

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 16th July, 2019

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM RISING STAR
EDUCATION CENTRE, NAIROBI CITY COUNTY

The Deputy Speaker (Sen. (Prof.) Kindiki: Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Rising Star Education Centre in Nairobi City County.

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

I thank you.

VISITING DELEGATION FROM DAWAMU
ACADEMY SCHOOL, KAJIADO COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Dawamu Academy School in Kajiado County.

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

(Applause)

Next Order!

STATEMENTS

HALTING OF GAMING BUSINESS IN KENYA

Sen. Malalah: Mr. Deputy Speaker, Sir, pursuant to Standing Order 47 (1), I rise to make a statement concerning the recent move by the Government to halt gaming business in Kenya.

Mr. Deputy Speaker, Sir, as we may all be aware, the Kenyan Government has for a very long time been embroiled in a push-and-pull with betting firms which has now culminated into the shutting down of telcos' paybill numbers and short codes of 27 betting companies. This close down means that gamers would not be able to deposit and withdraw money in the gaming wallets of the affected gaming companies until this impasse is resolved.

Mr. Deputy Speaker, Sir, the reasons being advanced for this shutdown range from issues of taxation, morality and money laundering claims that have rocked the financial sector. Suppose these claims were valid, the Government should have invoked the provisions of the Betting, Lotteries and Gaming Act about the forfeiture of licence and security on conviction and disqualification of licensee, but not engage in a blanket condemnation of the companies.

Mr. Deputy Speaker, Sir, we must agree as a House that the betting trend in Kenya is not the fault of the betting firms. The growth of the industry can be attributed to massive unemployment of the youth who engage in gambling as full time occupation or as means of passing time, and the development of new technologies such as online live betting. The newcomer entrepreneurs who own these firms have become rich and prosperous because they were able to identify the opportunity; they have been innovative and hardworking.

The Government has a duty of maintaining law and order and security of private property. The Betting Control and Licensing Board (BCLB) has lost the sense of direction to the point of being ridiculous. Issuing such ultimatums to betting firms is unwarranted. They, too, should concentrate on their important functions of permitting entry of new businesses and preventing fraud within the confines of the law.

Mr. Deputy Speaker, Sir, the action by Government to suspend betting companies is therefore malicious, suspect and out to discourage businesses in this country. Urging the police to clamp down on private business is ill-advised, unprocedural and unlawful. The price Kenya will pay for running down these businesses is high. Business will be discouraged; investors' confidence will be lost and the Government will lose tax revenues to finance public expenditure like the Big Four Agenda. Thousands of jobs are also on the line as these firms are now considering sacking employees.

Mr. Deputy Speaker Sir, these actions out rightly make one cast doubt on the Government's commitment to the growth and development of youth and sports. Sports are mostly a preserve of the youth of this country. The youth is a vulnerable category of our citizenry which should be supported in their endeavours. The advancement of sports in the past couple of years, especially by the help of some committed legal gaming companies has been remarkable. Sports needs committed and sustained support in order

to succeed. A blanket condemnation and blacklisting of these betting companies will deal a big blow to the progress being made in the sports sector.

We must agree that there are many sportsmen and women who are benefitting from the support of the gaming industry. There are teams such as Gor Mahia, AFC Leopards, Kariobangi Sharks and others whose skills have developed and improved courtesy of some good betting companies. The vexing question therefore remains; what mechanisms have been put in place by the Government to ensure there is continuity of sports nurturing and development after the shutdown of these betting Companies?

Mr. Deputy Speaker, Sir, a team like Kariobangi Sharks is now undoubtedly a national treasure, evoking nationwide pride and mapping Kenya globally! The very first Kenyan team to beat a top English Premier League team! We have the gaming industry to thank for this. One is left to wonder what will happen to the thousands of sportsmen and women who were benefitting from sponsorship and support from these blacklisted legal gaming companies? Does this mean a drastic end to their careers? How about their dependents?

We must therefore decide as a nation, whether we want to nurture a culture of Public Private Partnership (PPP) in development or whether we want to scare future investment from private firms. If we need to spur development, we must be genuine and remove trade barriers from investors and regulate the gaming industry in so far as payment of taxes is concerned and observance of the rule of law. The Government should not contradict itself and go against its own confines of the law. It is evident that some of these gaming companies have sought recourse through the courts of law and acquired injunctions as part of the required legal procedure. Unfortunately, we are witnessing a breach of law from the arms of Government who have gone ahead and interfered with the business operations of these companies.

Mr. Deputy Speaker, Sir, in a nutshell, Kenya is a country governed by the rule of law. Actions by individuals, institutions and the Government must conform to set rules and be adjudicated by law. To this end, the Government must be reminded that there exists law abiding betting firms that contribute significantly to both social and economic growth of our nation. This, they do by way of paying taxes as well as sports development and social investment.

It is not prudent or just to penalise the formal, legal industry on the pretext of reining in errant firms. If this trend is tolerated and nurtured, a dangerous precedent will be set that will grow into lawlessness.

Mr. Speaker, in cases of negative socio-economic problems related to the business of gaming, prompt measures must be put in place to safeguard the interest of the country and its citizenry. The gains we have made as a nation in matters sports development should not be thrown away on the pedestal of autocratic decisions. Harassment of players in the gaming industry and legitimate businesses will only work to discourage business interests from potential investors – locally and internationally. This will be at the detriment of our economy.

I therefore request that since these issues touches on the legality of the actions of Government on private businesses, the Committee on Justice, Legal Affairs and Human Rights should investigate these issues and share a report with this House so that we can

take a common stand and advise the Government on this matter based on the Committee's findings and recommendations.

Mr. Deputy Speaker, Sir, I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. Thank you, Sen. Malalah.

I can see so many requests and I want to draw your attention to Standing Order No.47 which, unlike Standing Order No.48, does not allow comments.

This is a Statement under Standing Order No.47(1) and it only gives the Speaker the discretion to, in an appropriate case, refer the matter to a Committee.

(Laughter)

Nevertheless, I wanted to draw your attention to that Standing Order so that you will understand when I limit comments, because I believe the issue of gaming and betting is a matter of great national interest. So, I will give a few Senators, and if you are lucky to get the chance, organize your thoughts; be very brief and avoid repetitions.

The Standing Orders state that observations and comments around this should not be taken as a pretext for debate. You cannot debate a Statement; you only debate a Motion.

The Senate Majority Leader (Hon. Murkomen): Mr. Deputy Speaker, Sir, I would like to congratulate Sen. Malalah for bringing this very important Statement to the Floor of the House even though I felt like he was dwelling on one side of the discourse in relation to gambling and betting.

Betting and gambling is one of the areas that we have been grappling with at the Senate, especially the law on gambling. Ordinarily, the Constitution has made gambling a function of county governments and it is also a function of the national Government. Therefore, it is a concurrent function.

Mr. Deputy Speaker, Sir, when this was done, it was deliberate and it was known that counties will have a say when it comes to matters of betting and gambling. Unfortunately, the law that is being applied is the archaic law; a law that was enacted way before the new Constitution was established. Therefore, the powerful responsibilities that create the powers that the Cabinet Secretary is using are powers that were donated by a Constitution that has already been repealed.

So, the first responsibility, that I hope the Committee will recommend, is an overhaul of all the gambling and betting laws in the country, so that we understand whose responsibility it is to license, who has the responsibility to ensure that license is protected in terms of the conditions that are in the license and who has the responsibility to create national policy. This is a concurrent function, and I believe that by law, we must have two levels: One doing the policy and the other responsible for implementation.

It is true, and I am not only speaking as the Majority Leader but as the captain of the Senate Football Team.

The Deputy Speaker (Sen. (Prof.) Kindiki): I thought you would say as a gambler or a "better"!

(Laughter)

The Senate Majority Leader (Hon. Murkomen): In fact, Mr. Deputy Speaker, Sir, I do not understand how betting and gambling works, but what I know as the Captain of the Senate Football Team is that, the support that this country has received in so far as the resources that come from the betting companies, especially, the fact that we were able to pay our footballers all their dues when they were in Cairo, and the sponsorship that the Ministry of Sports and Heritage has been able to extend to many sports teams, has been as a result of the resources that have been received through these betting companies, including the Sports Lottery that the Government has put in place. It is an area that has benefitted the country immensely.

Mr. Deputy Speaker, Sir, you cannot stop anybody who is above 18 years to do what they want to do, even those of us who do not agree with betting and gambling. On the other hand, we can also not sleep on the realities on the ground that many young people who have been addicted to betting and gambling are led to situations where the youth have used their money.

We are very much aware of this, and Sen. Malalah is a witness to this because it has happened in Kakamega, in my county and many other counties in the country where young people have committed suicide because they spent all the money they were given for school fees to bet and are unable to continue with their education since they cannot pay their school fees.

Some who have been addicted to betting are even stealing money from their parents to go and bet on Saturdays and Sundays. So, it cuts both ways; while we must protect businesses that do their job and do it well, we must also provide a standard legal framework that is respectable and can be able to identify and provide for protection for young people who are under 18 years so that they do not become addicts of gambling. This includes those who are above 18 years, so that they can be rehabilitated should they be addicted to gambling.

Mr. Deputy Speaker, Sir, it is shameful that, as the Senate and National Assembly, we have not been able to do something in this area until you saw one of the Members of Parliament in the House of Commons raising that issue in Britain. It puts us to shame that somebody in Britain had to raise the issue and defend Kenyan citizens when we should have been able to do so ourselves.

The last statement I want to put across is that we do not want to live in a country that public policy and enforcement of the law depends on the Cabinet Secretary sitting in the office, so that when he wakes up in the morning and says that I do not like Sen. Judy Pareno, I like Sen. Cherargei, he just makes his decision there and says; Sen. Cherargei can do business and Sen. Judy Pareno can be locked out of business. We do not want a country that is dependent on the wishes of one individual.

We gave ourselves a Constitution and said that we are a country that is going to be governed by the rule of law so that we do not wake up one morning and say that these businesses will continue. In fact, many people are saying the current implementation---

(Loud Consultations)

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

The Senate Majority Leader (Hon. Murkomen): I am making my last statement on that issue Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Please, do.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir.

We do not want a situation where citizens of Kenya are now debating that the only reason why certain companies have been exempted from the punishment meted by the Cabinet Secretary of State, is as a result of business competition. In order for there to be a fair playing ground for everybody, we need to put in place laws and regulations that will guide the process and remove it from the decision of one Cabinet Secretary to a collective decision of an institution that is charged with the responsibility of overseeing matters of betting and gambling.

