



REPUBLIC OF KENYA
TWELFTH PARLIAMENT – (THIRD SESSION)
THE SENATE
ORDER PAPER
WEDNESDAY, JUNE 19, 2019 AT 2.30 PM

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers (as listed in the Appendix)
6. Notices of Motion
7. Statements (as listed in the Appendix)
8. ****THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL (SENATE BILLS NO. 10 OF 2019)**
(Chairperson, Standing Committee on Tourism, Trade and Industrialization)
(First Reading)
9. **MOTION - ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILLS NO. 34 OF 2017)**
(Chairperson, Mediation Committee)

THAT, the Senate adopts the Report of the Mediation Committee on the Physical Planning Bill (National Assembly Bills No. 34 of 2017) laid on the Table of the Senate on Tuesday, 18th June, 2019 and pursuant to Article 113 of the Constitution and Standing Order 161 (3) of the Senate Standing Orders approves the mediated version of the Bill.
10. ***THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 32 OF 2018)**
(Sen. (Arch.) Sylvia Kasanga, MP)
(Second Reading)
(Resumption of debate interrupted on Tuesday, 18th June, 2019)
(Division)

11. COMMITTEE OF THE WHOLE

***THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL (SENATE BILLS NO. 18 OF 2018)**

(Sen. Ledama Olekina, MP)

*(Resumption of debate interrupted on Tuesday, 18th June, 2019)
(Division)*

12. COMMITTEE OF THE WHOLE

***THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO. 19 OF 2018)**

(Sen. Samuel Poghio, MP)

*(Resumption of debate interrupted on Tuesday, 18th June, 2019)
(Division)*

13. COMMITTEE OF THE WHOLE

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

(Sen. George Khaniri, MP)

*(Resumption of debate interrupted on Tuesday, 18th June, 2019)
(Division)*

14. COMMITTEE OF THE WHOLE

****THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL (SENATE BILLS NO. 34 OF 2018)**

(Chairperson, Standing Committee on Finance and Budget)

*(Resumption of debate interrupted on Tuesday, 18th June, 2019)
(Division)*

15. COMMITTEE OF THE WHOLE

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

(Chairperson, Sessional Committee on Delegated Legislation)

*(Resumption of debate interrupted on Thursday, 6th June, 2019)
(Division)*

16. COMMITTEE OF THE WHOLE

****THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILLS NO. 21 OF 2018)**

(Chairperson, Sessional Committee on Delegated Legislation)

17. COMMITTEE OF THE WHOLE

***THE NATIONAL COHESION AND PEACE BUILDING BILL (SENATE BILLS NO. 35 OF 2018)**

(Sen. Judith Pareno, MP)

18. COMMITTEE OF THE WHOLE

*****THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)**

(The Senate Majority Leader)

19. COMMITTEE OF THE WHOLE

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

(Chairperson, Standing Committee on Information and Technology)

20. COMMITTEE OF THE WHOLE

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

(Sen. Gideon Moi, MP)

21. COMMITTEE OF THE WHOLE

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

(Sen. Mutula Kilonzo Jnr., and Sen. Sakaja Johnson, MP)

22. COMMITTEE OF THE WHOLE

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

(Sen. Ledama Olekina, MP)

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

(Sen. Mary Seneta, MP)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 18th June, 2019)

24. **MOTION - COMPLETION OF ALL STALLED PROJECTS UNDER COUNTY GOVERNMENTS THROUGH BUDGETARY MANAGEMENT**

(Sen. Charles Reubenson Kibiru, MP)

THAT, AWARE THAT Kenya has had a development blueprint of Vision 2030 since 2008 which has guided planning and development for the last decade, with a focus to making Kenya an industrialized middle income economy with a higher per capita income for its citizens;

FURTHER AWARE THAT, the development planning of the country is funded from the Consolidated Fund through the annual budget whereby revenues generated by Kenyans through taxes, levies, and fees that are supplemented with support of development partners in the form of outright loans, conditional loans, grants and/or unconditional grants to support growth and development across the country;

COGNIZANT THAT, any diversion from the Vision 2030 blueprint as well as the President’s “Big Four” Agenda, would negatively impact the development trajectory that seeks to ensure a long term microeconomic stability resulting in a revision of targets on the goals for socio-economic, cultural, environmental, technological and political transformation;

...../Motion

NOTING THAT, whereas the National Government’s Budget is based on Vision 2030 and “Big Four” Agenda, the County Governments’ Budgets are based on their respective County Integrated Development Plans, (CIDPs) which are expected to dovetail with the overall national development blueprint;

CONCERNED THAT, there are glaring discrepancies in progress made in development among counties, particularly among the 14 devolved functions caused by lack of accountability, integrity, professionalism and remaining a blemish on the successes of devolution;

ACKNOWLEDGING, the tribulations, ridicule, pecuniary embarrassment and negative socio-economic impact that pending bills have had on the local business community who supplied or undertook a service for the county governments, and the attendant slowdown in actual project completion, the rise in stalled projects dotting counties, with County Governors prioritizing new projects instead of the completion of those which have stalled;

FURTHER ACKNOWLEDGING THAT, the National Treasury in its circular No. 9/2018 detailed the five hundred and forty five (545) projects which have stalled in the 47 Counties, and their status of completion, collectively amounting to an estimated project cost of three hundred and sixty six (366) Billion Kenya shillings;

NOW THEREFORE, the Senate recommends that the National Treasury in partnership with the Controller of Budget, Commission on Revenue Allocation, the Council of Governors and the County Assemblies Forum to-

1. Ensure that all the County Integrated Development Plans (CIDP’s) and Annual Development Plans (ADP’s) are aligned to Vision 2030 with an implementation, monitoring, and evaluation framework in place;
2. Address Pending Bills by prioritizing their payment, creating clear timeframes for payment and publishing a schedule of payment of the same; and
3. Prioritize the completion of stalled development projects prior to undertaking or funding new projects.

