



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE SENATE

SUPPLEMENTARY ORDER PAPER

THURSDAY, JUNE 20, 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 (as listed in the Appendix)
7. Statements (as listed in the Appendix)
8. **MOTION - LAWS THAT HAVE BEEN ENACTED UNPROCEDURALLY IN THE 12TH PARLIAMENT**
(The Senate Majority Leader and the Senate Minority Leader)

THAT, WHEREAS Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments and Article 96 (2) of the Constitution provides that the Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113;

AND FURTHER WHEREAS Article 109(4) of the Constitution provides that a Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses;

NOTING that Article 110 (3) of the Constitution requires that before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether any Bill is a Bill concerning counties, and if it is, whether it is a special or an ordinary Bill;

AND NOTING in particular, that the Supreme Court in ***Supreme Court Advisory Opinion No. 2 of 2013; Speaker of the Senate vs The Attorney General*** reaffirmed the role of the Senate in the legislative process and particularly in the consideration and passage of Bills concerning county governments as well as the role of the Senate in the legislative process;

...../Motion

CONCERNED that despite the provisions of Articles 96(1) and (2) and Articles 109 to 113 of the Constitution and the pronouncement of the Supreme Court in the aforementioned **Supreme Court Advisory Opinion No. 2 of 2013**, the two Houses of Parliament are yet to agree on the processing of legislation in Parliament as contemplated in the Constitution;

FURTHER CONCERNED that in the 12th Parliament, in respect of all the Bills originating from the National Assembly, the Speaker of the National Assembly has not sought the concurrence of the Speaker of the Senate as to whether the National Assembly Bills concern counties;

FURTHER CONCERNED that in the 12th Parliament, the National Assembly has originated and passed Bills without reference to the Senate despite the Bills containing matters concerning counties;

FURTHER CONCERNED that Bills originating from the Senate that are forwarded to the National Assembly for consideration are subject to the unconstitutional procedure of evaluation by the Budget and Appropriations Committee of the National Assembly as to whether or not they are money Bills and the consequent non-consideration of a good number of those Bills on the unilateral declaration of the National Assembly that such Bills are money Bills;

AWARE that the continued implementation of statutes for which there was no concurrence under Article 110 (3) of the Constitution and the continued introduction and consideration of new Bills without compliance with Article 110 (3) of the Constitution is a breach of the Constitution;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution and that Article 94 of the Constitution requires Parliament to protect the Constitution and to promote the democratic governance of the Republic;

FURTHER COGNIZANT that the Senate is vested with the sacrosanct and high calling of fiercely protecting devolution;

OBSERVING FURTHER that persistent non-compliance with Articles 96(2), 109(4) and 110 to 113 of the Constitution is a threat to devolution and is unconstitutional;

NOW THEREFORE THE SENATE-

- (a) **REITERATES AND RE-AFFIRMS** its commitment in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;
- (b) **FURTHER REITERATES AND RE-AFFIRMS** its commitment to protect the interests of the counties and their Governments;
- (c) **REITERATES AND RE-ASSURES** the People of Kenya, on whose behalf it exercises its mandate under Articles 94 and 96 of the Constitution that it shall always, diligently and robustly prosecute that mandate and shall resist any actions or attempts to undermine devolution and the people’s aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;

...../Motion

- (d) **RESOLVES** to institute legal proceedings to -
 - (i) challenge the laws that have been enacted unprocedurally in the 12th Parliament;
 - (ii) seek an interpretation of the term “money Bill”; and
 - (iii) seek a final determination of the procedure to be followed in respect of all the Bills that are pending before Parliament so as to ensure compliance with Article 110(3) of the Constitution and for the future.

9. COMMITTEE OF THE WHOLE

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

(Chairperson, Standing Committee on Information and Technology)

10. 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;

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;

...../Motion

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 Wednesday, 19th June, 2019)
(Balance of Time – 2 hours 13 minutes)***

11. 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;

...../Motion

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.

12. **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.

13. **MOTION - IMPROVING ALLOCATION OF RESEARCH FUNDS TOWARDS HIGHER LEARNING**

(Sen. (Arch.) Sylvia Kasanga, MP)

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;

...../Motion

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.

14. **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 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;

...../Motion

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.

15. **MOTION -REPORT OF THE PARLIAMENT OF KENYA DELEGATION TO THE 50TH SESSION OF AFRICAN CARIBBEAN PARLIAMENTARY (ACP) ASSEMBLY AND THE 35TH SESSION OF THE ACP – EU JOINT PARLIAMENTARY ASSEMBLY**
(Sen. (Prof.) Margaret Kamar, MP)

THAT, this House notes the Report of the Parliament of Kenya delegation to the 50th Session of the ACP Parliamentary Assembly and the 35th Session of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium, from 13th to 20th June, 2018, laid on the table of the House on Wednesday, 20th February, 2019.