I beg to support Sen. Malalah and hope that the Committee will come back not just to answer that particular question Sen. Malalah has raised, but with suggestions on the areas of law. We should come up with a more robust and modern legislation that is able to deal with gambling and betting.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senate Majority Leader. Please, make it brief; give a comment or an observation.

Sen. Mutula-Kilonzo Jnr: Thank you, Mr. Deputy Speaker, Sir. Under Standing Order No.47, the discretion to refer the matter to a Committee is yours, Sen. Malalah has already directed you to refer this matter to the Committee on Legal Affairs and Human Rights.

The Deputy Speaker (Sen. (Prof.) Kindiki): Did he?

Sen. Mutula-Kilonzo Jnr: Yes.

The Deputy Speaker (Sen. (Prof.) Kindiki): I think he made a prayer and the prayer may go either way.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, this is a dicey matter. The fact that these companies are supporting AFC Leopards, which is my team and that of Sen. Sakaja, does not necessarily cure the problems that are created by these betting firms. However, it is a contradiction for the Government to license betting firms and then claim that they are not paying taxes.

Third, the controversial Statute Law (Miscellaneous Amendments) Bill, 2019 that was in the National Assembly reduced the level of taxation of betting firms as opposed to increasing it. Therefore, when the national Government claims that there are unpaid taxes by these firms, it raises concerns.

Lastly, Mr. Deputy Speaker, Sir, the social aspect that Sen. Murkomen raised cannot be ignored; that is people are losing their families and the youth are gambling and wasting money. Therefore, some regulation and format of law on this matter must be considered. For example, the gentleman running SportPesa was a captain of Kenya Airways (KQ) but he was retrenched. So, it is not possible to verify the work that he is doing without necessarily identifying the problem that he has caused. While Sen. Malalah

says that he has sponsored sports, the gentleman who raised this issue in the House of Commons said that they are paying a small token *vis-a-vis* the money they are collecting.

I am told that one company, which I will not name here, is giving away Kshs10 million a week. This means that they are paying Kshs40 million a month. Are they paying equivalent taxes to the Government of Kenya? Why did the Cabinet Secretary (CS) for Finance and National Treasury in exercising this discretion---

I hope that the Committee on Justice, Legal Affairs and Human Rights and the Committee on Finance and Budget will raise this concern. While everybody's tax was going up, the taxes for betting companies went down by 15 per cent. Is this not the work of cartels that Sen. Murkomen has talked about?

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you for your comments.

Sen. Mutula Kilonzo Jnr.: Lastly, Mr. Deputy Speaker, Sir. This same thing that happened in the sugar industry should not be visited on the betting firms. It means that these policies are based on competition amongst businesspeople who have strong influence against Government functionaries.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. (Dr.) Ali. Make it brief.

Sen. (Dr.) Ali: Thank you, Mr. Deputy Speaker, Sir. I will be brief. Sen. Malalah has good intentions. However, betting companies are a problem to this country. They are a cause of corruption and many other problems. As the Senate Majority Leader has said, young people end up killing themselves, others join prostitution while others seek money from shylocks. It is not worth it.

If at all betting companies have to be allowed to operate, they have to be organized. The Government has to allow some and not others. We should have a few that are helpful. I am not a supporter of gambling. I do not engage in it, and I do not know how it happens. However, I have seen people suffer from it. Therefore, something should be done.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. This is a sensitive matter that requires proper handling.

(Sen. Cherargei consulted loudly)

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

Sen. Ochillo-Ayacko: We appreciate the fact that sport is best left of funds and it requires proper patronage in order to run in this country. However, we also appreciate the fact that everybody is vulnerable especially the youth. As you refer this matter to the respective Committee, it is my prayer that we will not amplify the issue of funding---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. What is happening this afternoon? The consultations are inordinately loud. Sen. Mwaura, you seem to have come back from somewhere.

(Laughter)

Proceed, Sen. Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir, for making the House attentive. In 2022, you will be in a good place.

(Laughter)

Mr. Deputy Speaker, Sir, Sen. Malalah has made a good Statement. However, let us balance the need for funding and that of protecting the society. I look at it from the perspective that we need to ensure that gamblers and people who encourage betting do not corrupt our society, the youth or take advantage of the situation to cause problems.

I plead with the Committee to which the Statement will be referred, to ensure that we come up with a balanced resolution and proposal that will look at both sides of the scale and advance the interest of society.

Lastly, the waking up of a CS to declare an item illegal is not modern democratic practice. We need to have proper procedures to deal with matters licensing and decisions so that we do not become a country that is run by theatric.

With those remarks, I congratulate my brother, Sen. Malalah. I also urge the Committee to come up with something that will help us as, a House and nation.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir. I am not a fan of gambling. In fact, the only gambling that I have ever involved myself in is *Kamari*, the one that is played by young boys. Sen. M. Kajwang knows it better than all of us. As young children---

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

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

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, is it in order for the Senator for Kericho to mention the name of Sen. M. Kajwang in a sentence that includes gambling and *Kamari* when I am a renowned Adventist, an upright citizen, a father, a husband and a man who does not gamble?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cheruiyot, Sen. M. Kajwang says that he has enough titles. He does not want an additional title of being a gambler.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, that being the case, I will not add him any further accolades. However, I know where he grew up and what the obsession of children was those days. If he has changed his ways, it is fine with me.

In conclusion, as a young child, there was a neighbourhood responsible father. We grew up in the days where raising children was a communal exercise. Every time he found us playing *Kamari*, he would collect all the money, beat us up and take us to the shop to buy us fruits as a warning that whatever we were doing was not a nice endeavour.

The issue before you this afternoon has nothing to do with gambling; it is about a Government that does not respect its own institutions. If Kenya Revenue Authority

(KRA) has declared an institution to be tax compliant, where does a CS get the powers to declare it to be none tax compliance?

We can all argue with the record. I am a fan of football. I enjoy what sport betting firms have been able to do in our country. Perhaps, it is for that reason that I am more lenient towards them, despite the fact that I would never encourage any of my children to engage in the activities that these firms promote. The issue that is being brought before this House is the disappearance of the rule of law in this country, where it is increasingly becoming clear that some Cabinet Secretaries are too powerful to a point that they can wake up one morning and declare that Senate ceases to exist.

If we encourage this kind of behavior we do not know how far they can go. Therefore, I would request that the committee that will look into this particular issue be properly guided and know that what we are dealing with is not the pros and cons of gambling *per se*, but the fact that we do not have enough respect to the rule of law in this country.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. I cannot and will never support arbitrary behavior by anybody in a position of responsibility. That notwithstanding, gambling is a vice that should never be encouraged in any country or situation. Let me pose a question to the hon. Senators. Sen. Sakaja, would you allow your son to gamble? The automatic answer would be “no” because it is a vice.

We cannot stand here and say that Robinhood was not a criminal because he was taking money from his victims and giving it to others. He remained a criminal. We should not, as leaders, encourage our country to be turned into a casino economy. Gambling has a lot of vices. I receive a lot of messages from parents whose children have gambled school fees and have been sent away from school. I receive messages from families in distress because of gambling.

As we look at this matter, we must borrow a leaf from that Member of Parliament who spoke in the House of Commons - I believe many hon. Members have seen it - decrying the vices being visited on Kenya by SportPesa and other gambling agencies away in the United Kingdom. I want to encourage this House that we can never substitute hard work with *pata potea*. It cannot work. *Pata potea* is a game that has been fought everywhere. I want to encourage hon. Members to look for a book called *The History of Crime and Mobs in the USA*. It talks of Al Capone and all those criminals who were gambling, killing people and doing all manner of things. My distinguished nephew is the patron of our beloved club, AFC Leopards. The fact that SportPesa has given a token to AFC Leopards does not make what they do to be acceptable. Whether it is SportPesa or Betin, very strong regulations must be put in place.

More importantly, one has to ask the question that Sen. Mutula Kilonzo Jnr. asked. Why did the Cabinet Secretary of the National Treasury and Planning decide to reduce the taxes on gambling from 35 per cent to 20 per cent? If these people are to be reined in, the Government has got the capacity and ability to monitor their gambling machines and tell them: “These are your takings; this is what you must pay to the Government.” A government that also wants to live on the proceeds of crime, participates in that crime. I want to encourage us to find better ways because we have so many ways of helping our youth.

We cannot ask our youth to engage in betting because there are no jobs, and see if they can make a living. That is taking the country in the wrong direction. The Committee that will be tasked to look at this matter must-

(i) Look at the legal framework and the conflicting jurisdictions between the national Government and the county governments on gaming, gambling and casinos.

(ii) Look at the consequences that gambling has visited on this society. Families are breaking up, people are committing suicide and so many other things are happening because of gambling.

We must, as leaders, not only resist it but fight it because it is not something that we should encourage. It is not a substitute to hard work.

The Deputy Speaker Sen. (Prof.) Kindiki: Thank you. We are running out of time. Sen. Mwaura, you have one minute.

Sen. Mwaura: Mr. Deputy Speaker, Sir, I rise to support this Statement that we indeed need to do something about gambling in this country. The way forward, in my opinion, is not to do away with gambling because it will always be there. If you do away with it formally, it will still go into the black market. People will still be doing it and that is a more dangerous way of looking at it.

We agree that there is a lot of good that is being done by gambling companies like SportPesa. We just need to properly regulate the activity so that the taxes are well paid; people are able to make returns and we are also able to protect the most vulnerable ones, the children. Otherwise, I think there is a lot of goodwill and good work in terms of sports, culture and supporting Corporate Social Responsibility (CSR) activities that really need to be done.

Yes, there is a chronic problem in our country and in other developed economies like the United Kingdom. However, I would like to urge this august House, as we look at this, that we be measured in the way we approach it so that we are able to benefit from this.

Mr. Deputy Speaker, Sir, I support.

Sen. Olekina: Mr. Deputy Speaker Sir, I am confused and perplexed because we have a Government that now seems to be speaking from the two sides of their mouth. Earlier on, we reduced the taxes which were being paid by these betting companies. However, all of a sudden, without following any due process of the law, an entity comes up and says they are not paying taxes. You give yourself powers that you do not have.

(Loud consultations)

The Deputy Speaker Sen. (Prof.) Kindiki: Order, Senators! Sen. Cheragei you are very restless today. Sen. Omanga, I do not know what you are canvassing. Order, Senators. Let us remain dignified. Leader of Majority, you are now leading the minority.

(Laughter)

Proceed, Sen. Olekina. I will give you two minutes.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Statement by Sen. Malalah. It is imperative that, in this country which is governed by the rule of law, we follow that law and not become selective in how we apply the rule of law. If we make a law that reduces the taxes which are being paid by these betting companies, we cannot then turn around and come and say that now we are going to shut down all of them.