***(Resumption of debate interrupted on Tuesday, 18th June, 2019)
(Balance of Time – 2 hours 18 minutes)***

25. **MOTION - CREATION OF SUPPORT SERVICES FOR THE DISCIPLINED FORCES AND THEIR FAMILIES**

(Sen. George Khaniri, MP)

THAT APPRECIATING the commitment and sacrifice by members of the disciplined forces in protecting our country from both internal and external aggression;

AWARE of the risky and stressful environment that the officers are exposed to daily in the line of duty, combined with the increased terrorism threats at home, and abroad;

NOTING that members of the disciplined forces, and by extension, their families are exposed to traumatic incidents both at home and abroad that manifest as living in constant fear, debilitating depression, nightmares, crippling anxiety and thoughts of

...../Motion

suicide commonly referred to as Post Traumatic Stress Disorder (PTSD) leaving them exposed to the stigma of society and unable to care for themselves and their families the way they could before;

RECOGNIZING that there is no structured national comprehensive program for post-traumatic stress counseling either for active or returning soldiers and their families;

NOW THEREFORE the Senate calls upon the Ministry of Interior and Co-ordination of National Government, in partnership with the Ministry of Defence, to establish counseling and support centers in all premises housing disciplined forces, and provide mandatory counseling to all service personnel and the families of those currently serving, and those who may have been killed in the line of duty.

26. **MOTION - WAIVER OF INTEREST ON HELB LOANS FOR GRADUATES**

(Sen. (Dr.) Abdullahi Ali, MP)

THAT, AWARE THAT Higher Education Loans Board (HELB) has, for over the last two decades, become the leading financier of higher education in Kenya whose mandate is to source funds and lend them as affordable loans, bursaries and scholarship to students pursuing higher education in recognized institution;

COGNIZANT THAT, the Ministry of Education announced that the government has lost Kshs. 7.2b through people defaulting payment on loans issued by HELB translating to 74,692 graduates who have defaulted the loans payment;

NOTING THAT, measures were taken to enhance the HELB loan recovery process which included a six month waiver of accumulated interest and penalties, and working with law enforcement officers to make sure the defaulters who are employed payback the loans;

CONCERNED THAT, there are graduates from institutions of higher learning who have not been gainfully employed for many years after graduation, and are therefore burdened with loans that have accumulated interest and penalties that they have no means to repay;

FURTHER CONCERNED THAT, when beneficiaries fail to remit their monthly instalments for more than three months, HELB reports them to the Credit Reference Bureaus (CRB) preventing them from accessing loan facilities with any financial institution in Kenya, accessing employment opportunities in the government and major private and publicly listed companies and the loan guarantors are pursued and forced to service the HELB loan;

NOW THEREFORE, the Senate recommends that the Ministry of Education and HELB –

1. institutes a six (6) month full waiver of all the interest and penalties accrued, including the lifting of Credit Reference Bureau blacklisting, for defaulters who are willing to repay their loans in entirety, within the six (6) month period; and
2. embarks on a forty-five (45) day sensitization exercise preceding the waiver, no later than ninety (90) days after the passage of this motion.

...../Motion

27. **MOTION - RENAMING OF MURANG’A UNIVERSITY OF TECHNOLOGY TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY.**

(Sen. Isaac Mwaura, MP)

THAT AWARE THAT, Murang’a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act, 2012, and is positioning itself to develop a distinctive profile as a progressive and international Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang’a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD –Asili under which he ran for presidency in 1992 general election;

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba’s contribution to our Nation, to rename Murang’a University of Technology to Kenneth Matiba University of Technology.

NOTICE

The Senate resolved on 13th February, 2019 as follows:-

THAT, pursuant to Standing Order 106 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

KEY

******** - Denotes a Majority /Minority Party Bill

******* - Denotes a National Assembly Bill

****** - Denotes a Committee Bill

***** - Denotes any other Bill

A. *THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING BAYS) BILL
(SENATE BILLS NO. 18 OF 2018)

(Sen. Ledama Olekina, MP)

NOTICE is given that Sen. Wamatangi Kimani Paul, MP Chairperson to the Standing Committee on Roads and Transportation, intends to move the following amendments to the County Planning (Roads, Pavements and Parking Bays) Bill, 2018, (Senate Bill No. 18 of 2018) at the Committee Stage—

CLAUSE 3

THAT clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

No. 6 of 1996 (b) provide a framework for planning of commercial structures along county roads in accordance with the Physical Planning Act;

CLAUSE 4

THAT clause 4 of the Bill be amended by deleting the words “and all commercial buildings constructed along major roads” appearing immediately after the words “county roads”.

CLAUSE 5

THAT clause 5 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting the words “all roads” and appearing immediately after the words “drainage systems along” in paragraph (b) and substituting therefor the words “county roads”;

(ii) deleting the words “national and” appearing immediately after the words “constructed along” in paragraph (c);

(iii) deleting paragraph (d) and substituting therefor the following new paragraph—

(d) construct, maintain and facilitate the construction and maintenance of adequate parking bays in the respective county.