16. **MOTION -REPORT OF THE PARLIAMENT OF KENYA DELEGATION TO THE GLOBAL SUMMIT ON OPEN GOVERNANCE PARTNERSHIP**
(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)

THAT, this House notes the Report on the Global Summit on Open Governance Partnership held in Tbilisi, Georgia, from 17th to 19th July, 2018, laid on the Table of the House on Wednesday, 20th February, 2019.

17. **MOTION-REPORTS OF THE SIXTH ORDINARY SESSION OF THE FOURTH PAN- AFRICAN PARLIAMENT AND THE FIRST ORDINARY SESSION OF THE FIFTH PARLIAMENT OF THE PAN-AFRICAN PARLIAMENT**
(Sen. (Dr.) Abdullahi Ali, MP)

THAT, this House notes the Reports of the Sixth Ordinary Session of the Fourth Pan- African Parliament held in Midrand, South Africa, from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, 24th July, 2018; and, the First Ordinary Session of the Fifth Parliament of the Pan African Parliament held in Kigali, Rwanda, from 18th October to 3rd November, 2018, laid on the Table of the House on Tuesday, 12th March, 2019.

18. **MOTION - REPORT ON THE THIRD STATUTORY MEETING OF THE COMMITTEE ON ECONOMIC DEVELOPMENT, REGIONAL INTEGRATION AND NATURAL RESOURCES OF THE FORUM OF PARLIAMENTS OF THE INTERNATIONAL CONFERENCE OF THE GREAT LAKES REGION (FP-CGLR)**
(Sen. Samuel Poghio, MP)

THAT, this House notes the Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the Forum of Parliaments of the International Conference of the Great Lakes Region (FP-ICGLR) held in Bujumbura, Burundi, from 13th to 14th March, 2019, laid on the Table of the House on Tuesday, 21st May, 2019.

19. **MOTION** - (The Senate Majority Leader)

THAT, pursuant to Standing Orders 28 and 29, the Senate do adjourn until Tuesday, 2nd July, 2019.

NOTICE

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

- (a) **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.

- (b) **THAT**, notwithstanding the provisions of Standing Order 106 (4), the debate on any Motion for the adjournment of the Senate to a day other than the next normal sitting day in accordance with the calendar of the Senate shall be limited to a maximum of two hours with not more than fifteen minutes for each Senator speaking after which the Senate shall adjourn without question put;

Provided that when the period of recess proposed by any such Motion does not exceed nine calendar days, the debate shall be limited to a maximum of thirty (30) minutes, and shall be confined to the question of adjournment.

KEY

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

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

****** - Denotes a Committee Bill

***** - Denotes any other Bill

****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) a data controller or data processor who is a Kenyan citizen or a legal entity established in the Republic of Kenya; and

(ii) a data controller or data processor 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 matters relating to 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.

...../Amendments

CLAUSE 4

THAT the Bill be amended by deleting clause 4 and substituting therefor the following new clause –

Principles of personal data protection. **4.** (1) The following principles shall guide the interpretation and application of this Act —
(a) personal data shall —

(i) be collected, processed, stored or dealt with in any other manner if it is necessary for or directly related to a lawful, explicitly defined purpose and shall not intrude on the privacy of the data subject;

(ii) be collected directly from and with the consent of the data subject;

(iii) only be disclosed to a third party or put to a different use with the consent of the data subject;

(iv) not be kept for a longer period than is necessary for achieving the purpose for which it was collected;

(v) not be processed in a manner that is incompatible with the purpose for which it was collected; and

(vi) shall be accurate, up-to data and complete;

(b) the data subject shall be informed of the purpose to which personal data shall be put and the intended recipients of that data at the time of collection; and

(c) appropriate technical and organizational measures shall be taken to safeguard personal data against the risk of loss, damage, destruction of or unauthorized access to personal information.

CLAUSE 6

THAT clause 6 of the Bill be amended in sub-clause (2) by deleting paragraph (a).

CLAUSE 7

THAT clause 7 of the Bill be amended –

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

(1) A data controller or data processor shall, subject to subsection (2), where it requires personal data from a person, collect such personal data directly from the data subject for a purpose which is specific, explicitly defined and lawful.

(b) in sub-clause (2) by –

(i) deleting the words “an agency” appearing at the beginning of the introductory clause and substituting therefor the words “a data controller or data processor”;

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

(a) the data subject has made the data public;

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

(b) the data subject or in the case of a child or a person who is legally incapacitated, the guardian of that child or person, has consented to the collection of personal data from another source;

(iv) deleting paragraph (c);

(v) 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”;

(vi) by deleting paragraph (e)(iv);

(vii) deleting paragraph (f) and substituting therefor the following new paragraph –

(f) if the life, safety or health of a person or property is in imminent danger.