We need order, and this order can only be brought by this Parliament. This issue where Cabinet Secretaries have so much power will take this country back to dictatorship. We have got to balance. This is a country where many of our youth are unemployed. In this country, the youth make up about 80 per cent of the population. If there is any good in what these companies are doing, we have to balance it.

I am aware that these betting companies are contributing a lot to social entrepreneurship. They are helping. We need to develop regulations that can encourage these betting companies to offer counseling and support services to the gamblers. When I lived in the USA, I noted that there are states that survive only because of gambling. So, I am not going to stand here and say it is an evil in the society yet other people are benefitting from it.

We have to balance and make sure that if we pass a law in this Parliament, we abide by it. It is ridiculous for us to pass laws and then tomorrow, an entity or Cabinet Secretary comes and says I have cancelled the licenses of these companies. How are we going to encourage technology which is now moving faster than the speed with which we are able to come up with laws? In a nutshell, I support this Statement. I would request that before coming up with certain ridiculous moves, the Cabinet Secretary should sit down with all stakeholders and agree on how they cope with that.

The Deputy Speaker (Sen. (Prof.) Kindiki): Please, conclude.

Sen. Olekina: Finally, Mr. Deputy Speaker, Sir, I request the Committee that will handle this matter to interrogate it before coming up with a conclusion.

I thank you.

(Interruption of Debate on the Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATIONS FROM VARIOUS SCHOOLS

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to recognise more visitors who are with us today in the Public Gallery.

We have visiting delegations of students and teachers from the following schools-

1. Olbutyo Girls Secondary School in Bomet County.
2. Ndunduni Secondary School in Makueni County.

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

I thank you.

(Applause)

Sen. (Dr.) Milgo, you have one minute.

Sen. (Dr.) Milgo: Mr. Deputy Speaker, Sir, I join you in welcoming students and teachers from Olbutyo Girls Secondary School in Bomet County as well as those from Makueni County. Students of Olbutyo Girls Secondary School are disciplined and the school shines when results are released.

I encourage the students to be disciplined and work hard, so that in future, they can replace us when we retire from this House. This is a House of reason and they did well in choosing to visit the Senate. I encourage them to work hard so that some of them can join this House in future.

(Resumption of Debate on the Statement)

The Deputy Speaker (Sen. (Prof.) Kindiki): I would like to hear from Sen. Sakaja.

An hon. Member: Patron!

Sen. Sakaja: Mr. Deputy Speaker, Sir, I can hear a Senator saying “patron”. It is just the same way you say “super”.

The Deputy Speaker (Sen. (Prof.) Kindiki): One of your two minutes is over.

Sen. Sakaja: Mr. Deputy Speaker, Sir, let me say two things because of time. As the patron of AFC Leopards, we received a lot of support. Many of the betting companies have been supporting sports across the country. This is a matter that needs to be looked at objectively.

The Bible says; everything is permissible but not everything is beneficial. Everything is permissible but you should not be controlled by everything. I shall quote the exact scripture but everyone who goes to church knows it. Everything needs to be moderated with respect to the sports industry. It is an industry that has been there since time immemorial. It is just that we now have technology and because of technology, it has gone a notch higher.

I would like to inform the House that we have a proposed legislation on betting because the current laws are almost archaic. They were there long time before we had all the technology and before betting had gotten to where it is today. We have a Bill before our Committee that is concerned with issues of betting in this current dispensation. That is a concurrent function of both the national and county governments but the place of county governments has not been established.

When this matter is referred to a committee, I hope Senators and even Kenyans will participate, so that we look at it objectively in order to make sure that benefits accrue without endangering any section of our society. The taxes they pay are just like other taxes such as those levied on alcohol.

There are people who commit suicide because of alcohol, smoking or whatever it is. Some of them are dangerous to people’s health but still they are regulated in a certain manner. So, we must have an objective way of dealing with this current situation.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): I would like to hear from the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

Sen. Cherargei: Mr. Deputy Speaker, Sir, I support this Statement. I know there are many implications on issues of betting and gambling when it comes to people who are addicted and the youth being involved. As a Senate, we must have a legal framework, so that we do not have arbitrary influence by the respective Cabinet Secretary. We need to look at aspects of business and Corporate Social Responsibility (CSR) because betting companies have been sponsoring our teams.

Mr. Deputy Speaker, Sir, you are aware that in some cases, young people have committed suicide because of betting and gambling. I hope we will resolve the issues by coming up with regulations.

If I am not wrong, there is a song called *The Gambler* by Kenny Rogers. It describes all the issues we have been discussing in this House. As a Senate, we must come up with a legal framework to regulate betting and gambling in this country because some companies claim that others are being favoured.

Mr. Deputy Speaker, Sir, I know this Statement will be referred to our Committee but that is at your discretion. When it is referred to my committee, we shall come up with proper legal framework. We shall propose amendments so that we protect our young people, businesses, and the taxman because many taxes go to the Kenya Revenue Authority (KRA).

I know they have been supporting football but I come from the source of champions. I hope in future they will support talent academies training athletes, so that we take care of all sportspersons.

Sen. Wambua: Mr. Deputy Speaker, Sir, I also stand in support of the spirit of the Statement by Sen. Malalah. I am talking about the spirit because there are aspects of the Statement that I entirely do not agree with. I support that a Cabinet Secretary cannot just wake up one morning and decide to close down businesses.

There is an impression being created in this country through gambling that there is an easy way of making money or getting rich overnight. In a situation like ours where the rate of unemployment in this country is high, that is the worst thing that we can do to our youth. We are creating the wrong impression to them that they can just wake up one morning, gamble and become millionaires overnight. That impression must be corrected.

To assist Sen. Sakaja because he quoted a verse in the Bible, it is actually---

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir. So that the Senator does not go on record as having given me the verse which I know, it is 1st Corinthians 6. It says everything is permissible but not everything is beneficial, everything is permissible but I will not be mastered by anything. That is my version of the Bible.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wambua, you should know that you are not doing well. Do not do that next time.

Sen. Wambua: Mr. Deputy Speaker, Sir, I wish the Senator for Nairobi City County, the distinguished nephew of---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Is he also your distinguished nephew?

Sen. Wambua: That has been claimed by Sen. Wetangula, the Senator for Bungoma County. I will not---

The Deputy Speaker (Sen. (Prof.) Kindiki): Go on.

Sen. Wambua: Mr. Deputy Speaker, Sir, the verse is actually not the one he quoted. It is 1st Corinthians 10:23. Apostle Paul wrote to the Church in Corinth, warning them against certain things they were doing.

On a serious note, gambling is a matter that this country must have a serious conversation about. It is turning our children into zombies and making people believe that they can just wake up one day from poverty to riches.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I am afraid we have to leave it there.

Order, Senators.

*(Sen. Outa, Sen. Ochillo-Ayacko and Sen. M. Kajwang
walked into the Chamber)*

Order, Senator for Kisumu, Senator for Homa Bay and Senator for Migori. I know that you are vicious with the Lake Basin Economic Bloc.

(Laughter)

This Statement has been requested under Standing Order No. 47 under which no provision is made for comments or observations. However, I did exercise my discretion and applied Standing Order No.1 which is an overriding Standing Order because I understand that over the last few years, the issue of betting and gambling has taken over the psyche of our nation.

There have been concerns, which I believe are legitimate, about the serious socio-economic and cultural ramifications of betting and gambling. From the Statement made by Sen. Malalah, the Senator for Kakamega County, and the comments and observations that have been made, there is concern on the power and role of the national Government as provided for in the Constitution but in the context of this House, we are also concerned of how that plays out with the role of our counties. There has been a lot of push and pull around that issue.

Therefore, it is my own view that we have had many negative socio-economic effects on betting and gambling and they must be balanced from a legal standpoint with the constitutional dictates and parameters within which the Government must regulate business. For that reason, although the subject matter of betting and casinos relates to issues of a social nature and would ordinarily fall into the mandate of the Committee on Labour and Social Welfare, I find that the overwhelming majority of the issues raised by Sen. Malalah's Statements and the comments and observations that have ensued thereafter, raise legal issues.

Accordingly, I direct that this Statement be conveyed to the Committee on Justice, Legal Affairs and Human Rights with a view to not only consider the matter in

accordance with Standing Order No. 47(3) but they should also do justice to this country by engaging the stakeholders as exhaustively as possible and should produce a report for us not to duplicate the human resources that we have in this House. We should not treat a matter differently just to end up with an overlap and duplication.

I direct the Committee on Justice, Legal Affairs and Human Rights to exhaust this matter, then table a report and a roadmap on how we can regulate, license and control this matter bearing in mind that it has serious socio-economic implications on the young people of this country. The report should be ready in two weeks' time. It is so ordered!

Thank you, Senators, for your cooperation. I know that a few more Senators would have wanted to make their observations but I request that you indulge me. We will now listen to Sen. Prengei.

STATE OF PREPAREDNESS FOR THE 2019 NATIONAL
POPULATION AND HOUSING CENSUS

Sen. Prengei: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the state of preparedness by Government for inclusion of minority communities in the forthcoming 2019 National Population and Housing Census.

In the Statement, the Committee should-

(1) Indicate the status of preparedness of the Government to carry out the 2019 National Population and Housing Census.

(2) Provide a list of unique community codes that are assigned to all communities in Kenya for the purpose of the exercise, stating whether minority communities such as the Ogiek, Endorois and Yaaku have such codes, and if not, explain why.

(3) Explain the measures that the Government has put in place to ensure that all Kenyans are enumerated including the minority communities as well as pastoralist communities.

The Deputy Speaker (Sen. (Prof.) Kindiki): Any observations or comments on that Statement?

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, in the same spirit, I would also like to ask the Committee to follow up on the issue of the pastoralists. August is normally a dry month and most of the pastoralists move to areas where they cannot be accessed. We need to know how the Kenya National Bureau of Statistics (KNBS) will capture the pastoralists who will be in inaccessible areas. All the able-bodied young men from Laisamis Constituency are in Samburu County because that is where they can get pasture for their animals. They do not intend to go home because it is still dry. KNBS should tell us the mechanisms that they have put in place to capture all those people in this census.

Sen. Mwangi: Mr. Deputy Speaker, Sir, the Ogiek community, from where the Senator comes from, is a small community. The community has produced a Senator to this House.