(iv) deleting paragraph (e);

- (v) deleting paragraph (f) and substituting therefor the following new paragraph—

No 6 of (f) facilitate regular inspection of all buildings, roads, streets, lanes, alleys, parking bays and walkways under the jurisdiction of the county government to ensure that they adhere to prescribed building codes and standards as set out in the Physical Planning Act, the Urban Areas and Cites Act and any other written law;
1996.

- (b) by inserting the following new sub-clause immediately after sub-clause (2)—

(3) The CEC shall, for purposes of subsection (2) consult with the National Council for Persons with Disabilities established under section 3 of the Persons with Disabilities Act.

CLAUSE 6

THAT clause 6 of the Bill be amended by inserting the words “in accordance with the Physical Planning Act” immediately after the words “in the county”.

CLAUSE 7

THAT clause 7 of the Bill be amended —

- (a) by deleting sub-clause (1); and
- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—

(2) The county executive committee member shall, in consultation with the National Lands Commission, designate public land for the construction of parking bays within the county.

CLAUSE 8

THAT the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Construction and maintenance of walkways by the county government	8. Each county government shall construct and maintain walkways along all county roads in the respective county.
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CLAUSE 9

THAT the Bill be amended by deleting clause 9 and substituting therefor the following new clause—

<p>Designation of Pedestrian Crossing</p>	<p>9. (1) The county executive member shall designate areas for use by pedestrians for the purpose of crossing a county road in a manner that does not interfere with the flow of traffic and that complies with national and county legislation.</p> <p>(2) The county executive member shall, for the purpose of subsection (1) and where necessary, designate a pedestrian crossing and maintain a footbridge or any other convenience for use by pedestrians to cross a county road.</p>
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CLAUSE 10

THAT the Bill be amended by deleting clause 10 and substituting therefor the following new clause —

<p>Access ways to commercial buildings</p> <p>No. 6 of 1996</p>	<p>10. (1) Subject to subsection (2), an owner of a commercial building which is situated along a county road—</p> <p>(a) may, with the approval of the county government, construct an access-way to the property in which the commercial building is situated in such a manner that the access-way does not obstruct a county road or extend directly from a county road.</p> <p>(b) shall allocate adequate space for access to the building in accordance with the Physical Planning Act and any other written law.</p> <p>(2) The county government shall ensure that there is an alternative means of access to commercial buildings in the area where the building is situated.</p> <p style="text-align: right;"><i>...../ Amendments</i></p>
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(3) Every person who, immediately before the commencement of this Act, owns a commercial building situated along a county road shall comply with provisions of this section—

- (a) within a period of twelve months from the date of the commencement of this Act; or
- (b) within a period of twelve months from the date of completion of the construction of an alternative means of access to the building as provided under subsection (2).

(4) A person who contravenes subsection(1)(b) commits an offence and is liable, on conviction, in accordance with section 30 of the Physical Planning Act.

CLAUSE 11

THAT the Bill be amended by deleting clause 11 and substituting therefor the following new clause—

<p>Construction and maintenance of walkways by owners of commercial buildings.</p>	<p>11. (1) The owner of a commercial building may construct and maintain a walkway next to the commercial building where the county government—</p> <ul style="list-style-type: none"> (a) has designated an area next to the building for the construction of a walkway; and (b) has not constructed or has failed to maintain the walkway. <p>(2)A person shall not construct or maintain a walkway under subsection (1)—</p> <ul style="list-style-type: none"> (a) unless such person has applied for and obtained approval of the county executive committee member; and (b) otherwise in accordance with the prescribed standards.
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CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (2) by deleting the words “in accordance with the standards prescribed under this Act” and substituting therefor with the words “in accordance with the Physical Planning Act and any other written law”.

CLAUSE 13

THAT clause 13 of the Bill be amended—

- (a) in sub-clause (1) by deleting the word “pavement” appearing immediately after the word “A” and substituting therefor the word “walkway”;
- (b) in sub-clause (2) by deleting the word “pavement” appearing immediately after the words “commercial activity on a” and substituting therefor the word “walkway”; and
- (c) by deleting sub-clause (3).

CLAUSE 14

THAT clause 14 of the Bill be amended —

- (a) by deleting sub-clause (3); and
- (b) in sub-clause (4) by deleting the word “seize” appearing immediately after the words “committee member may” and substituting therefor the word “walkways”.

CLAUSE 15

THAT the Bill be amended—

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause—

Cap 39 of 1953	(4) A person who contravenes this section commits an offence and is liable, on conviction in accordance with section 52A of the Traffic Act.
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- (b) by deleting sub-clause 5.

CLAUSE 16

THAT the Bill be amended

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) The county executive committee member may, in consultation with the Cabinet Secretary and all relevant stakeholders, make regulations for the better carrying out of the provisions of this Act;

(b) in sub-clause (2)

(i) by deleting paragraph (a); and

(ii) in sub-clause (2)(b) by deleting the word “pavement” appearing immediately after the words “parking bays and” in paragraph (b) and substituting therefor the word “walkways”.