(c) by deleting sub-clause (3) and substituting therefor the following new sub-clause –

(3) A data controller or data processor shall collect or process personal data using lawful means and in compliance with the right to privacy and this Act.

CLAUSE 8

THAT clause 8 of the Bill be amended by –

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

(b) deleting the words “an agency” appearing at the beginning of the re-numbered sub-clause (1) and substituting therefor with the words “a data controller or data processor”;

(c) inserting the following new sub-clause immediately after the new 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 the Bill be amended by deleting clause 9 and substituting therefor the following new clause –

Rights of the data subject. **9.** A data subject has a right to –

- (a) be informed of the use to which their personal data is to be put;
- (b) access their personal data which is in the possession of a data controller or data processor;
- (c) object to the collection or processing of all or part of their personal data;
- (d) correction of false or misleading personal data;
- (e) the deletion of personal data relating to the data subject which is in possession of a data controller or data processor;
- (f) be informed of the period within which personal data is to be stored; and
- (g) data portability.

CLAUSE 10

THAT clause 10 of the Bill be amended –

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

(1) A data controller or data processor shall, before collecting personal data directly from a data subject, inform the data subject in a language the data subject understands —

- (a) the fact that personal data is being collected;
- (b) the purpose for which personal data is being collected;
- (c) the intended recipient of the personal data;
- (d) the name and address of the data controller or data processor that is collecting the personal data and any other person who may access the collected personal data;
- (e) where the information is collected pursuant to any law —
 - (i) the law requiring or authorising the collection of the information;
 - (ii) the procedure required to be undertaken in order to comply with the law; and
 - (iii) whether the giving of the personal data by that data subject is voluntary or mandatory;
- (f) the consequences if any, where the data subject fails to provide all or any part of the requested information; and
- (g) the right of the data subject specified under section 9 of this Act.

(b) in sub-clause (2) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

CLAUSE 11

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

When not to notify. **11.** (1) A data controller or data processor shall not be required to take the steps specified under section 10 if the data controller or the data processor has, prior to collecting the personal data, taken those steps within the past twelve months when collecting the same personal data or personal data of the same kind from that data subject.

(2) Where a data controller or data processor collects personal data under subsection (1) to be used for a different purpose from the one for which the personal data was first collected or where the circumstances of the data subject have changed, the data controller or data processor shall notify the data subject of the new use to which the personal data shall be put to.

(3) A data controller or data processor shall notify a data subject that a waiver of his or her rights under this Act shall be construed as consent and authorisation for the data controller or a data processor to collect the information.

CLAUSE 12

THAT the Bill be amended by deleting clause 12 and substituting therefor the following new clause –

- Lawfulness of processing personal data.
- 12.** (1) A data controller or data processor shall not process personal data unless –
- (a) the data subject consents to the processing for one or more specified purposes;
 - (b) the processing is necessary –
 - (i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;
 - (ii) for compliance with any legal obligation to which the data controller or a data processor is subject;
 - (iii) in order to protect the fundamental rights and freedom of the data subject or another person;
 - (iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in a data controller or data processor;
 - (v) for the performance of any task carried out by a public authority;

- (vi) for the protection of legitimate interests pursued by a data controller or data processor having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject;
- (vii) for the purpose of historical, statistical or scientific research; or
- (viii) for such other purpose as the Cabinet Secretary may prescribe.

(2) Further processing of personal data shall be in accordance with the purpose for which the personal data was collected.

CLAUSE 13

THAT clause 13 of the Bill be amended by –

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

Automated processing.

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

(2) 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 a data controller or data processor;
- (b) authorised by a law to which a data controller or data processor 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.

(3) Where a data controller or data processor intends to make a decision based on automated processing and which produces a legal effect or significantly affects the data subject, the data subject shall have the right to –

- (a) be notified in writing before a decision is taken;
- (b) be provided with an explanation of the reason for and the consequences of the decision; and
- (c) raise an objection against a decision made under this section to the data controller or data processor for the protection of the data subject’s legitimate interests.

(4) The data controller or data processor shall consider the issues under subsection (3)(c) and notify the data subject of its findings and decision within seven days of receipt of the objection.

CLAUSE 14

THAT clause 14 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;
- (b) in sub-clause (2) by –
 - (i) inserting the words “information on” at the beginning of paragraph (b);
 - (ii) inserting the words “information on” at the beginning of paragraph (c);
 - (iii) deleting the word “transmitted” appearing immediately after the words “is to be” in paragraph (d) and substituting therefor the word “disclosed”; and
 - (iv) 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 15

THAT clause 15 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;
- (b) in sub-clause (2) by deleting the words “an agency” appearing immediately after the words “with subsection (1)” and substituting therefor with the words “a data controller or data processor”;
- (c) by inserting the following new sub-clause immediately after sub-clause (2) –
 - (2A) In implementing the measures under subsection (2), a data controller or data processor shall take into account –
 - (a) the amount of personal data processed;
 - (b) the nature of personal data being processed;
 - (c) the extent of the processing of the personal data;
 - (d) special risks that exist in the processing of the personal data;
 - (e) the period of retention of the personal data; and
 - (f) the ease of accessibility.