The small tribes have been discriminated over the years. It is time for us to consider them as tribes in this country. Governments in this country are formed by big

tribes that conglomerate to pick a president. We should promote the small tribes for their identity---

*(Sen. Wambua and Sen. (Dr.) Kabaka consulted Sen. Outa,
Sen. M. Kajwang and Sen. Ochillo-Ayacko)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wambua and Sen. (Dr.) Kabaka. There is a general concern on how we conduct ourselves. I am kindly reminding Senators to observe our Standing Orders. Proceed, Sen. Mwangi.

Sen. Mwangi: Mr. Deputy Speaker, Sir, the small tribes should be recognised in order for them to be remembered when the Government is developing different regions in this country. That will also help them to be remembered when talents are being developed. We already have one of them here, Sen. Prengei. We need these tribes to have a place in this country. Therefore, they can also decide to get together and overthrow the big tribes.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is not the debate, Sen. Mwangi.

Sen. Mwangi: Thank you, Mr. Deputy Speaker, Sir.

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

Sen. Sakaja, the Chairperson of the Committee on National Security and Foreign Relations, say something and tell Sen. Prengei what you intend to do about his request.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. If you look at the way the Statement has been worded, there is a clear contradiction with the provisions of Standing Orders.

Mr. Deputy Speaker, Sir, the Second Schedule---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah! Order, Senators! Once more, Senators, we are not doing so well. For the last one month or so, we are getting concerns from the public, who watch us from across the country. They are concerned that there is too much noise during our proceedings; let me put it that way. We have Senators talking on phones, others on WhatsApp and others reading newspapers. If you must read a newspaper, we have a lounge and our offices. If there is an urgent call that comes through, there is always the backroom. Therefore, let us not have this.

Thank you. Proceed, Sen. Sakaja.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I was making a point; that this Statement and the one earlier seem to be misdirected in terms of the committees. Standing Order No.211 is clear about the mandate of each committee. Of course, everything we are dealing with in this House has a legal bearing; there is a legal aspect towards everything that we deal with.

However, Mr. Deputy Speaker, Sir, when a Committee – for instance on the first one – I advised the House that we are already looking at the legislation. This is because we are talking about the wider spectrum of the matters when it comes to betting and lotteries. That Bill is coming---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is the point, Chairman?

Sen. Sakaja: The point is misdirection, and we will also follow it up.

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

Sen. Sakaja: Mr. Deputy Speaker, Sir, Standing Order No.211 is clear about the mandates of each committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Therefore, what do you say about that against the Statement?

Sen. Sakaja: The first Statement was directed to the wrong Committee. Similarly, this Statement is being sought from the Committee of National Security and Foreign Relations, yet it is a matter of planning. Planning does not fall under security; it might fall under the Committee on Finance and Budget. If it is on the issues of the specific communities that he is talking about, it falls under the Committee on National Cohesion and Equal Opportunity to make sure that we equalize opportunities for all, and that no community is discriminated because of its size, *et cetera*.

Therefore, Mr. Deputy Speaker, Sir, just on those two issues, we would seek direction on matters that a committee is dealing with. For instance, now that the Statement by Sen. Malalah – which is looking at the wider spectrum of issues around betting – has come forth, does my Committee then stop what we have been doing? Do we stop pursuing legislation?

The Deputy Speaker (Sen. (Prof.) Kindiki): I do not think so.

Sen. Sakaja: What happens if both of us bring a different report, yet the Standing Orders have clearly given one Committee that specific mandate? Whenever there is an overlap of mandates, ideally you would either do a Joint Committee, or if the Committee needs any legal advice, it can seek to co-opt members from the Committee on justice, Legal Affairs and Human Rights or any other Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is noted, Sen. Sakaja. In the meantime, on the point you have raised about this Statement, it is true that this is about national planning and the census. Is it not?

Sen. Sakaja: Yes.

The Deputy Speaker (Sen. (Prof.) Kindiki): That Department of Planning falls under which Ministry? Is it the Ministry of Devolution?

Sen. Sakaja: It is under the National Treasury.

The Deputy Speaker (Sen. (Prof.) Kindiki): The National Treasury.

Sen. Sakaja: Yes. Therefore, ideally the Committee that oversees the National Treasury should have---

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Sakaja, resume your sit.

On that note, I direct that this Statement be seized of by the Committee on Finance and Budget.

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

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

Sen. Wetangula: Mr. Deputy Speaker, Sir, Sen. Sakaja is right. However, that notwithstanding, I urge the Chair that the census that is slated for next month in the country is so important to every Senator in this House. This is because it is the outcome

of that census that is partly going to determine the amount of money and resources that will be channelled to each county. According to the proposal by Commission of Revenue Allocation (CRA), 46 per cent of allocations goes to---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Order! Sen. Mutula Kilonzo Jnr. and Sen. (Eng.) Mahamud, you know what to do if you want to inform Sen. Wetangula.

Sen. Wetangula: A high percentage of resources go to counties based on the population. I would, therefore, suggest that in prosecuting this Statement through the Committee of Finance and Budget, because this is a matter of planning, we do not just seek information from the Ministry. We should also call the concerned Ministry to come to a Committee of the Whole and be interrogated on the level of preparedness on countrywide census.

Mr. Deputy Speaker, Sir, we have had situations where, in certain pastoral areas, people are not counted because they have crossed the borders to look for pasture. In some areas bedeviled with insecurity, people are not counted; and we have also had incompetent clerks in some areas. Right now, they are recruiting clerks and training them. I have seen that in some areas, they are skewing recruitment to favour certain desired interests. Therefore, we need to interrogate the Cabinet Secretary and his team for each county to have the same level of---

The Deputy Speaker (Sen. (Prof.) Kindiki): You have made your point, Sen. Wetangula.

Are there any other Senators who share the sentiments of Sen. Wetangula?

Hon. Senators: Yes! Yes!

The Deputy Speaker (Sen. (Prof.) Kindiki): It is agreed that the Chairperson should call the relevant Cabinet Secretary (CS) to appear before a Committee of the Whole on that issue.

I agree with Sen. Wetangula that the national census is not done every day; and that there is a big, direct link between the census or the number of people in this country and the money that goes to the counties. Therefore, let us not belabour that point beyond that.

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

There is nothing out of order, Sen. Kajwang; is there? What is it, Senator for Homa Bay?

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, when we went for the Leadership Retreat early this year, there was a resolution that the census, being as important as it has been suggested by Sen. Wetangula, the House would probably set up a Select Committee to oversee the process.

Mr. Deputy Speaker, Sir, just last week, the Committee on Liaison was looking at the action points from that meeting. I know that it is one of the substantive issues that the Committee is looking at---

The Deputy Speaker (Sen. (Prof.) Kindiki): Process that within the structures of the House. That does not take away what I have just said; that it is very important and we can have the CS come before us. When the Select Committee is appropriately set up, they will take over that process at that point.

Thank you for the information, Sen. M. Kajwang’.

Sen. M. Kajwang’: Much obliged, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Next let us hear from the Chairpersons. We were not doing very well, timewise. I will, therefore, defer one of the Statements; the one by the Chairperson of the Committee on Roads and Transport on request by the Chairperson.

ACTIVITIES OF THE COMMITTEE ON ROADS
AND TRANSPORTATION

(Statement Deferred)

Therefore, we will hear from two Committee Chairs; namely the Chairperson of the Standing Committee on Tourism--- Sen. Kibiru, you are known for summary. Please, highlight the key activities of your Committee.

Sen. Kibiru: Thank you, Mr. Deputy Speaker, Sir, for noting that I am known for summary. Indeed, I am known for quality and not quantity.

Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order---

(Loud consultations and laughter)

Mr. Speaker, Sir, I rise pursuant to---

Sen. Sakaja: On a Point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Sakaja? Are you disputing the quantitative quality of Sen. Kibiru?

(Sen. Kibiru remained standing in his place)

Sen. Sakaja: Mr. Deputy Speaker, Sir, kindly advise him to---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kibiru, you know that two Senators cannot be standing and having the microphone at the same time.

(Sen. Kibiru resumed his place)

Sen. Sakaja: Mr. Deputy Speaker, Sir, I have no capacity to have knowledge of his quantity or quality. I will, therefore, not comment on that.

Mr. Deputy Speaker, I had raised two issues, and you have only responded to one.

The Deputy Speaker (Sen. (Prof.) Kindiki): Which was the other one?

Sen. Sakaja: All of them were based on the mandate of the committees. The first one was on the Statement by Sen. Malalah, and then the second is this one on planning which you have directed to the Senate Committee headed by Sen. (Eng.) Mahamud. I would also like your response on the first one.

The Deputy Speaker (Sen. (Prof.) Kindiki): Resume your seat, Sen. Sakaja.

(Sen. Sakaja resumed his seat)

It is true, first and foremost, that the Statement as framed by Sen. Malalah; the Standing Orders do not allow the use of Statements to perhaps promote debate. It is supposed to raise a specific issue as requested by the specific Senator. It is not like a general issue about betting and gambling and so forth.

Looking at the way the Statement was framed, I hold the view that it relates more to the regulatory issues because the action that triggered that Statement is an action by the Cabinet Secretary (CS) to suspend licenses and other issues. In that specific context, that is why I am of the view that the matter should be handled by the Senate Committee on Justice, Legal Affairs and Human Rights. However, generally, I noted that some of the socio-economic issues around betting *et cetera* fall within the Senate Committee on Labour and Social Welfare.

In fact, it is impossible to have a matter exhaustively falling under one committee. I will give you another example, Sen. Sakaja. This same Statement would as well fall under the Senate Committee on Devolution and Intergovernmental Relations because betting and casinos are devolved functions. There has been debate between the counties and the national Government on the devolution of this area. Let us, therefore, leave that matter but your point nevertheless is noted that this House must endeavour all the time to make sure that the mandate of committees is respected.

Finally, nothing prevents the Senate Committee on Justice, Legal Affairs and Human Rights from looking for any expertise from the Senate Committee on Labour and Social Welfare or the Senate Committee on Devolution and Intergovernmental Relations. My directive on this Statement stands, Sen. Sakaja, but I have noted the comments you have made---

Sen. Sakaja: Mr. Deputy Speaker, Sir, just for the record, since statements especially under that Standing Order do not negate the mandate of committees, our Committee will continue doing what it is doing on the specific matter.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely, there are one million issues associated with betting and gambling. I would be surprised if your Committee does not---

Sen. Sakaja: Mr. Deputy Speaker, Sir, I was informing the House in order to avoid duplication. Since we are already seized of the same matter, we shall continue to do it as a Committee. I wanted you to inform us what will happen if there are conflicting reports on the same issue, that is the mandate of a specific committee which cannot be changed by a Statement---

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us cross that one when we reach there. Continue with your activities. There is no injunction against your Committee from performing its mandate.