CLAUSE 2

THAT clause 2 of the Bill be amended—

(a) by deleting the definition of the word “commercial building” and substituting therefor the following new definition:

“commercial building” shall have the same meaning assigned to it under the Physical Planning Act;

(b) by inserting the following new definition immediately after the definition of the word “national road”—

“walkway” means any egress, footpath, pathway or route for use by non-motorized traffic and shall not include cycle lanes;

(c) by deleting the definition of the word “heavy commercial vehicle” and substituting therefor the following new definition—

“heavy commercial vehicle” has the meaning assigned to it under section 2 of the Traffic Act;

(d) by deleting the definition of the word “county road” and substituting therefore the following new definition—

“county road” means all roads falling within the mandate of the county governments under Part 2 of the Fourth Schedule to the Constitution and specified under any other written law;

(e) by deleting the definition of the word “major road”;

(f) by deleting the definition of the word “minor road”; and

(g) by deleting the definition of the word “national road”.

SHORT TITLE

THAT the Bill be amended by deleting clause (1) and substituting therefor the following new clause—

Short Title	1. This Act may be cited as the County Roads, Walkways and Parking Bays Act, 2018.
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B. *THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO. 19 OF 2018)

(Sen. Samuel Poghio, MP)

NOTICE is given that the Chairperson of the Standing Committee on Information and Technology, Sen. Gideon Moi, MP intends to move the following amendments to the County Outdoor Advertising Control Bill (Senate Bills No. 19 of 2018) at the Committee Stage –

CLAUSE 4

THAT clause 4 of the Bill be amended –

(a) in subclause (2)(b) by deleting subparagraph (ii) and substituting therefor the following new paragraph –

(ii) the Kenya National Highway Authority or any other entity responsible for the management of road reserves, where the advertisement is to be displayed on a road reserve;

(b) by inserting the following new subclause immediately after subclause (2) –

(2A) The county executive committee member shall keep and maintain a register in which shall be recorded all applications made and licences issued under this Act.

CLAUSE 15

THAT clause 15 of the Bill be amended –

(a) by deleting the marginal note and substituting therefor the following new marginal note –

Publication of application for a licence.

(b) in subclause (2) by inserting the words “within seven days from the date of the notice” immediately after the words “on the application”.

NEW CLAUSE 14A

THAT the Bill be amended by inserting the following new clause immediately after clause 14 –

No other government entity to levy fees.

14A. Subject to this Act or any other written law, no other government entity shall levy fees on outdoor advertising.

NEW CLAUSE 18A

THAT the Bill be amended by inserting the following new clause immediately after clause 18 –

Dispute
resolution.

18A. (1) The National government, a county government or any other person who is a party to a dispute arising under this Act shall take reasonable measures to resolve the dispute by alternative dispute resolution before resorting to judicial proceedings.

(2) A party is considered to have taken reasonable measures to resolve a dispute by alternative dispute resolution if such a party-

- (a) notifies the other party of the issues that are in dispute and offering to settle them;
- (b) responds appropriately to a notification under paragraph (a);
- (c) provides relevant information and documents to the other party to enable that party understand the issues and determine the best approach to take in responding to the issues; or
- (d) where an alternative dispute resolution mechanism is agreed to -
 - (i) collaborating with the other party in determining the person to facilitate resolution of the dispute; and
 - (ii) attending the alternative dispute resolution process.

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

(Sen. George Khaniri, MP)

NOTICE is given that Sen. Mohamed Yusuf Haji, the Chairperson to the Standing Committee on National Security, Defence and Foreign Relations, intends to move the following amendments to the County Law Compliance and Enforcement Bill (Senate Bills No. 25 of 2018) at the Committee Stage –

CLAUSE 4

THAT clause 4 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “deployment, secondment” immediately after the words “the ranks” in paragraph (a); and
- (b) inserting the following new paragraph immediately after paragraph (c);
- (d) ensure that recruitment and appointment of officers to the unit reflect the ethnic and geographical diversity of the people within the county.

CLAUSE 6

THAT clause 6 of the Bill be amended in sub-clause (2) by deleting the words “on matters such as weights and measures and noise level” appearing immediately after the words “with county laws” in paragraph (b).

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (1) by –

- (a) deleting the words “any other law” appearing immediately after the words “this Act or” in the introductory clause and substituting therefor the words “the respective county legislation”; and
- (b) deleting the words “contrary to the provisions of this Act or any other county law” appearing immediately after the words “to cause harm” in paragraph (d)(i).

CLAUSE 8

THAT clause 8 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) An enforcement officer may make an *ex parte* application to the relevant court for an order to seize property and for any other relevant order where the enforcement officer has reasonable grounds to suspect that any property –

- (a) has been or is being used for the purpose of carrying out a regulated activity contrary to the respective county legislation; or
- (b) is maintained, kept or controlled in any other manner contrary to the respective county legislation.

CLAUSE 9

THAT clause 9 of the Bill be amended –

- (a) by deleting sub-clause (4) and substituting therefor the following new sub-clause –

(4) In the case of perishable or rapidly depreciating property, the court may make an order for the disposal or return, by the unit, of the property to the owner.

(b) in sub-clause (5) by deleting the word “destruction” appearing immediately after the words “an order for” in the introductory clause and substituting therefor the word “disposal”; and

(c) by inserting the following new sub-clause immediately after sub-clause (6) –

(7) Where, upon the conclusion of proceedings, the court finds the owner of the property not to have committed an offence, the court may make an order for compensation for any loss suffered by the owner of the property.

CLAUSE 10

THAT the Bill be amended by deleting clause 10.

CLAUSE 11

THAT the Bill be amended by deleting clause 11.