CLAUSE 16

THAT clause 16 of the Bill be amended –

- (a) by re-numbering the existing clause sub-clause (1);
- (b) in the new clause (1) by –
 - (i) deleting the introductory clause and substituting therefor the following new introductory clause –
 - (1) Where there is a breach of security or there are reasonable grounds to believe that personal data has been accessed or processed contrary to this Act, a data controller or data processor shall –
 - (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 data controller or data processor 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) A data controller or data processor may delay notification to the data subject under subsection (1)(a) for the purpose of preventing, detecting or investigating a crime by the relevant public entity.
 - (4) Where a data processor becomes aware of a personal data breach, the data processor shall notify the data controller within forty-eight hours of becoming aware of such breach.

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 a data controller or data processor is in possession of personal data or where a person believes that a data controller or data processor is in possession of personal data relating to him or her, that person —

(a) may obtain from the data controller or data processor 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) A data controller or data processor 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 words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

(b) in sub-clause (2) —

(i) by deleting the words “an agency” appearing immediately after the words “the constitution, request” and substituting therefor with the words “a data controller or data processor”;

(ii) inserting the words “outdated or such other personal data relating to the data subject as the data subject may request” immediately after the words “or misleading data”.

(c) by deleting sub-clause (6);

(d) by deleting sub-clause (7) and substituting therefor the following new sub-clause —

(7) Where a data controller or data processor approves a request under subsection (2), the data controller or data processor shall —

(a) correct or delete the data within seven days of approval of the request;

(b) inform the data subject of the action taken within seven days of taking the action under paragraph (a); and

(c) where the data had been shared with any other person, inform that other person of the action taken and require that person to correct or delete the data.

- (e) by inserting the following new sub-clause immediately after sub-clause (7) –
 - (8) A data controller or data processor shall not correct or delete personal data which is the subject of a case before a court.

CLAUSE 19

THAT clause 19 of the Bill be amended –

- (a) in sub-clause (1) by –
 - (i) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;
 - (ii) 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 data controller or the data processor;
 - (iii) deleting the words “parties to the contract” appearing immediately after the words “contract between the” in paragraph (d) and substituting therefor the words “data subject and the data controller or the data processor”;
 - (iv) inserting the following paragraph immediately after paragraph (d) –
 - (e) the retention is for historical, statistical, journalistic literature and art or research purposes.
- (b) by deleting sub-clause (2); and
- (c) in sub-clause (3) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;
- (d) by inserting the following new sub-clause immediately after sub-clause (3) –
 - (3A) A data controller or data processor may, for purposes of subsection (3), anonymise or pseudonymise the data retained under subsection (3) in such a manner as to ensure that the data subject is no longer identifiable.
- (e) in sub-clause (4) by deleting the words “an agency” appearing at the beginning of the sub-clause and substituting therefor with the words “a data controller or data processor”;

CLAUSE 20

THAT the Bill be amended by deleting clause 20.

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-clauses immediately after the new sub-clause (1) –

(2) A data controller or data processor 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.

(3) The Cabinet Secretary in consultation with the Commission may prescribe practice guidelines for commercial use of personal data in accordance with this Act.

CLAUSE 22

THAT clause 22 of the Bill be amended –

- (a) in sub-clause (1) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or data processor”;
- (b) in sub-clause (2) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or data processor”;

CLAUSE 23

THAT the Bill be amended by deleting clause 23.

CLAUSE 24

THAT clause 24 of the Bill be amended–

- (a) in sub-clause (1) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or a data subject”;
- (b) in sub-clause (2) by –
 - (i) inserting the words “or 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);
 - (ii) deleting paragraph (d) and substituting therefor the following new paragraph –

(d) with respect to information that has been made public by the data subject.
 - (iii) inserting the following new paragraphs immediately after paragraph (d) –

(e) necessary for the establishment, exercise or defence of a legal claim.

CLAUSE 25

THAT the Bill be amended by deleting clause 25.

CLAUSE 27

THAT the Bill be amended by deleting clause 27.

CLAUSE 28

THAT clause 28 of the Bill be amended –

- (a) by deleting the words “an agency” appearing at the beginning of the introductory clause and substituting therefor the words “a data controller or data processor”; and
- (b) in paragraph (a) by deleting the words “or a social service institution” appearing immediately after the words “medical institution”.

