious means, that property is seized and taken away. The only way you can update your assets and liabilities record is through the participation by people in that area. If this is enhanced, I am sure we will have almost near perfect record of assets and liabilities in our counties.

At Pumwani, for instance, there are some pieces of land lying fallow; they belong to the County Government of Nairobi City. The public around there know about them but the smart ones already dupe them otherwise. This is where we find a lot of cheating, squandering and acquisition of property that belongs to the county government. Those are big assets and I think this will help in providing that usefulness in dealing with these elements.

I must say that in dealing with public participation, there is one element which I had discussed it with my colleague, Sen. M. Kajwang'. We agreed that there has been a lot of wastage particularly as it relates to a Clause 18(1). On the appointment of qualified members who will assist the Senator in oversight of the county, I do not know who will employ them. We have to agree on the methodology of employing these people. Will it be through the Parliamentary Service Commission (PSC) or will it be through direct identification by the Senator and being employed directly by him? Who ascertains those qualifications? I think this is a grey area but we need to agree on how to deal with that element.

Madam Temporary Speaker, Clause 19(1) is on the role of the county assembly. We have been toying with the idea of empowering the county assemblies to do primary oversight work. Most of the oversight work is being done at the Senate level and through individual Senators. It is not humanly possible to be able to oversight each and everything that happens within a county. Therefore, the wards become primary sites for oversight and if our Members of County Assemblies (MCAs) and county assemblies are empowered to carry out that oversight, it will be very important. There is one fear that I know of that some may be compromised in their oversight work and ignore their primary responsibility in carrying out this oversight work.

Madam Temporary Speaker, I agree with the previous comments in Clause 19(2), that says-

“The Clerk of the county assembly may provide such logistical support as is necessary for carrying out of a successful public participation and oversight exercise.”

I have discussed this with Sen. Olekina and I told him that I should bring an amendment to that clause. This is because once it is perceived that they are actually funding you, it then loses the meaning and the steam that we want to start with this Bill. I expected that we would have continued fighting for this oversight fund, because it is important, necessary, cost-saving, prioritises events within a county and works as a perfect watchdog for the resources that are being allocated to the county governments.

Without that sharp watchdog approach by the Senate and Senators from respective counties in collaboration with the county assemblies, it will be very difficult to stem off the stealing that happens at the county level. One good thing that we can do in

this regard, as Senators, is to strengthen the overall oversight responsibility by allocating enough resources to the Senate to do this oversight work.

Madam Temporary Speaker, I sometimes wonder when people call to question the role of the Senate. Obviously, if the Senate is not involved, the kind of squander you have already seen elsewhere is going to be very rampant in every county. We have, for instance, gone through the fiduciary risk of all the 47 counties. It is amazing that some of the counties have attracted adverse reports or disclaimers. When we look through the list, there are about five or six such counties which have attracted disclaimers throughout the period of their financial auditing from the financial years 2013/2014, 2015/2016, 2016/2017 to now, 2017/2018.

Indeed, our Committee will be presenting before this House the way we want to handle this matter. We want to be current with auditing oversight work when it comes to these counties that have attracted disclaimers. The same applies to those counties which have attracted adverse reports, leave alone the qualified reports. There are only two counties that have attracted unqualified reports; those are Nyandarua and Makueni. Are you telling me that all these years they have never learnt? Could it be that the missing link is non-participation of the public in running the affairs of the counties? That is why I see this Bill as an important element in assisting both the Senate and the Senators, the county assemblies and the executive in being able to do that which is necessary.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina, could you approach the Chair?

*(Sen. Olekina approached the Temporary Speaker (Sen. Nyamunga))*

**Sen. (Prof.) Ongeri:** Therefore, Madam Temporary Speaker, I do not want to take so much time. I support this fully because it will give us an extra impetus to deal with rogue governors who do not want to listen to the set-down regulations. We have the Public Finance Management Act and so many other instruments that we can use to deal with such situations.

Thank you, Madam Temporary Speaker.

I beg to support.

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. Seneta.

**Sen. Seneta:** Thank you, Madam Temporary Speaker, for giving me a chance to also add my voice to this very important Bill. From the outset, I congratulate Sen. Olekina for having thought of it. As many of our colleagues have already said, it is a timely Bill.

I want to touch on three very important aspects in this Bill. One of them is the issue of public participation in terms of the budget-making process. The public cannot oversight projects which they have no idea, information or the monies that were allocated for them. Therefore, the public should be aware of the projects, the amount of money that has been allocated and what they want done from the ward level. That way, they will be able to oversight these projects. The same case applies to Members of County Assemblies

(MCAs). We need to continuously think of capacity building for MCAs so that they can oversight these projects from their own wards.