CLAUSE 12

THAT the Bill be amended by deleting clause 12.

CLAUSE 13

THAT clause 13 of the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

- (1) A notice required to be given shall be deemed to have been served if -
 - (a) it is served upon the owner or occupant of the property;
 - (b) it is served upon an employee, who occupies a position of management, of the owner or occupant of the property; or
 - (c) sent to the last known address of the owner or occupant of the property.

CLAUSE 15

THAT clause 15 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

(4) A county government shall not establish, maintain or operate a facility for the purpose of detaining a person arrested pursuant to this Act.

NEW CLAUSE 25

THAT the Bill be amended by inserting the following new clause immediately after clause 24 –

25. This Act shall not be construed as providing for the establishment of a police service or an entity performing a mandate similar to that of the National Police Service established under Article 243 of the Constitution.

D. **THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL (SENATE BILLS NO. 34 OF 2018)

(Chairperson, Standing Committee on Finance and Budget)

- (i) **NOTICE** is given that Sen. Mohamed M. Mahamud, Chairperson, Committee on Finance and Budget, intends to move the following amendments to the County Wards (Equitable Development) Bill, Senate Bills No. 34 of 2018, at the Committee Stage-

CLAUSE 4

THAT clause 4 of the Bill be amended-

- (a) in paragraph (a) by inserting the word “equitable” immediately after the words “the promotion of the”;
- (b) by deleting paragraph (c);
- (c) by inserting the following new paragraph immediately after paragraph (d)-
 - (e) the use of public funds in a prudent and responsible manner in accordance with Article 201 of the Constitution.

CLAUSE 5

THAT clause 5 of the Bill be amended in subclause (3) by deleting the word “expenditure” appearing immediately after the words “allocation for development” in paragraph (a) and substituting therefor the word “budget”.

CLAUSE 6

THAT clause 6 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause-

- (2) The county assembly shall consider and either approve or reject the criteria within twenty-one days of receipt of the criteria.

CLAUSE 7

THAT clause 7 of the Bill be amended-

- (a) in subclause (1) by deleting the word “county” appearing immediately after the words “resident of each” and substituting therefor the word “ward”;
- (b) in subclause (4) by deleting the words “the village councils” appearing immediately after the words “offer technical assistance” and substituting therefor the words “to the respective ward administrator”.

CLAUSE 8

THAT clause 8 of the Bill be amended-

(a) in subclause (1) by deleting the words “section 7(4)” appearing immediately after the words “the proposals received under” and substituting therefor the words “section 7”;

(b) by deleting subclause (2) and substituting therefor the following new subclause-

(2) The projects identified under subsection (1) shall be submitted to the respective county assembly for approval.

(c) by deleting subclause (3) and substituting therefor the following new subclause-

(3) The county executive committee member shall publicize the projects approved by the county assembly for implementation in each ward by notice in the county Gazette and through such other means as the county executive committee member shall consider appropriate.

CLAUSE 12

THAT clause 12 of the Bill be amended in subclause (5) by deleting the words “subsection (2) or” appearing immediately after the words “of funds under” in the introductory clause and substituting therefor the word “subsection”.

CLAUSE 2

THAT clause 2 of the Bill be amended in the definition of the term “community” by deleting the words “location, sub-location or village and having common interests” appearing immediately after the words “as a ward”.

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

(Chairperson, Select Committee on Delegated Legislation)

NOTICE is given that Sen. Samson Cherarkey, Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Statutory Instruments (Amendment) Bill, 2018, at the Committee Stage-

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause-

Amendment **3.** The principal Act is amended in section 15 by-
of section
15 of No. 23
of 2013.

(a) deleting subsection (1) and substituting therefor the following new section-

(1) The Committee shall make a report to the relevant House containing a resolution either that the statutory instrument that stands referred to the Committee be approved or that the statutory instrument be annulled.

(b) deleting subsection (3) and substituting therefor the following new subsection-

(3) Notwithstanding subsection (2) the House may, by resolution, extend the time within which the Committee shall consider a statutory instrument under subsection (2) for a period not exceeding twenty-eight days.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 3-

Insertion of new section **4.** The principal Act is amended by inserting the following new section immediately after section 15-15A in No. 23 of 2013.

Concurrence **15A.** (1) The Clerk of the House to on a which a statutory instrument is statutory referred shall, upon-instrument.

(a) the resolution of the relevant House under section 15(1) for the approval or annulment of a statutory instrument; or

(b) expiry of the period specified under section 15(2),

cause the resolution of the House to be transmitted to the Clerk of the other House within two days of the resolution.

(2) A resolution under subsection (1) shall stand referred to the relevant Committee of that House which shall consider the resolution together with the statutory instrument and report to the House within fourteen days of the referral.

(3) The House to which resolution is referred to under subsection (1) may extend the time within which the Committee shall consider the resolution for a period not exceeding seven days.

(3) If both Houses resolve to-
(a) approve the statutory instrument; or
(b) annul the statutory instrument;

the Clerk of the House to which the statutory instrument was transmitted under section 11(1) shall, within seven days of the decision, notify the regulation-making authority.

...../Amendments

(4) Where the House resolves to revoke a statutory instrument and the other House does not, the statutory instrument shall be referred to a joint committee for mediation in accordance with Article 113 of the Constitution which shall be applied with the necessary modification.

Amendment **5.** The principal Act is amended by deleting of section 18 and substituting therefor the following new section-
18 of No. 23 of 2013.