CLAUSE 29

THAT clause 29 of the Bill be amended –

- (a) by re-numbering the existing clause as sub-clause (1);
- (b) in the new sub-clause (1) –
 - (i) by deleting the words “An agency” appearing at the beginning of the sub-clause and substituting therefor the words “A data controller or data processor”;
 - (ii) in paragraph (a) by deleting the words “or any other person having authority to make decisions on behalf” appearing immediately after the words “parent or guardian”;
 - (iii) by deleting paragraph (d) and substituting therefor the following new paragraph –
 - (d) in the best interest of the child.
- (c) by inserting the following new sub-clause immediately after the new sub-clause (1) –
 - (2) A data controller or data processor shall adopt appropriate measures for age verification and the giving of consent for processing of personal data.

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 sub-clause (1);
- (b) in the new sub-clause (1) by –
 - (i) deleting the words “An agency” appearing at the beginning of the introductory clause and substituting therefor the words “a data controller or data processor”;
 - (ii) deleting the words “third party” appearing immediately after the word “the” appearing at the beginning of paragraph (a) and substituting therefor the words “Commission is satisfied that the other country”;
 - (iii) 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 data processor or data controller;
 - (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.
 - (iv) by deleting paragraph (d); and
- (c) by inserting the following new sub-clause immediately after the new sub-clause (1) –
 - (2) The Cabinet Secretary in consultation with 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 a data controller or data processor.

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 data controller or data processor to remedy or mitigate the breach; and
- (g) the nature and status of the data controller or data processor.

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 three million shillings or two percent of its annual turnover, whichever is higher.
- (c) by inserting the following new sub-clause immediately after sub-clause (3) –
 - (4) In addition to any penalty prescribed under this section, a Court may make orders –
 - (a) for the forfeiture of any equipment or any article used or connected in any way with the commission of the offence; or
 - (b) prohibiting the doing of any act to stop continuing commission of an offence.

NEW CLAUSES

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

PART IIA— REGISTRATION OF DATA CONTROLLERS AND DATA PROCESSORS

Registration of data controllers and data processors.

3A. (1) Subject to subsection (2), no person shall act as a data controller or data processor unless registered with the Commission.

(2) The Commission shall prescribe the threshold required for mandatory registration of a data controller and data processor, and in making such determination, the Commission shall consider –

- (a) the nature of industry;
- (b) the volumes of data processed;
- (c) whether special personal data is being processed; and
- (d) any other criteria the Commission may specify.

Application for registration.

3B. (1) A data controller or data processor required to register under section 3A shall apply to the Commission for registration.

(2) An application under subsection (1) shall provide the following particulars –

- (a) a description of the personal data to be processed;
- (b) a description of the purpose for which the personal data is to be processed;
- (c) the category of data subjects to which the personal data relates;
- (d) contact details of the data controller or data processor;
- (e) a general description of the risks, safeguards, security measures and mechanisms to ensure the protection of personal data; and
- (f) any other details as may be prescribed by the Commission.

(3) The Commission shall issue a certificate of registration where a data controller or data processor meets the requirements for registration.

(4) A data controller or data processor shall notify the Commission of a change in any particular outlined under subsection (2).

(5) On receipt of a notification under subsection (4), the Commission shall amend the respective entry in the register.

Duration of the registration certificate. **3C.** A registration certificate issued under section 3B shall be valid for a period of three years and the holder may apply for the renewal after expiry of the certificate.

Register of data controllers and data processors. **3D.** (1) The Commission shall keep and maintain a register of registered data controllers and data processors.

(2) The Commission may, at the request of a data controller or data processor, remove any entry in the register which has ceased to be applicable.

(3) A person may request the Commission for a certified copy of any entry in the register.

Cancellation or variation of the certificate. **3E.** The Commission may, on notice, vary terms and conditions of a certificate of registration or cancel the registration where—

(a) any information given by the applicant is false or misleading; or;

(b) the holder of the certificate of registration, without lawful excuse, fails to comply with any requirement of this Act.

Compliance and audit. **3F.** The Commission may carry out periodical audits of the processes and systems of the data controllers or data processors to ensure compliance with this Act.

Designation of the Data Protection Officer. **3G.** (1) A data controller or data processor may designate or appoint a data protection officer on such terms and conditions as the data controller or data processor may determine, where —

(a) the processing is carried out by a public body or private body, except for courts acting in their judicial capacity;

(b) the core activities of the data controller or data processor consist of processing operations which, by virtue of their nature, scope or purposes, require regular and systematic monitoring of data subjects; or

(c) the core activities of the data controller or the data processor consist of processing of sensitive categories of personal data.

(2) A data protection officer may be a staff member of the data controller or data processor and may fulfil other tasks and duties provided that any such tasks and duties do not result in a conflict of interest.

(3) A group of entities may appoint a single data protection officer provided that such officer is accessible by each entity.

(4) Where a data controller or data processor is a public body, a single data protection officer may be designated for several such public bodies, taking into account their organisational structures.

(5) A person may be designated or appointed as a data protection officer, if that person has relevant academic or professional qualifications which may include knowledge and technical skills in matters relating to data protection.