Sen. Sakaja: Mr. Deputy Speaker, Sir, we shall continue.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Let us have Sen. Kibiru, the summary man of quality.

(Sen. Kibiru laughed)

Sen. Kibiru: Thank you, Mr. Deputy Speaker, Sir. I know people may want to doubt that but here we are.

ACTIVITIES OF THE COMMITTEE ON TOURISM, TRADE
AND INDUSTRIALIZATION

I rise pursuant to Standing Order No. (51(1)(b) to make a Statement on activities of the Standing Committee on Tourism, Trade and Industrialization for the period commencing 1st January to 30th June, 2019.

We held 15 sittings, considered one Bill, two Petitions, and five Statements and held two stakeholder engagements. Among the Bills we considered is the County Tourism Bill (Senate Bills No. 5 of 2019) and had submissions from the stakeholders on the same.

Mr. Deputy Speaker, Sir, regarding statements, pursuant to Standing Order 48(1), four Statements were referred to the Committee during the period under review. Two Statements were sought by Sen. Pareno, whereas Sen. Khaniri and Sen. Halake sought one each.

We have concluded the Statements by Sen. Pareno on the state of East African Portland Cement. A meeting was held to that effect with the relevant Ministries.

The three other Statements fall within the mandate of the national Treasury, the Anti-Counterfeit Agency, the State Department of Cooperatives and State Department of Wildlife, respectively. The Committee has scheduled meetings with these Ministries and institutions to conclude the considerations.

We have even invoked the Parliamentary Powers and Privileges Act to fine the CS Munya Kshs500, 000 for not attending meetings.

(Sen. Cheruiyot spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator Cheruiyot. Do not import press conference matters here.

Sen. Kibiru: Mr. Deputy Speaker, Sir, I am moving forward to Petitions.

Two Petitions were brought before the Committee. The first one was brought by Mr. Vincent Ombaka concerning disruption of trade, while the second one was by one Macharia on review of laws relating to business premises.

The Committee has met the petitioners, considered the prayers in the Petitions and shall be tabling the reports. Arising from the Petition on review of the laws relating to business premises, the Committee intends to introduce an amendment Bill to the Landlords and Tenants, Shops, Hotels and Catering Establishment Act of 1965.

Mr. Deputy Speaker, Sir, in the period under review, the Committee held a consultative meeting on 14th March, 2019, with the Council of Governors (CoG) and the Ministry of Industrialisation and Trade on Enablers, Support and Development of Industrial Infrastructure and Status of Industrial Parks, Special Economic Zones and Economic Processing Zones in the Counties.

During the same period under review, the Committee had challenges and that is what I mentioned; that we were unable to get the CS for Industrialisation and Trade to appear before the Committee. As a result of that, we invoked the powers under Article 125 of the Constitution and fined him Ksh500, 000.

Mr. Deputy Speaker, Sir, the Committee intends to carry out the following activities: consider the recently published Street Vendors Protection Livelihood Bill (Senate Bill No.10 of 2019) previously called Hawkers' Bill and conclusion of the publication of the legislative proposal on the County Resource Development Bill. We intend to hold a meeting with relevant stakeholders on the implementation of industrial parks and special economic zones.

Finally, we intend to hold a meeting with the State Department of Trade on issues of privatization and with the Ministry of Tourism and Wildlife to deliberate on enablers of local tourism and management of conservancies.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kibiru, for living up to your promise.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Kinyua? Do you want to make an observation?

Sen. Kinyua: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Quickly and briefly.

Sen. Kinyua: Thank you very much. He was precise and it was good. I have heard so many questions concerning human-wildlife conflict in Laikipia, Taita-Taveta and Kajiado. I did not hear him say anything about that and the way forward.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kibiru, what do you say about human-wildlife conflict?

Sen. Kibiru: Mr. Deputy Speaker, Sir, as you notice, there is a very thin line between who gets that kind of a Statement between us and the Committee on Land, Environment and Natural Resources. The other day, we had a debate whether the Statement by a Senator was referred to us correctly. Probably, those Statements have been referred to the Committee on Land, Environment and Natural Resources

The Deputy Speaker (Sen. (Prof.) Kindiki): That is the position, Sen. Kinyua.

(Several Senators stood in their places)

Order, Sen. Mutula Kilonzo Jnr., Sen. (Eng.) Mahamud. Sen. Cheruiyot and the Senator for Murang'a.

(Interruption of Debate on Statements)

Hon. Senators, I have a communication to make.

COMMUNICATION FROM THE CHAIR

PROCESSING OF A PETITION BY FAMILIES OF THE VICTIMS OF THE ETHIOPIAN AIR CRASH

Hon. Senators, as you may recall, on Tuesday, 2nd July, 2019, I presented a Petition by eight Kenyans on behalf of families of the 32 victims of the Ethiopian air crash, Flight ET 302 on 10th March, 2019, which crashed just outside Addis Ababa in Ethiopia.

The Petitioners sought the intervention of the Senate on the following two prayers:

- (1) Lack of death certificates for the victims of the crash bearing in mind that the airline indicated that there were no survivors on board that flight; and,
- (2) Lack of counselling and requisite post-crash trauma support to families of the victims of the crash.

After the presentation of the Petition, I allowed comments by several Senators on the matter and referred the Petition to the Standing Committee on National Security, Defence and Foreign Relations. I also directed the Chairperson of the Committee to bring a report on the Petition to the Senate within two weeks. Ordinarily, it should have been 60 days, but I directed that the Report be brought within two weeks, pursuant to standing order 51(1) (b).

I have since reflected further, especially after a subsequent point of order which was raised by the Senator for Makeni County, Sen. Mutula Kilonzo Jnr., especially with regard to the need to expedite the matter of counselling and issuance of death certificates to the families of the victims, to enable them carry on with their affairs, especially those to do with succession and compensation. By succession I mean legal succession. I believe the issue of compensation is also important because without death certificates, the issue of compensation becomes difficult.

Hon. Senators, I listened to the points which were raised by Sen. Mutula Kilonzo Jnr. and I have personally reflected on this matter. I have come to the conclusion that this matter - especially on the first prayer which is lack of death certificates for the victims of the crash - does not fall under the mandate of the Committee on National Security, Defence and Foreign Relations. The reason is that in a situation where a person dies and the body cannot be found so that a medical doctor is able to give a death certificate, the procedure in law is that administrators of the estate of the deceased must file in court for a declaration of presumption of death before a death certificate can be issued.

I also want to clarify that ordinarily, presumption of death in our law and also in the common law is given after seven years of disappearance of a person. However, in extreme cases, especially where death is associated with air crashes, drowning in sea or other unfortunate calamities where it is impossible to get the remains of the deceased, a court of law can hasten the presumption of death in less than seven years. However, that has to be through an application in a court of law.

I am now, therefore, reviewing the earlier directives and direct on that first prayer relating to death certificates that this matter be seized of the Committee on Justice, Legal Affairs and Human Rights. The Committee is directed to engage the Attorney-General of the Republic with a view to ensuring that the legal procedure of the presumption of death is followed to allow, later on upon court orders, the presumption of death orders and also to allow the issuance of death certificates which will open up the door for compensation and also other legal consequences, including succession.

So ordered.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Before I entertain a point of order from Sen. Wetangula, I further direct that this Communication, therefore, supersedes the directives issued on 2nd July, 2019 on the Floor of this House.

Sen. Wetangula: Mr. Deputy Speaker, Sir, congratulations for shifting your position on this matter from the earlier position taken.

I also want to encourage you that in a matter of distress of this nature and given the pain that the families are going through, that you, in fact, need not go through a committee of this House. The Speaker should direct the Attorney-General on behalf of the families of the victims, to go to court in a collective suit. He can get the manifest from the origin of the flight in Addis Ababa. He can get all the names and details and all he needs to have are supporting affidavits from at least one member of each family of the victims; take a suit to court; get a collective decision involving all the victims and then allow death certificates to be issued.

When we say that the families can go to court, families suffer from various difficulties. Some do not have finances, some cannot afford lawyers and some have all manner of problems. I want to urge you - and it is within your power - that you do not have to send this matter to the Committee; that you direct that the Attorney-General through his Assistant, the Solicitor General goes to court forthwith and seeks court orders to obtain death certificates for each of the presumed dead victim on this flight. You can then expedite the rest of the process.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula for those useful comments. Before I give further directions, I would want to hear from Sen. Kang'ata.

Sen. Kang'ata: Thank you, Mr. Deputy Speaker, Sir. Allow me to inform the House that I am one of the lawyers who are handling that matter. Secondly, indeed, the petitioners behind this Petition are personally known to me. It is also true that death certificates are being processed currently by the Ministry of Foreign Affairs. There was even a desk handling the matter.

Mr. Deputy Speaker, Sir, I am the one who advised the petitioners to come up with this petition. I did not want to participate in person, because of potential conflict of interest issues, since I am handling some other matters related to this petition. There are several instances where some officials in that Ministry are delaying and are even refusing. I, therefore, thought that it is an administrative issue which this Senate, through its relevant Committee as correctly interpreted by your message, can intervene and cause the hastening of that process.

I support this Petition.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kang'ata. I have noted that your contribution today is quite organized. I think you are speaking as a lawyer today. Maybe during the other times, you usually speak as the Senator.

Proceed, Sen. Faki.

Sen. Faki: Mr. Deputy Speaker, Sir, I would agree with Sen. Wetangula, that it will be more cost effective if the Attorney-General could take up a class action suit, rather than each of the families making a separate application, which may be cumbersome and time consuming. Therefore, it would be better for him to take over the matter and apply jointly for the death certificates of all the victims.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kindiki): Very well. Where is the Chairperson of the Committee on Justice, Legal Affairs and Human Rights? How about the Vice Chairman?

(Sen. (Dr.) Ali spoke off record)

(Laughter)

Order, Sen. (Dr.) Ali, Sen. Cheruiyot and Sen. Omanga! I do not know what the excitement is all about.

Hon. Senators, I have heard what Sen. Wetangula, Sen. Kang'ata and Sen. Faki have said. However, this House works through Committees. Before I say what I want to say, let me comment in agreement, that the levels of distress on this matter are extremely high. This House should be seen to be on the side of the many families that were affected by that fatal air crash. If there is anything that this House can do to expedite the process of closure and redress, we should be glad to do so.