Annulment. **18.** (1) When Parliament passes a resolution to annul a statutory instrument the statutory instrument shall be deemed to be annulled.

(2) The regulation making authority shall publish the annulment of the statutory instrument within fourteen days of the annulment.

F. *THE NATIONAL COHESION AND PEACE BUILDING BILL (SENATE BILLS NO. 35 OF 2018)

(Sen. Judith Pareno, MP)

NOTICE is given that Sen. Naomi Waqo, Vice-Chairperson to the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration intends to move the following amendments to the National Cohesion and Peace Building Bill, 2018, Senate Bill No. 35 of 2018, at the Committee Stage -

CLAUSE 9

THAT clause 9 of the Bill be amended by deleting the word “three” appearing immediately after the words “chairperson and” and substituting therefor the word “four”.

CLAUSE 11

THAT clause 11 of the Bill be amended in sub-clause (4) by deleting the words “cabinet secretary” appearing immediately after the word “the” and substituting therefor the word “President”.

CLAUSE 15

THAT clause 15 of the Bill be amended in sub-clause (1) by deleting paragraph (h).

CLAUSE 34

THAT clause 34 of the Bill be amended in sub-clause (3) by inserting the following words “put measures in place to ensure that the principle of non-discrimination is adhered to” at the end of the sub-clause.

CLAUSE 38

THAT clause 38 of the Bill be amended in sub-clause (2) by deleting the words “and without justification” appearing immediately after the words “public resources”.

CLAUSE 44

THAT clause 44 of the Bill be amended in sub-clause (1) by deleting paragraph (c).

CLAUSE 45

THAT the Bill be amended by deleting clause 45 and substituting therefor the following new clause –

45. A complaint to the Commission may be made by –

- (a) a person acting in their own interest;
- (b) a person acting on behalf of another person who cannot act in their own name;
- (c) a person acting as a member of a group or class of persons;
- (d) a person acting in the public interest; or
- (e) an association acting in the interest of one or more of its members.

CLAUSE 52

THAT clause 52 of the Bill be amended in paragraph (a) by inserting the words “Office of the” immediately after the words “matter to the”;

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

(Chairperson, Standing Committee on Information and Technology)

NOTICE is given that Sen. Gideon Moi, the Chairperson of the Standing Committee on Information and Technology, intends to move the following amendments to the Data Protection Bill (Senate Bills No. 16 of 2018) at the Committee Stage –

CLAUSE 3

THAT the Bill be amended by deleting clause 3 and substituting therefor the following new clause –

Application.

3. (1) This Act shall apply to –

(a) the protection of personal data of a data subject in the processing of such data by –

(i) an agency established in the Republic of Kenya; and

(ii) an agency not established in the Republic of Kenya but processes personal data of a data subject who is a resident of the Republic of Kenya; and

(b) the processing by automated or any other means of personal data which forms or is intended to form part of a filing system.

(2) This Act shall not apply to the processing of personal data –

(a) by or on behalf of a public body responsible for national security the purpose of which is the prevention, detection, investigation or punishment of a crime; or

(b) by a person in the course of a personal or household activity.

(3) Despite the provisions of subsection (2)(a) and except where the security of the country, the life, safety or health of a person, or property is in imminent danger, a public body that intends to process personal data without the consent of the data subject shall make an application *ex parte* to a court for orders to process such data.

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (2) by –

- (a) deleting paragraph (b) and substituting therefor the following new paragraph –
 - (b) the data subject or a guardian, where the data subject is a child or a person who is legally incapacitated, has consented to the collection of the personal data from another source;
- (b) deleting paragraph (c);
- (c) by deleting the words “the interests” appearing immediately after the words “protection of” in paragraph (e)(ii) and substituting therefor the words “fundamental rights and freedoms”;
- (d) deleting paragraph (f) and substituting therefor the following new paragraph –
 - (f) the life, safety or health of a person or property is in imminent danger.
- (e) deleting sub-clause (3) and substituting therefor the following new sub-clause –
 - (3) An agency shall collect or process personal data using lawful means that do not intrude to an unreasonable extent upon the privacy of a data subject.

CLAUSE 8

THAT clause 8 of the Bill be amended by –

- (a) re-numbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause immediately after sub-clause (1) –
 - (2) Where the data subject is in control of the means of inputting or processing his or her personal data, it shall be the responsibility of the data subject to ensure that personal data is complete, accurate, up-to-date and not misleading.

CLAUSE 9

THAT clause 9 of the Bill be amended by –

- (a) deleting paragraph (e) and substituting therefor with the following new paragraph –
 - (e) the deletion of personal data relating to the data subject which is in possession of an agency; and
- (b) inserting the following new paragraphs immediately after paragraph (f) -
 - (g) be informed of the period within which personal data is to be stored; and
 - (h) data portability.

CLAUSE 10

THAT clause 10 of the Bill be amended in sub-clause (1) by –

- (a) deleting the introductory clause and substituting therefor the following new clause –

- (1) Before an agency collects personal data directly from a data subject, the agency shall inform the data subject, in a language the data subject understands, of –

- (b) deleting the word “hold” appearing immediately after the words “agency that will” in paragraph (d) and substituting therefor the words “be in possession of”;
- (c) deleting paragraph (h) and substituting therefor the following new paragraph –
 - (h) the rights conferred on the data subject under section 9 of this Act.