(6) A data controller or data processor shall publish the contact details of the data protection officer and communicate them to the Commission.

(7) The responsibility of a data protection officer shall be to—

- (a) advise the data controller or data processor and their employees on data processing requirements provided under this Act or any other written law;
- (b) ensure on behalf of the data controller or data processor that this Act is complied with;
- (c) facilitate capacity building of staff involved in data processing;
- (d) provide advice on data protection impact assessment; and
- (e) Cooperate with the Commission and any other authority on matters relating to data protection.

NEW CLAUSE 7A

THAT the Bill be amended by inserting the following new clause immediately after clause 7 –

Conditions of consent. **7A.** (1) A data controller or data processor shall bear the burden of proof for establishing a data subject’s consent to the processing of personal data.

(2) A data subject may withdraw consent for collection or processing of personal data at any time.

(3) The withdrawal of consent under sub-section (2) shall not affect the lawfulness of processing of personal data before consent was withdrawn.

NEW CLAUSE 16A

THAT the Bill be amended by inserting the following new clause immediately after clause 16 –

Data protection impact assessment. **16A.** (1) Where processing of personal data is likely to result in high risk to the rights and freedoms of a data subject due to the nature, scope, context or purpose, a data controller or data processor shall, prior to processing, carry out an impact assessment.

(2) The impact assessment shall include –

- (a) a systematic description of the intended personal data processing operations and the purpose for processing;
- (b) an assessment of the necessity and proportionality of personal data processing operations taking into account the purposes for processing of personal data;
- (c) an assessment of the risks to the rights and freedoms of a data subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Act, taking into account the rights and legitimate interests of data subjects and other interested persons.

(2) Where an impact assessment indicate that the processing of personal data would result in high risk to the rights and freedoms of a data subject, a data controller or data processor shall consult the Commission prior to processing personal data.

(3) The Commission shall set out the guidelines for carrying out an impact assessment under this section.

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 a data controller or data processor, 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 data controller or data processor.

(3) Where possible, the data subject shall have the right to have the personal data transmitted directly from a data controller or processor 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 data controller or data processor shall comply with data portability requests, free of charge and within a period of seven days from the date of the request or as may be determined by the Commission personal data is numerous or complex.

...../Amendments

NEW CLAUSE 31A

THAT the Bill be amended by inserting the following new clause immediately after clause 31 –

Safeguar ds for special personal data. **31A.** (1) A data controller or data processor shall, for the purposes of this Part, adopt appropriate measures to ensure that the data subject is not identifiable including anonymising or pseudonymising the data used for statistical or research purposes.

(2) The Cabinet Secretary in consultation with Commission may provide additional guidelines on protection of special personal data.

NEW CLAUSE 39A

THAT the Bill be amended by inserting the following new clause immediately after clause 38 –

Codes guideline s and certificati ons. **39A.** The Commission may –
(a) issue guidelines or codes of practice;
(b) offer data protection certification standards and data protection seals and marks in order to encourage compliance with this Act;

...../Amendments

- (c) require certification or adherence to a code of practice; or
- (d) develop sector specific guidelines as the Commission may determine.

CLAUSE 2

THAT clause 2 of the Bill be amended –

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

“data controller” means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of personal data;

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

“data subject” means an identified or identifiable natural person who is the subject of personal data;

- (d) 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;

- (e) by deleting the definition of the word “exempt information”;

- (f) in the definition of the word “personal data” –

- (i) by deleting the words “about a” appearing immediately after the words “means information” in the introductory phrase and substituting therefor the words “relating to an identified or identifiable natural”

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

(d) the biometrics of a person;

- (iii) by deleting paragraph (g); and

- (iv) by deleting paragraph (h);

- (g) in the definition of the word “processing” by inserting the word “storage” immediately after the words “collection, organisation” in paragraph (a);
- (h) 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, biometric data or data revealing a natural person’s race, health status or ethnic origin.

- (i) by inserting the following new definitions in their proper alphabetical sequence –

“consent” means any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her;

“data processor” means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller;

“personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data;

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 Auditor-General on the Financial Statements of Makueni County Executive State and Public Officers Car Loan and Mortgage Fund for the Year ended 30th June 2018;
- (ii) Report of the Auditor-General on the Financial Statements of Makueni County Emergency Fund for the Year ended 30th June 2018;
- (iii) Report of the Auditor-General on the Financial Statements of Makueni County Youth, Men, Women, Persons with Disabilities and Table Banking Groups Empowerment Fund for the Year ended 30th June 2018;
- (iv) Report of the Auditor-General on the Financial Statements of Limuru Water and Sewerage Company Limited for the Year ended 30th June 2018;
- (v) Report of the Auditor-General on the Financial Statements of Bungoma County Youth Empowerment Fund for the Year ended 30th June 2018;
- (vi) The 2017/2018 National Cohesion and Integration Commission Annual Report;
- (vii) National Government Budget Implementation Review Report for the First Nine Months of Financial Year 2018/2019;
- (viii) Report of the Auditor-General on the Financial Statements of Kenya Health Sector Programme Support III – Danida Ref. 104.Kenya.810.300 – County Government of Kisii for the Year ended 30th June 2018; and
- (ix) Report of the Auditor-General on the Financial Statements of Nyamira County Executive Mortgage Scheme Fund for the Year ended 30th June 2018.