Having said that, I reiterate that this House works through committees. However, the same purpose which Sen. Wetangula is seeking can be achieved. Therefore, the root of a class action suit can be a very appropriate route, especially on that legal issue of presumption of death. The other issues, which are commercial *et cetera*, can come later. In any case, even the issues of compensation or other socio-economic issues cannot be dealt with until this very important document, called the death certificate, is available. That death certificate is issued by the State through the Court, especially in a case like this one, where there is no body.

Accordingly, I direct the Committee on Justice, Legal Affairs and Human Rights to engage the Attorney-General on the issue of a class action suit on behalf of all the Kenyan victims and report progress to this House on Thursday. Therefore, they have to

look for him wherever he may be found – I am sure that he is in the Republic – and give the status or some way forward to this House on Thursday during the Statement Hour. It is so ordered.

(Applause)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MICHINDA PRIMARY SCHOOL, NYANDARUA COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Michinda Primary School in Nyandarua County.

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

I thank you.

(Applause)

Proceed, Sen. Mwangi.

Sen. Mwangi: Thank you, Mr. Deputy Speaker, Sir. I also welcome the students who are in the public gallery. They are doing a good job, it is a good school and the students in the school have been doing very well. We are expecting leaders to this House from the school in the future. They are competent enough to come here and become Senators. We wish them very well.

(Applause)

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

Proceed, Sen. Madzayo.

Sen. Madzayo: Asante, Bw. Naibu Spika. Langu ni kukuunga mkono katika kuwakaribisha wanafunzi kutoka Kaunti ya ndugu yangu, Sen. Mwangi, ambaye ni Seneta mtendakazi. Vile vile, ningependa kuwaambia vijana kwamba Maseneta wote waliopo hapa walikuwa vijana kama wao. Walienda shule, wakafanya bidii na hatimaye wamejipata hapa kwa sababu ya kuchaguliwa na wananchi. Pia nyinyi pia mnaweza kuwa Maseneta kama sisi baada ya sisi kustaafu na muendeleo kujenga taifa letu.

Nawatakia kila la kheri wanafunzi kutoka Kaunti ya Nyandarua. Nafurahi pia kuona kwamba ndugu yangu amefurahishwa sana kwa kuja kwenu.

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

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Cheruiyot? The students are now welcome.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, it is a different issue. In proper parliamentary practice, I know that the Speaker has to be prompted. Earlier on, you were

looking for the Chairperson of the Committee on Justice, Legal Affairs and Human Rights Committee. I just want to notify you that he is back in the House.

(Laughter)

Mr. Deputy Speaker, Sir, no sooner had you issued the order on the sport betting companies than they left with---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot! I will not allow any further comments on that issue. I hope that you are not imputing an improper motive on the Chairperson because that will be very detrimental to our dignity, as a House. You could have said it differently. You could have said that the Chairperson, after the orders were given, got engaged in other pressing Committee matters. However from the excitement on your face---

(Laughter)

Very well. Sen. (Dr.) Musuruve, I hope it is not about students because the two Senators who have spoken welcomed them on our behalf? Let me hear you. What is it?

Sen. (Dr.) Musuruve: Asante, Bw. Naibu Spika, kwa kunipa fursa hii ili kuwakaribisha wanafunzi hawa katika Bunge hili. Wanafunzi hawa ni wachanga, na ni vizuri sana kwao kuwa hapa kwa sababu wataona jinsi tunavyojadili miswada ambayo inawafaidi wananchi. Wanafunzi hujifunza mengi kwa kusikiliza majadiliano yetu kuhusu taifa letu.

Bw. Mnenaji, ninawapongeza walimu wa shule hii---

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. Olekina?

Sen. Olekina: Bw. Naibu Spika, Kiswahili si lugha yangu ya mama lakini dadangu, Sen. (Dr.) Musuruve amekuita 'Bw. Mnenaji'. Je, anaweza kufafanua alichomaanisha?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Musuruve, '*mnenaji*' is a spokesman. Are you addressing the spokesman or the Speaker?

Sen. (Dr.) Musuruve: Bw. Naibu Spika, naomba uniwie radhi.

The Deputy Speaker (Sen. (Prof.) Kindiki): Kindly conclude.

Sen. (Dr.) Musuruve: Bw. Naibu Spika, ni vyema wanafunzi kuja Bunge kusikia tunavyojadiliana kuhusu mambo ya taifa letu. Nahimiza shule zingine pia zilete wanafunzi wao hapa ili waweze kujifunza mengi kwani hao ndio viongozi wa siku zijazo.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Musuruve, your time is up!

Let us get the last statement on the activities of Committee on County Public Accounts and Investments (CPAIC) from Sen. M. Kajwang' before I indulge Sen. (Eng.) Mahamud to lay a Paper.

Kindly proceed, Sen. M. Kajwang'.

(Resumption of Debate on Statements)

ACTIVITIES OF THE COMMITTEE ON COUNTY
PUBLIC ACCOUNTS AND INVESTMENTS

Sen. M. Kajwang': Mr. Deputy Speaker, Sir, no sooner had you called me, than I stepped to the Dispatch Table, if I was to use the words that were used by Sen. Cheruiyot who spoke before me.

I rise pursuant to standing order 51 (1) (b) to make a statement on the activities of the Sessional Committee on County Public Accounts and Investments (CPAIC) for the period commencing 12th February to June 2019.

Mr. Deputy Speaker, Sir, the Committee was reconstituted for the third session on 12th February 2019. The Committee thereafter elected its leadership on 19th February 2019 and kicked off its operations for the Third Session. I wish to provide the following detailed report relating to the activities of the Committee since this session commenced.

During the period under review the Committee has held a total of 42 sittings. The Committee held one retreat in March 2019 whose agenda was to define the work plan for the Session and adopt a strategy that would ensure Senate complies with Article 229(8) of the Constitution of Kenya which requires Parliament to debate and consider audit reports within three months of tabling.

During the retreat, the Committee also considered and adopted the first Fiduciary Risk Report for the financial years 2013/2014, 2014/2015 and 2015/2016. This report has since been tabled and the Motion scheduled for debate. During the same retreat, the Committee adopted 24 county reports that are also ready for tabling.

Mr. Deputy Speaker, Sir, on 24th April 2019, the Committee held joint discussions with the Office of the Auditor-General (OAG), the Controller of Budget (COB), the Ethics and Anti-Corruption Commission (EACC), the Directorate of Public Prosecutions (DPP) and the National Treasury to discuss ways of improving oversight and stemming corruption in counties. It was resolved that EACC and DPP would appoint Parliamentary Liaison Officers who would be seconded to CPAIC and would proactively undertake investigations on recommendations of the Committee. I am happy to report that the EACC has since seconded a senior officer to the Committee.

The challenges faced by counties in use of the Integrated Financial Management System (IFMIS) were also discussed. Whereas National Treasury was of the view that IFMIS had been successfully rolled out, evidence from counties indicated a different reality. It was resolved that a tripartite meeting between National Treasury, Counties and Senate be convened to specifically deal with the implementation issues of the IFMIS.

Mr. Deputy Speaker, Sir, during the period under review, the Committee undertook one county visit. We visited Samburu County to assess the measures taken to address non conformances raised by the OAG. The Committee held meetings with the Public Accounts Committee of Samburu as well as the Governor and the Executive.

The Committee visited several county projects, including two of the level four hospitals where it was established that the county was not getting value for money from its investments in the Managed Equipment Scheme. I hope that this House will follow through on its past recommendations on scrutiny of the managed equipment scheme.

A visit of other county funded projects across the county also exposed delays in project execution, for example, solar powered boreholes that were not delivering benefits to residents due to delays in laying pipes, and a newly built level four hospital in Archers Post Town that was complete, but unutilised.

Mr. Deputy Speaker, Sir, it is noteworthy that two days after the visit to Samburu, the EACC moved swiftly to take legal action against top county officials suspected of engaging in irregularities in utilization of county funds.

Mr. Deputy Speaker, Sir, between 6th and 10th May 2019, the Committee undertook a study tour to the United Kingdom House of Commons. The tour, coordinated with the help of the Westminster Foundation for Democracy, sought to establish linkages with the PAC at the House Commons so as to share best practices in parliamentary oversight. The Committee held fruitful discussions with the Chair of the UK, House of Commons Public Accounts Committee Hon. Meg Hillier, as well as the top leadership of the Independent Parliamentary Standards Authority, the Parliamentary Scrutiny Unit, the Public Accounts Commission, the National Audit Office and the Commonwealth Parliamentary Association.

The Report of the visit will be tabled in the House and is expected to stimulate a discussion on the legislative and administrative measures necessary to strengthen the role of Senate in oversight.

Mr. Deputy Speaker, Sir, the Committee notes that in the past five financial years, the OAG has tabled more than 200 reports for county executives, 140 reports for county assemblies and hundreds of reports for county funds and corporations. Allow me, to congratulate the outgoing Auditor-General for ensuring that his office reports to Parliament within the timelines specified in Article 229 of the Constitution.

In order for Senate to meet the requirements of Article 229 (8) of the Constitution, the Committee resolved that-

(1) County responses for the financial years 2013 – 2017 shall be in the way of written responses accompanied by sworn affidavits by Governors as Chief Executive Officers. So far, I would like to report that all the 47 counties have since submitted their written responses to the Senate.

(2) The Committee shall interrogate Governors on their responses for the latest Financial Year 2017/2018 and any matters arising from previous years. So far, the Committee has interrogated 15 governors out of the 18 that were scheduled, and has issued notices of appearances for the remaining counties.

(3) The Committee has also resolved that it shall report its findings and recommendations to the House in the form of a Fiduciary Risks Report. The report covering the financial years from 2013 – 2016 has already been laid before the House.

Mr. Deputy Speaker, Sir, the appearances by governors have brought to the national debate the state of financial management in counties. For example, in Kiambu County, the Committee revealed that their budget execution report included budget items running into billions that were on functions that were not devolved. This led to a heated national debate on the integrity of financial reports from counties, the fitness of IFMIS to support counties as well as the capacity of the Auditor General and oversight bodies to proactively address financial management challenges at the counties. The Committee resolved to request the Auditor General to undertake a special audit of Kiambu County within 45 days. I would like to report that next week on Monday, the Committee shall be meeting with the Auditor-General to get a report on the progress of the special audit.

Other matters that the Committee has dealt with during this period include: The Nairobi Civil Appeal No. 204 of 2015: Council of Governors & others vs Senate & Another. The Court of Appeal in this case affirmed the constitutional power of Senate to invite or summon governors as witnesses in line with Article 125 of the Constitution. This power had been challenged by the COG. We understand that COG has escalated the fight over this matter to the Supreme Court.