CLAUSE 11

THAT clause 11 of the Bill be amended in sub-clause (1) by deleting the words “in the recent past” appearing immediately after the words “taken those steps” and substituting therefor the words “within the past twelve months”.

CLAUSE 12

THAT clause 12 of the Bill be amended –

- (a) in paragraph (a) by deleting the words “publicly available” and substituting therefor the words “a matter of public record”;
- (b) by deleting paragraph (c); and
- (c) by deleting paragraph (f) and substituting therefor the following new paragraph –
 - (f) compliance would endanger the life, safety or health of a person or endanger property;

CLAUSE 13

THAT clause 13 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

- (1A) Subsection (1) shall not apply to a data subject where the decision is –
 - (a) necessary for entering into, or performing, a contract between the data subject and the agency;
 - (b) authorised by a law to which the agency is subject and which lays down suitable measures to safeguard the data subject’s rights, freedoms and legitimate interests; or
 - (c) based on the explicit consent of the data subject.

CLAUSE 14

THAT clause 14 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “information on” at the beginning of paragraph (b);
- (b) inserting the words “information on” at the beginning of paragraph (c);
- (c) deleting the word “transmitted” appearing immediately after the words “is to be” in paragraph (d) and substituting therefor the word “disclosed”; and
- (d) deleting the words “processed data” appearing immediately after the words “deletion of” in paragraph (f) and substituting therefor the words “data which has been processed”.

CLAUSE 16

THAT clause 16 of the Bill be amended –

- (a) by re-numbering the existing clause as sub-clause (1);
- (b) in the new clause (1) by –
 - (i) inserting the words “is a breach of security or there” after the words “Where there” in the introductory clause;
 - (ii) deleting the words “as soon as reasonably practicable” appearing at the beginning of paragraph (a) and substituting therefor the words “within seventy two hours”;
- (c) by inserting the following new sub-clauses immediately after the new sub-clause (1) –
 - (2) The notification under subsection (1)(a) shall set out sufficient information to enable the data subject to take protective measures against potential consequences of the data breach, including —
 - (a) description of the nature of the breach;
 - (b) description of the likely consequences of the breach;
 - (c) description of the measures that the agency intends to take or has taken to address the breach;
 - (d) recommendation on the measures to be taken by the data subject to mitigate the adverse effects of the breach; and
 - (e) where possible, the identity of the person who may have accessed or processed the personal data.
 - (3) An agency may delay the issuance of a notification under subsection (1) for the purpose of preventing, detecting or investigating a crime by the relevant public entity.

CLAUSE 17

THAT clause 17 of the Bill be amended –

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) Where an agency is in possession of personal data or where a person believes that an agency is in possession of personal data relating to him or her, that person –

- (a) may obtain from the agency a confirmation as to whether the agency possesses such personal data and the purposes for processing the personal data; and
- (b) shall have access to that data.

- (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause –

(2) An agency to which an application for access to personal data has been made may charge a prescribed fee for the provision of the personal data and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the data subject.

CLAUSE 18

THAT clause 18 of the Bill be amended –

- (a) in sub-clause (1) by deleting the word “holds” appearing immediately after the words “an agency which” and substituting therefor the words “is in possession of”; and
- (b) in sub-clause (2) inserting the words “or such other personal data relating to the data subject as the data subject may request” immediately after the words “or misleading data”.

CLAUSE 19

THAT clause 19 of the Bill be amended –

- (a) in sub-clause (1) by –
 - (i) deleting paragraph (c) and substituting therefor the following new paragraph –

(c) the retention of the data is necessary for a lawful purpose related to the function or activity performed by the agency;
 - (ii) by deleting the words “parties to the contract” appearing immediately after the words “contract between the” in paragraph (d) and substituting therefor the words “the data subject and the agency”;

(b) by inserting the following new sub-clause immediately after sub-clause (3) –

(3A) An agency may, for purposes of subsection (3), anonymise the data retained under subsection (3) in such a manner as to ensure that the data subject is no longer identifiable.

CLAUSE 20

THAT clause 20 of the Bill be amended by deleting the word “holds” appearing immediately after the words “an agency that” and substituting therefor the words “is in possession of”.

CLAUSE 21

THAT clause 21 of the Bill be amended by –

- (a) re-numbering the existing clause as sub-clause (1); and
- (b) inserting the following new sub-clause immediately after the new sub-clause (1) –

(2) An agency that uses personal data for commercial purposes shall, where possible, anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.

CLAUSE 23

THAT the Bill be amended by deleting clause 23.

CLAUSE 24

THAT clause 24 of the Bill be amended in sub-clause (2) by –

- (a) inserting the words “in the case of a data subject who is a child or a person who is legally incapacitated, the guardian” immediately after the words “the data subject” in paragraph (a);
- (b) deleting paragraph (d) and substituting therefor the following new paragraph –

(d) with respect to information that has made public by the data subject.

CLAUSE 25

THAT the Bill be amended by deleting clause 25.

CLAUSE 27

THAT the Bill be amended by deleting clause 27.

CLAUSE 29

THAT clause 29 of the Bill be amended –

- (a) in paragraph (a) deleting the words “or any other person having authority to make decisions on behalf of the child” appearing immediately after the words “parent or guardian”; and

(b) by deleting paragraph (d) and substituting therefor the following new paragraph –

(d) in the best interest of the child.

CLAUSE 30

THAT the Bill be amended by deleting clause 30.