Madam Temporary Speaker, the other issue that this Bill gives emphasis on is the oversight role of the Senate. According to the Constitution, we need to have a framework. We also need to have timely information on each project that is supposed to be done by the county and the accountability aspect of it.

We discussed the issue of Samburu County and I really sympathize with them. They have been put in an awkward situation of not having any authority in charge of the county. However, we also need to look at in another way. Corruption should be made very expensive. Citizens must feel that the Government is fighting corruption. They should not sympathize with a county governor who is charged in a court of law because of corruption cases.

We have a situation where a certain group of citizens from a particular county has been mobilized to bless a governor who is facing a court case. This is because they want to make people believe that he or she is an innocent person. Therefore, what we need to do in this particular case, without paying a lot of attention to Samburu County, is to make the citizens of this country from all counties to believe in the projects that the monies have been allocated for. They need to know the amount of money that the county government spends and the standard of work that is done in the counties. The public needs to call for accountability. They should not be paid or given handouts so as to protect people in authority who misuse and misappropriate their funds.

Madam Temporary Speaker, the other thing that I admire in this Bill is the issue of experts. You cannot do a proper audit of a project if you are not sure of how the money was spent and how the whole process was done. Therefore, there is need for people or institutions which are mandated to oversight to be capacitated and given timely information, so that oversight is done at the right time.

This is an important Bill and therefore I support it.

**The Temporary Speaker** (Sen. Nyamunga): Finally, let us have Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, allow me to thank you for giving me an opportunity to add my voice to this important Bill. I commend Sen. Olekina for coming up with this objective Bill. It has come at a time when we need it because it speaks about our role in the Senate.

I am happy about the progression of this Bill. The Bill has highlighted principles of citizens' participation and that the public should be aware of whatever is happening. It has also highlighted about people accessing information.

It is unfortunate that when you go to the counties, sometimes citizens are not aware of their rights and developments that are supposed to be done. They are also not aware that it is their right to have the development done. As a Senate, we need to think of how to sensitise people in *mashinani* concerning their rights. It is not something that you can compromise. If there are no roads, it is their right to have them and if they do not have water, it is their right to have it.

There are some counties where people do not know that they are supposed to have benefited from rural electrification. As we speak now, there are some areas where people

live in darkness because they do not have electricity. It is embarrassing for me to say here that people in my neighbourhood do not have electricity. They have come to me several times and I have gone to Kenya Power many times to put their concern across. However, they have realised that I am just a nominated Senator and I may not have the ability to have electricity connected to their houses. That is why I still insist that there is need for citizens to know their rights. When they understand their rights, then they should be implemented.

When you talk about public participation, there is need to ensure infrastructural development for the purpose of ensuring that members of the public can meet somewhere and be informed about what they do not know or the amount of money allocated to their county. They need to look at the budget and question it because they have a right to do so. The power lies with the people and not the governors or anybody else. So, there is need for them to be told rightly what is happening.

I am happy that this Bill has highlighted the issue of infrastructure. When facilities are constructed people do not put in mind the Persons with Disabilities (PWDs). Shame on those who construct without thinking about the PWDs! I have visited counties where there are no facilities or infrastructure for PWDs. For example, I have seen some of them crawling to the toilet. We need to be sensitive to their plight. Some of them even wear adult diapers because they know that nobody cares about them. This Bill needs to address that primary need in terms of infrastructural development of counties. I know Sen. Olekina has listened to me keenly and he will improve this Bill by including facilities for PWDs in the development of infrastructure in our counties.

I have come from the Moi International Sports Centre, Kasarani, where I had gone to grace the deaf volleyball tournament. It is sad that I had to scale countless stairs to get to the venue. Shame on that kind of arrangement. As we put up physical structures, we must take into consideration the needs of PWDs. We can build ramps for them to access those buildings using wheelchairs if there are no lifts or escalators.

Madam Temporary Speaker, Sir, I will not keep quiet when the rights of PWDs are infringed. This Senate must make a difference in terms of taking care of PWDs. It is sad that some hotels in this country do not have facilities for PWDs. All infrastructure must factor in issues of disability.

Madam Temporary Speaker, the Bill says the county assembly will have to approve the development. The approval aspect is important because it will make the county assembly part and parcel of the development taking place in a county. I am happy about the plan for development, the budget, monitoring and evaluation.

It is also important to have a fully-fledged secretariat that will identify the issues which will interfere with devolution. We must all work together to see devolution succeeding in our country. This secretariat will flag out the gaps that will be addressed by the Senate. Devolution is no longer in its initial stage. Devolution must work for the citizens of this country. There is need for Wanjiku to benefit in terms of good roads, health facilities, amongst others.