Mr. Deputy Speaker, Sir, while giving its judgment, the Court of Appeal made an observation regarding the distinction between national revenue allocated to county governments and revenues collected at the county. The court made the observation that the oversight role of the Senate was limited to national revenue allocated to counties as per Article 96(3) while County Assemblies ought to oversight revenues collected locally. This observation has practical challenges and cannot be implemented.

At its meeting of 9th July 2019, where the Director of Legal, Director of Litigation and the main Counsel advocate, Mr. Kioko Kilukumi were present, the Committee resolved as follows-

(1) That the observations made by the Court of Appeal Judges on the distinction between national and own source revenue has practical challenges and cannot be implemented. Therefore, the observations shall be considered as obiter dictum.

(2) That the Senate must robustly defend itself against the matter filed at the Supreme Court by the COG on its power to summon Governors in line with Article 125.

(3) That the Senate should come up with legislative and procedural guidelines to ensure clarity between the oversight roles of the Senate and County Assemblies

Mr. Deputy Speaker, Sir, the other matter noteworthy to report is that the Office of the Auditor-General (OAG), working under request from the national Treasury, conducted an audit of pending bills in counties and tabled the report in the House on the 3rd July, 2019. The report indicated that pending bills as at 30th June, 2018 had reduced from Kshs108 billion to Kshs51 billion. The Committee has done a preliminary review of the report and the Committee is not satisfied with completeness and comprehensiveness of the report and has requested the OAG and Controller of Budget (COB) to submit a more detailed report that analyses the pending bills per county.

Again, during the session, the Committee considered a proposal by the Westminster Foundation for Democracy (WFD) to strengthen the capacity of the Committee in carrying out proactive audits. The framework for the support is still morphing, and so far, WFD has helped in setting up contacts and a study tour of United Kingdom's public finance oversight structures.

For the months of July, August and September, the Committee has scheduled governors of 29 counties to appear before it. The Committee shall also undertake county visits within the same period.

In the month of August, the Committee has convened the annual accountability forum that brings together chairpersons of public accounts committees drawn from the 47 counties.

In conclusion, some of the challenges and recommendations are those that have been brought before the House previously include-

- (1) Backlog in the consideration of audit reports.
- (2) Inadequate capacity of Public Accounts Committees (PACs) at County Assemblies.
- (3) Heavy workload arising from the Committee's mandate of considering the reports of the Auditor-General from all the county government entities.
- (4) The sessional nature of the Committee where valuable time is lost before the constitution of the Committee for a new session.

Mr. Deputy Speaker, Sir, some of the recommendations that the chairperson has previously discussed with the Senate Business Committee include:

(5) Drawing from the oversight arrangements at the UK House of Commons; the Senate should establish the equivalent of a Financial Scrutiny Unit. I have previously called it a parliamentary audit office or it could be an extension of the Parliamentary Budget office.

(6) Considering that the term of the Auditor-General and Controller of Budget is coming to a close, Senate should make recommendations that it be included in the vetting of the new office bearers.

I acknowledge that the vetting of these new office bearers is dictated by the Constitution, but drawing from the experience of the UK House of Commons, Parliament should consider establishing a joint committee for the vetting and oversight of the Controller of Budget and the Auditor-General because their work has serious implications on operations of counties.

(7) There may be need for the Senate to consider adopting the African continent's Association of Public Accounts Committees recommendations that encourages legislatures to consider longer lifespan for PACs to improve efficiency and effectiveness.

Mr. Deputy Speaker, Sir, that then is a report from the Public Accounts Committee.

The Deputy Speaker (Sen. (Prof) Kindiki): Thank you, Sen. M. Kajwang'. Well done.

Very briefly, Sen. Mwaruma.

Sen. Mwaruma: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to comment on the work of CPAIC. There is something that came up during CPAIC sittings; this was to do with budgets for county assemblies and I thought maybe

the chairperson could highlight it as challenge because the Public Finance Management (PFM) Act, indicates that County Assemblies should get 7 per cent. However, County Assembly Allocation Act (CARA) has a different ceiling that is over and above 7 per cent.

We need clarification, so that when governors come and they are told by CPAIC that they are actually giving more to the county assemblies than as outlined in PFM Act, then, we are very clear. That is a challenge that requires some conversation.

The Deputy Speaker (Sen. (Prof) Kindiki): Chairperson, what sayeth thou?

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, indeed, it is true that particularly when the County Government of Taita Taveta appeared before my Committee, we referred to Regulation 25 of the PFM Regulations for County Governments.

It is very clear that allocations to County Assembly shall not exceed 7 per cent of the county’s revenue or twice the emoluments, whichever is lower. These are part of the fiscal responsibility principles that start from the Constitution; they are in the PFM Act and the regulations.

Mr. Deputy Speaker, Sir, I have consulted my colleagues, some who seat in the Finance and Budget Committee. In the CARA, we have introduced ceilings because CARA is an Act of Parliament and the regulations, I am talking about is subsidiary legislation, then, in that hierarchy, we have now reverted to the position taken in CARA.

I just want to encourage the House that those ceilings on average, County Assemblies are now getting close to 12.5 per cent. In certain counties, we have seen that county assemblies are engaging in all sorts of mischief because their allocations far exceed what they need to pay salaries.

The Deputy Speaker (Sen. (Prof) Kindiki): Sen. Farhiya, are you still on the CPAIC reports? Make it brief, please.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir. Mine is very brief. First of all, it is commendable that pending bills reduced from Kshs108 billion to Kshs51 billion, that is a drastic reduction. I commend the Committee for their good job.

The other thing I would like to speak about is the pending bills that are unsupported. That one needs further investigation because in my view, it borders on fraudulent transactions. They need to be thoroughly investigated, especially we need thorough details, including who is responsible. Is it the defunct local government, the current governor or the previous governor, where the governors have changed? That responsibility should be borne by a particular person.

Sen. Olekina: On a point of information, Mr. Speaker, Sir.

The Deputy Speaker (Sen. (Prof) Kindiki): I hope you have noted, Chairperson.

Whom are you informing? She has finished. Can we hear it?

Sen. Olekina: Mr. Deputy Speaker, Sir, it is important for the House to know that the reason why we in the Committee call for a meeting between the Auditor-General and the Controller of Budget is because we found the report which was tabled a little bit too general.

We can interrogate the information that the distinguished Senator is asking, so that we know how these pending bills were accumulated. This is because getting just two pages where you are told that in county x, the money went from point x to this and that.

We want to get details on how money was spent so that we come up with a summary of what transpired. We do not want this general information from the Auditor-General which was tabled in this House.

The Deputy Speaker (Sen. (Prof) Kindiki): Sen. Cheruiyot, you may now proceed.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir. I would like to seek certain clarification from the Chairperson of the CPAIC. In the beginning of the current session that we are in, he gave communication that they were considering having sittings of this Committee outside the precincts of Parliament. For example, when they are scrutinizing the audit report of Kericho County, they consider to have it either within the county or somewhere close, so that citizens can understand how this Committee works.

I would like to hear from him what other plans they have for us as a House to ensure that devolved funds are put into proper use apart from just the indications of the information that is brought up from the report of the Auditor-General. Is there anything that they are suggesting to the House?

The Deputy Speaker (Sen. (Prof) Kindiki): Quickly, Chairperson, we need to close this issue now.

Sen. M. Kajwang: Thank you, Mr. Deputy Speaker, Sir, I thank Sen. Cheruiyot for the reminder of sitting outside the precincts of Parliament. In our schedule, we will visit a minimum of five counties. We have already planned those visits. On 3rd September, 2019, we will visit Kwale County. On 4th September, 2019, we will be in Mombasa County. We will do Machakos, Kitui and Makueni when the Senate goes to *mashinani*. We would wish to do more of these counties away from the Senate precincts. Sometimes the challenge is that of backlog. However, we believe that we will be more effective if we go to the counties.

In terms of a better oversight mechanism, I still believe that CPAIC by its very nature is a mortician because we do a lot of postmortem examination. I still want to convince the House that we should not drop that idea to have a proactive monitoring and evaluation arrangement that can enable our committees and individual Senators to be able to look at disbursements going into their counties, the budgets, and the utilization.

We should also not drop that business of the County Development Boards. I have submitted a legislative proposal that we set up County Leaders Forum so that Senators are also made aware of some of the goings on in their counties. We realized that Senators discover certain things only when matters are brought by the Auditor-General before the CPAIC. Let us not rob that idea for a monitoring and evaluation framework.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Before I allow Sen. Sakaja's point of order, I apply Standing Order No. 40 (2) and ask the Clerk to call out the Order on Papers, so that we dispose of one or two things.

Next Order.

PAPERS LAIDREPORT ON THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2019

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday 16th July, 2019-

Report of the Standing Committee on Finance, Commerce and Budget on the Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019)

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

Sen. Farhiya: Mr. Deputy Speaker, Sir, pursuant to Standing Order No.22(1) (2), I beg to lay the following Papers on the Table of the Senate, today Tuesday 16th July, 2019-

IRISH POTATO REGULATION 2019

Irish Potato Regulation 2019.

COFFEE GENERAL REGULATION, 2019

Coffee General Regulation, 2019

(Sen. Farhiya laid the documents on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Before we go to the next Order, What is it, Sen. Sakaja?

POINT OF ORDERPROCESSING OF A PETITION BY FAMILIES OF
THE VICTIMS OF THE ETHIOPIAN AIR CRASH

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. I apologise for taking you back to the Communication that you issued earlier following the intervention of fellow Senators on the Petition of the Ethiopian Airlines air crash that was brought on the 2nd July, 2019 and committed to the Committee on National Security, Defence and Foreign Relations.

Mr. Deputy Speaker, Sir, the Committee already started working on this. We have invited the petitioners, the Office of the Attorney-General, CS, Foreign Affairs and International Trade and many other State officers. The sittings begin on Thursday. However, the Communication raised after reflection, you have ordered that this may be addressed better by the Committee on Justice and Legal Affairs and Human Rights.

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I want to inform the House on what has been done so far. Since we are all Committees of the House, the invitations still stand. Starting on Thursday the petitioners should come. However, the Committee that will hear the Petition becomes the Committee on Justice, Legal Affairs and Human Rights. They can look at all the aspects of the Petition.

I apologise for briefly stepping out when you issued the Communication. However, it is well in order because we are all Committees of the House. What one Committee has started can be finished by another Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): In other words, you are comfortable with the Committee on Justice, Legal Affairs and Human Rights. The worry is about the legal issue around presumption of death and court orders. That is what informed that Communication based on a point of order raised by Sen. Mutula Kilonzo Jnr. and supported by Sen. Wetangula and a few other Senators.