CLAUSE 31

THAT clause 31 of the Bill be amended –

(a) by re-numbering the existing clause as sub-clause (1);

(b) in the new sub-clause (1) by –

(i) deleting the words “third party” appearing immediately after the word “the” appearing at the beginning of paragraph (a) and substituting therefor the words “Commission satisfied that the other country”;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph –

(c) the transfer is necessary -

(i) for the performance or conclusion of a contract between the data subject and the agency;

(ii) for the establishment, exercise or defence of a legal claim;

(iii) for the protection of fundamental rights and freedoms of a person; or

(iv) in the interest of the public.

(iii) by deleting paragraph (d); and

(c) by inserting the following new sub-clause immediately after the new sub-clause (1) –

(2) The Commission shall prescribe guidelines for the transfer of personal data outside the country and the filing of reports on personal data transferred outside the country by an agency.

CLAUSE 36

THAT clause 36 of the Bill be amended –

(a) by deleting sub-clause (4) and substituting therefor the following new sub-clause –

(4) Despite the provisions of this Act, a person whose personal data is collected or processed contrary to this Act or who suffers loss as a result of disclosure of personal data may lodge a claim before a court for an appropriate remedy.

- (b) by inserting the following new sub-clause immediately after sub-clause (4) -
 - (5) In determining a claim under subsection (4) a court shall consider –
 - (a) the nature and the seriousness of the breach;
 - (b) the categories of personal data affected;
 - (c) any benefit gained or loss suffered as a result of the breach;
 - (d) the number of previous violations;
 - (e) the duration of time over which the breach occurred;
 - (f) any action taken by the agency to remedy or mitigate the breach; and
 - (g) the nature and status of the agency.

CLAUSE 38

THAT clause 38 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “five hundred thousand” appearing immediately after the words “not exceeding” and substituting therefor the words “one million”; and
- (b) by inserting the following new sub-clause immediately after sub-clause (1) –
 - (1A) Despite subsection (1), where the offence –
 - (a) committed relates to special personal information the person shall be liable, on conviction, to a fine not exceeding five million shillings or to a term of imprisonment not exceeding ten years; or
 - (b) is committed by a body corporate, the body corporate shall be liable, on conviction, to a fine not exceeding two million shillings or two percent of its annual turnover, whichever is higher.

NEW CLAUSE 18A

THAT the Bill be amended by inserting the following new clause immediately after clause 18 –

Right to data portability.

18A. (1) A data subject has the right to receive personal data which the data subject has provided to an agency, in a structured, commonly used and machine-readable format.

(2) A data subject has the right to transmit the data obtained under subsection (1) to another agency.

(3) Where possible, the data subject shall have the right to have the personal data transmitted directly from one data agency to another.

(4) The right under this section shall not apply to circumstances where —

(a) processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority; or

(b) it may adversely affect the rights and freedoms of another.

(5) An agency shall comply with data portability requests, free of charge and within a period of seven days from the date of the request.

CLAUSE 2

THAT clause 2 of the Bill be amended –

- (a) by deleting the definition of the word “data controller”;
- (b) by deleting the definition of the word “data subject” and substituting therefor the following new definition –

“data subject” means a natural person to whom personal data relates;

- (c) by deleting the definition of the word “disclosure” and substituting therefor the following new definition –

“disclosure”, in relation to personal data, includes the disclosure of information extracted from such data and the transfer of such data to another person but does not include a disclosure made directly or indirectly by an agency to its employee or agent for the purpose of enabling the employee or agent to carry out its duties and, where the identification of a data subject depends partly on the data and partly on other information in the possession of the agency, the data shall not be considered as disclosed unless the other information is also disclosed;

- (d) by deleting the definition of the word “exempt information”;
- (e) in the definition of the word “personal data” –
 - (i) by deleting paragraph (d) and substituting therefor the following new paragraph –
 - (d) the biometrics of a person;
 - (ii) by deleting paragraph (g); and
 - (iii) by deleting paragraph (h);

- (f) in the definition of the word “processing” by inserting the word “storage” immediately after the words “collection, organisation” in paragraph (a); and
- (g) by deleting the definition of the word “special personal information” and substituting therefor the following new definition –

“special personal information” means the personal data of a child or data revealing a natural person’s race, health status or ethnic origin.

SHORT TITLE

THAT the Bill be amended by deleting clause 1 and substituting therefor the following new clause –

Short title and commencement.

1. This Act may be cited as the Personal Data Protection Act, 2018, and shall come into operation six months from the date of assent.

APPENDIX

1. **PAPERS**

- (i) Report of the Standing Committee on Land, Environment and Natural Resources on the Natural Resources (Benefit Sharing) Bill (Senate Bills No. 31 of 2018).

(Chairperson, Standing Committee on Land, Environment and Natural Resources)

- (ii) Report of the Auditor-General on the Financial Statements of the County Assembly of Nyandarua for the Year ended 30th June 2018.

(The Senate Majority Leader)

2. **STATEMENTS PURSUANT TO STANDING ORDER 48(1)**

- a) The Senator for Marsabit County (Sen. (Eng.) Godana Hargura, MP) to seek a statement from the Standing Committee on Roads and Transportation concerning the state of Loiyangalani Airstrip in Marsabit County; and
- b) Nominated Senator (Sen. Abshiro Halake, MP) to seek a statement from the Standing Committee on Finance and Budget regarding the issue of zero-rating of duty and VAT on locally manufactured menstrual hygiene products.