(The Senate Majority Leader)

- (x) Report by the Standing Committee on Health on the Kenya Medical Supplies Authority (Amendment) Bill (Senate Bills No. 38 of 2018); and
- (xi) Report by the Standing Committee on Health on the Mental Health (Amendment) Bill (Senate Bills No. 32 of 2018).

(Chairperson, Standing Committee on Health)

2. NOTICES OF MOTION

(i) STAFF RATIONALIZATION IN COUNTIES.

(Sen. (Dr.) Agnes Zani, MP)

THAT, AWARE THAT the Senate represents the counties, and serves to protect the interests of the Counties and their governments;

...../Appendix

FURTHER AWARE THAT, the launch of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme was launched by the Inter-Governmental Steering Committee (IGSC) on 14th July 2014 with the objective of transforming the Public Service for efficient and effective service delivery at both levels of Government;

NOTING THAT, the implementation timelines for the CARPS programme of two years specifically with regard to the capacity assessment, workload analysis and staff redeployment and transfers, are of paramount importance in the Counties as the terms of all second term County Governors come to a close in 2022;

CONCERNED THAT, County governments are still engaged in uncontrolled hiring of staff in total violation of applicable laws, exposing a glaring imbalance between money spent on recurrent expenditure, versus budgets for development projects which are the essence of devolution;

CONCERNED FURTHER THAT, contrary to Section 15(2)(b) of the Public Finance Management (PFM) Act, in counties such as Nairobi, Machakos, Garissa, Kisumu, Wajir, Baringo, Narok, Nakuru and Nyamira, staff salaries consumed in excess of 75% of total expenditure, over and above the set limit of 35% as provided in Regulation 25 (1) of the Public Finance Management (County Governments) Regulations, 2015 during the FY 2018/2019;

DEEPLY CONCERNED THAT, although Section 65 of the County Governments Act requires that more than 30% of the vacancies at entry level be given to members of ethnic groups that are not dominant in their precincts, the 2016 Ethnic and Diversity audit launched by the National Cohesion and Integration Commission revealed that 68% of Counties have hired more than 70% of their staff from one ethnic group;

NOW THEREFORE in exercise of its oversight function, the Senate resolves that the Public Service Commission (PSC), Intergovernmental Relations Technical Committee (IGTRC) and the Council of Governors provide a comprehensive report on:

1. the progress and implementation status of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme indicating the County Governments that are compliant; and
 2. the number of employees in each County Government showing the amount spent as wage bill vis a vis recurrent expenditure budgeted for FY 2018/2019.
- and submit these reports to the Senate within 60 days of this resolution.

(ii) PLANTING OF TREES ALONG MAJOR INFRASTRUCTURE PROJECTS IN KENYA

(Sen. Charles Kibiru, MP)

THAT, AWARE of the numerous benefits that trees play in environmental conservation, combating climate change, air and water purification, carbon sequestration, flood control, prevention of soil erosion, human and wildlife sustenance, urban planning, as well as other social and economic benefits;

NOTING THAT Kenya has and continues to implement various infrastructure projects across the country, among them railways, roads and highways, airports, sea and inland ports, pipelines, dams, among others;

CONCERNED by the extent of environmental degradation that takes place when undertaking such infrastructure projects, entailing clearance of trees, foliage, soils, rocks, excavation of quarries, interference with forests, wetlands, rivers, drainage systems and other embankments, as well as human and wildlife displacement along the paths of the infrastructure projects;

ACKNOWLEDGING THAT the Environmental Management and Coordination Act (No. 8 of 1999) and the Guidelines issued thereon require an environmental audit to be undertaken before any infrastructure projects are undertaken, with a view to identifying potential environmental impacts of the proposed projects, assessing the significance of those impacts, and proposing mitigation measures to address the negative impacts of the said projects on the environment;

CONCERNED HOWEVER THAT the implementation of these provisions has failed to comprehensively address the continued large-scale environmental degradation that takes place during construction of these infrastructure projects, and that the mitigation measures undertaken thereon have failed to compensate for the damage done to the environment as well as the negative effects to human and wildlife populations along the infrastructure project paths;

AWARE THAT the National Government has launched an ambitious plan to plant 1.8 billion trees by the year 2022, with a view to enhancing the country’s tree cover from 6.2% to the globally accepted minimum of 10%, and that this entails, among others, planting at least 1 million trees annually in each of the forty-seven Counties;