There is also need for oversight funds for Senators. Senators must be facilitated to be effective in their work. For example, I represent the interests of 47 counties in this House as a nominated Senator. This morning as I was going to Moi International Sports

Centre in Kasarani, I had to facilitate myself. How can I go to do oversight in Thika, Kakamega or Narok or any other county if I am not facilitated? We need to have the oversight fund for Senators for devolution to succeed in this country.

Madam Temporary Speaker, nominated Senators have to cover wide areas of representation. If we are going to be effective in our work, then we need to be fully facilitated in terms of funds and other facilities. When we are effective, Kenyans will appreciate our work and say after all nomination of Senators is not a bad thing. Therefore, we, as Senators, must deliver services to Kenyans. We must ensure that both elected and nominated Senators are facilitated to do their work.

I rest my case. Once again, I thank you for giving me an opportunity to add my voice in support of this noble Bill.

**The Temporary Speaker** (Sen. Nyamunga): Thank you Senators for the contributions that you have made. I do not know if we have enough time for Sen. Olekina to reply. Kindly get started.

**Sen. Sakaja:** Madam Temporary Speaker, the time is enough for him to reply because he moved it eloquently. If he replies it in two minutes, I can move the next Bill and we can continue with it in the next session. Otherwise, they will change the order of things.

**Sen. Olekina:** Madam Temporary Speaker, there were about 11 Senators who contributed to this Bill and I want to thank all of them. That shows how important this Bill is in terms of us fulfilling our mandate. I want to promise Sen. Sakaja, Sen. Pareno, Sen. Mutula Kilonzo Jnr., Sen. (Dr.) Langat, Sen. M. Kajwang', Sen. (Prof.) Onger, Sen. (Prof.) Kamar, Sen. (Dr.) Kabaka, Sen. Seneta and Sen. (Dr.) Musurube that I will look at their contributions in the HANSARD and put them into consideration. I will ensure that we amend the clauses that were pointed out by my colleagues who sit with me in the Committee on County Public Accounts and Investment (CPAIC), so as to have this Bill see the light of day.

I beg to reply.

**The Temporary Speaker** (Sen. Nyamunga): Senator, you need to---

**Sen. Olekina:** Madam Temporary Speaker, pursuant to Standing Order No.61(3), I request that the putting of the question be deferred to a later date.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, that question will be put on Tuesday, next week.

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

Next Order.

*Second Reading*THE DETERMINATION OF THE NATURE OF BILLS  
(PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)

**Sen. Sakaja:** Thank you, Madam Temporary Speaker, for the opportunity to move this Bill.

This Bill is a collaborative effort between two Senators. It has been sponsored by Sen. Mutula Kilonzo Jnr. and I. It is a Bill that this House needs urgently. For the last few years, we have seen a lot of issues between the two Houses when it comes to determining where a Bill should go. Whereas the Constitution is very clear that both Speakers must determine whether a Bill concerns counties or whether it is a money Bill before it is presented to any of the Houses that does not happen. This meeting has been left to the discretion of the Speaker who receives a Bill and it has rarely happened since the last Parliament.

Madam Temporary Speaker, you and I were in the National Assembly in the last Parliament where we felt that we had jurisdiction that was exclusive and that the Senate was not to be involved in them. The same thing is still happening. There are numerous Bills that should be brought to this House but have never been brought here. After the Committee of the Whole, the Third Reading and the approval of the National Assembly, the Bills go straight to the President for assent. In fact, a lot of the legislations that have passed since the beginning of the bicameral system can be challenged in a court of law because the Constitution clearly states that a Bill must go through a certain process.

This Bill proposes to set out the criteria or rather the form in which this meeting is supposed to take place. This Bill seeks to set out the manner through which the Speaker of the National Assembly and the Speaker of the Senate will meet so as to discuss where a Bill is supposed to go.

In the provisions of this particular Bill, we have pronounced ourselves on the aspirations of the Constitution and have gone step by step or *hatua kwa hatua* to show how the secretariat of both Houses will receive the legislative proposals, sit down and create a prescribed form. In future, if both Houses---

**The Temporary Speaker** (Sen. Nyamunga): Sen. Sakaja, I know that you are a senior Member of this House. You should have started your Bill by saying; 'I propose to move'. However, you can still do that. I will give you a few seconds to do that before we adjourn.

**Sen. Sakaja:** Madam Temporary Speaker, I think that I had mentioned it but for the record, I will say it again.

I beg to move that the Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018) be now read a second time. The Bill is sponsored by Sen. Mutula Kilonzo Jnr. and I.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Sakaja, you have a balance of 58 minutes to finalise moving your Bill.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until, tomorrow, Thursday, 4<sup>th</sup> April, 2019 at 2:30 p.m. in the National Assembly Chamber for the Joint Sitting of Parliament.

The Senate rose at 6:30 p.m.