UNDERSCORING the need to balance between development and sustainable environmental management, for the benefit of present and future generations, as enshrined in the preamble to the Constitution of Kenya;

NOTING that planting of tree buffers alongside and around major infrastructure projects in the country would help offset the carbon footprint of these projects, enhance the beauty and aesthetics of the projects, create safe spaces for human recreation and for wildlife to thrive, and help in meeting the target of 10% national tree cover by the year 2022;

NOW THEREFORE, the Senate resolves that the National Government, together with the County Governments, formulate a policy mandating the planting of trees alongside and around all major infrastructure projects across the country, setting out the roles of various actors at both the national and county levels, and outlining incentives and penalties to ensure that the policy is complied with, in ensuring a balance is attained between development and environmental conservation.

(iii) LAWS THAT HAVE BEEN ENACTED UNPROCEDURALLY IN THE 12TH PARLIAMENT

(The Senate Majority Leader and the Senate Minority Leader)

THAT, WHEREAS Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments and Article 96 (2) of the Constitution provides that the Senate

participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113;

AND FURTHER WHEREAS Article 109(4) of the Constitution provides that a Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Articles 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses;

NOTING that Article 110 (3) of the Constitution requires that before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether any Bill is a Bill concerning counties, and if it is, whether it is a special or an ordinary Bill;

AND NOTING in particular, that the Supreme Court in ***Supreme Court Advisory Opinion No. 2 of 2013; Speaker of the Senate vs The Attorney General*** reaffirmed the role of the Senate in the legislative process and particularly in the consideration and passage of Bills concerning county governments as well as the role of the Senate in the legislative process;

CONCERNED that despite the provisions of Articles 96(1) and (2) and Articles 109 to 113 of the Constitution and the pronouncement of the Supreme Court in the aforementioned ***Supreme Court Advisory Opinion No. 2 of 2013***, the two Houses of Parliament are yet to agree on the processing of legislation in Parliament as contemplated in the Constitution;

FURTHER CONCERNED that in the 12th Parliament, in respect of all the Bills originating from the National Assembly, the Speaker of the National Assembly has not sought the concurrence of the Speaker of the Senate as to whether the National Assembly Bills concern counties;

FURTHER CONCERNED that in the 12th Parliament, the National Assembly has originated and passed Bills without reference to the Senate despite the Bills containing matters concerning counties;

FURTHER CONCERNED that Bills originating from the Senate that are forwarded to the National Assembly for consideration are subject to the unconstitutional procedure of evaluation by the Budget and Appropriations Committee of the National Assembly as to whether or not they are money Bills and the consequent non-consideration of a good number of those Bills on the unilateral declaration of the National Assembly that such Bills are money Bills;

AWARE that the continued implementation of statutes for which there was no concurrence under Article 110 (3) of the Constitution and the continued introduction and consideration of new Bills without compliance with Article 110 (3) of the Constitution is a breach of the Constitution;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution and that Article 94 of the Constitution requires Parliament to protect the Constitution and to promote the democratic governance of the Republic;

FURTHER COGNIZANT that the Senate is vested with the sacrosanct and high calling of fiercely protecting devolution;

OBSERVING FURTHER that persistent non-compliance with Articles 96(2), 109(4) and 110 to 113 of the Constitution is a threat to devolution and is unconstitutional;

NOW THEREFORE THE SENATE-

- (a) **REITERATES AND RE-AFFIRMS** its commitment in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;
- (b) **FURTHER REITERATES AND RE-AFFIRMS** its commitment to protect the interests of the counties and their Governments;
- (c) **REITERATES AND RE-ASSURES** the People of Kenya, on whose behalf it exercises its mandate under Articles 94 and 96 of the Constitution that it shall always, diligently and robustly prosecute that mandate and shall resist any actions or attempts to undermine devolution and the people’s aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;
- (d) **RESOLVES** to institute legal proceedings to -
 - (i) challenge the laws that have been enacted unprocedurally in the 12th Parliament;
 - (ii) seek an interpretation of the term “money Bill”; and
 - (iii) seek a final determination of the procedure to be followed in respect of all the Bills that are pending before Parliament so as to ensure compliance with Article 110(3) of the Constitution and for the future.

3. STATEMENTS

(i) Pursuant to Standing Order 47(1)

Nominated Senator (Sen. (Dr.) Alice Milgo, MP) to make a statement on the rising cases of medical negligence and malpractices in private health facilities.

(ii) Pursuant to Standing Order 48(1)

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.

(iii) Pursuant to Standing Order 51(1)

Chairperson, Standing Committee on Labour and Social Services to make a statement on the radical policy on employment by the Public Service Commission.

(iv) Pursuant to Standing Order 52(1)

The Senate Majority Leader to issue a statement on the business of the Senate for the week commencing Tuesday, 2nd July, 2019.