If that is the case, for a seamless transition on that issue, the Thursday invite will be handled jointly between your Committee and the Committee on Justice, Legal Affairs and Human Rights. This is because I made the directive orally. It is not in that Communication.

The Committee on Justice, Legal Affairs and Human Rights needs to give some interim roadmap on this legal issue on resumption of death and engage the Attorney-General by Thursday. So, I further direct that as the Committee on Justice, Legal Affairs and Human Rights transits and take over the Petition, it sits in on Thursday so that when the Attorney-General comes, he is not invited by another House Committee the subsequent week.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. That is in order. Indeed, the legal aspects were canvassed within the Committee and we got advice from our legal counsel which every Committee has. That is why the Attorney-General was also part of those who were to come.

If you look at the Petition, in addition to that legal issue, there are matters of how disasters are handled, counseling, *et cetera*. All Committees are competent. Therefore, it would be neater for that Committee to come in on Thursday and then take over the rest of the issues.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely. It is so ordered.

Chairperson of the Committee on Justice, Legal Affairs and Human Rights, have you noted?

Sen. Cherargei: Yes, Mr. Deputy Speaker, Sir. However, we will discuss with the Chairperson, my colleague, Sen. Sakaja on how to proceed. This is because apparently on Thursday, we are meeting the Independent Electoral and Boundaries Commission (IEBC)---

The Deputy Speaker (Sen. (Prof.) Kindiki): You can send representations. That sitting on this Petition will be the last sitting of Sen. Sakaja's Committee. So, you can send representation to ensure that the legal issues that were raised are canvassed when the Attorney-General appears to avoid a situation where after one day or two, you summon him on the same subject matter.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. I am well guided.

The Deputy Speaker (Sen. (Prof.) Kindiki): We can now move to the next Order. Before we go to the next order, I would like to recognize some visitors on the Public Gallery.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ITIGO GIRLS SECONDARY SCHOOL, NANDI COUNTY

We have visiting students and teachers from Itigo Girls Secondary School, Nandi County. I welcome them to Parliament.

On behalf of the Senate and on my own behalf, I extend a warm welcome to them and wish them a fruitful visit.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cherargei, be brief and welcome them on behalf of all of us.

Sen. Cherargei: Mr. Deputy Speaker, Sir, I take this opportunity to welcome the beautiful girls from Itigo Girls Secondary School in Chesumei Sub-County, Nandi County, which is my neighbouring village. I have a special relationship with this school because my younger sister schooled there.

I wish them well. I am proud of them. We look forward to them performing well this year. I know that their performance has been extremely good. However, I want them to be excellent. I hope that they will have an opportunity to see how the Senate operates. In future, when some of us are old enough and retired, they will take over some of these responsibilities of serving the nation.

On behalf of the Senate and my own behalf, I wish them well. I ask them to learn as much as they can. We are proud of them. One of these fine days, I will visit the school so that we share more.

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

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

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Mr. Temporary Speaker, Sir, is Sen. Cherargei in order to tell the young students from his county that they will take over when he retires? He is only 32 years or thereabout. If he his retirement age is 60 years, he is telling the young people to wait for almost 30 years yet we say that they are the leaders of today and not tomorrow.

(Laughter)

Mr. Temporary Speaker, Sir, we must encourage them that when they turn 18 years, they can make some of us to retire immediately because the future of this country is with them. So, they should not wait for Sen. Cherargei to retire unless he is retiring as my Deputy President in the next 20 years, but not as the Senator for Nandi County.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Next Order.

MOTION

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

THAT, the Senate adopts the report of the Mediation Committee on the Land Value Index Laws Bill (National Assembly Bills No. 3 of 2018) laid on the Table of the Senate on Wednesday, 10th July, 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.

(Sen. Mwangi on 11.7.2019)

(Resumption of debate interrupted on 11.7.2019)

Sen. Prengei: Mr. Temporary Speaker, Sir, I rise to support the Motion moved by my Chairman. It seeks to solve one critical issue that has been haunting many people by proposing to set the value of land in specific places. It also aims to solve the issue of land speculation in this country. When we interrogated officers of the National Land Commission (NLC), we realised that some people buy land speculation purposes so that they can make huge profit. This Motion seeks to solve that problem, once and for all.

Another key issue is the formulation of a tribunal in case of any disputes pertaining land. The mediated version of the Bill seeks to address that by establishing a tribunal that will incorporate competent people in land matters.

I thank you, Mr. Temporary Speaker, Sir.

Sen. Halake: Mr. Temporary Speaker, Sir, I also rise to support the Motion by the Chairperson of the Committee on Lands, Environment and Natural Resources who was also the Vice Chairperson of the Mediation Committee where I had an opportunity to sit. While I had a lot of reservations on the original Bill that was passed by the National Assembly, the mediated version has dealt with issues that we raised.

Mr. Temporary Speaker, Sir, you and I come from pastoralists communities. The original Bill sought to amend a non-existing law. I am happy that we, as a House, corrected that. This is because we were required to amend a law that never existed in the first place. There were pertinent issues around land that were of great concern to many pastoralists, including how land that does not have buildings or has not been developed should be valued. As we know, most pastoralists land does not have structures. However, that does not make it less valuable in terms of biodiversity.

We should not have compulsory acquisition of land to disadvantage pastoralists. Those clauses have since been corrected. Valuation of land as far as community land is concerned will not consider how many structures are there. This is because there are no structures on land found in pastoralists' areas. The community land is used by both pastoralists and wildlife.

The nature of the Bill as it was before was punitive. It almost took the model of the colonial land system where the locals were to be removed from their ancestral land to pave way for development and other things. I am glad this House stood up against those kinds of systems that are outdated and punitive when it comes to communal land.

In terms of land ownership, there was a bit of ambiguities around it. I am happy to note that some of the ambiguities around land ownership were dealt with. While we may not have title deeds for community land, there is no dispute that they belong to the community. Ownership does not just mean a piece of paper because there are no disputes on ownership of community trust lands. Those parcels of land are known and it is just a matter of registration.

I am happy with some clauses, but there are others that may need a bit clarification. I hope those concerns have been taken into consideration. I was lucky to be invited to the Mediation Committee meeting for one day. I hope some of the issues we raised as members of the pastoralist communities were taken care of.

Mr. Temporary Speaker, Sir, I must congratulate the Chairman of the Committee on Lands, Environment and Natural Resources for his commitment to ensuring that this was done well. The Bill was mediated to ensure that communities in the counties are well taken of and that valuation of land will be done not based on the structures, but the livelihoods of pastoralists and other vulnerable groups. In future, I propose that the Committee of the Whole should look at all these issues.

I was assured that other Acts that are not amended by the Bill have sufficient provisions for some of the concerns that we have. We will now be waiting to see the implementation of some of the provisions. The spirit of the land valuation and compulsory acquisition should go beyond evictions and disenfranchisement, especially of pastoralist communities that occupy trust lands. They should get value for their land. The protection that the Constitution envisages in terms of land ownership and valuation and the laws that govern our land systems.

Mr. Temporary Speaker, Sir, as I support, I look forward to seeing that we closely observe how this will be implemented.

Sen. (Eng.) Hargura: Mr. Temporary Speaker, Sir, I would like to support the Report by the Mediation Committee because most of the amendments by the Senate were accepted by Members of the National Assembly, except for a few cases like the Title where they insisted to have it the way it was.

The rationale behind having amendments to various land laws is because we have been having compulsory acquisition of land for infrastructural development. Being a Member of the Committee on Roads and Transportation, we have many petitions based on that. We have had cases where within the same year, land valuation by different valuers has been changing rapidly. There is need to have some guidance.

An acre of land could be valued at Kshs900,000 but another valuer could value the same land at Kshs30 million. Using the same parameters, you cannot get that kind of variation in the same year. So, there is need to have some way of calculating the values. I hope once the Bill is assented to, there will be some order because many Kenyans are suffering because the relevant commission could not come up with acceptable land values. When valuation is done, you can have three different values by the same commission for the same piece of land. That shows there is no particular way of doing this evaluation.

My main concern is the issue of the community land. Right now, we have major infrastructure projects like the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor project which goes through northern Kenya. I know in Marsabit, not less than 400 kilometres are affected. The LAPSSET project is insisting on acquiring a 500 metre corridor and it is all meant to run through community land.

It is assumed that community land is not developed; the way we understand development. We, as Pastoralists, believe that the way we are using land is the best way to use it. We do not have to construct structures on it to indicate that we have developed it. The way we use it; that is the best way we can use it. So, there must be a way of taking that into account; the form of land use. This involves a bigger population. Unlike private land where only a family or an individual will be affected. In this case, we are affecting a whole community which uses that land. Once you have that kind of infrastructure going through, then you are disrupting their way of life. They will not be able to cross that infrastructure development, whether it is the railway line or a road. You have already disrupted their lives completely.

How do we take that into account?

We accept this Bill as it is after mediation, but there is need to refine it further. This is to ensure that other forms of land use which unfortunately are the ones most affected like pastoralism are factored in, so that we can establish the real value. Just the way land value index takes into account the issue of development, this one has to take into account the issue of land use and we can come up with a different land value index for that.

The Temporary Speaker (Sen. (Dr.) Lelegwe): I now call upon the Mover to reply.

Sen. Mwangi: Thank you, Mr. Temporary Speaker, Sir. This is one of the most important Bills in this country because it is dealing with compulsory acquisition of land. We have had a lot of cartels in Kenya who have been buying land for speculation purposes and they have fleeced the Government. This law will ensure that we do not have cartels in the Government who are buying land for the purpose of fleecing the economy of this country.

The land value index will be developed by county governments within six months of the signing of this Bill by the President. At no time, will we have a situation where land speculators will be allowed to fleece this country, in terms of buying land in places where Government projects will be.

This is a mediated version of the land value index. This Senate had proposed a lot of amendments, but some of them were rejected by the National Assembly. That

occasioned the need to form a mediation Committee with five Members of the National Assembly and five Members from the Senate. We agreed on a version that is agreeable by the entire nation. Most of the amendments that had been done by this Senate were accepted by the Mediation Committee. We believe that Kenyans will now get value for money. We cannot have cartels who will fleece this country in the name of land which they have bought by having knowledge that Government projects will pass through a certain area.

Mr. Temporary Speaker, Sir, I thank all those who have contributed towards this Bill. They have added value to this Bill by giving better ideas than those which were in the original Bill. It will be my pleasure if this Bill is assented to and becomes a law because it will save this country a lot of money and takes care of all Kenyans. This Bill goes to the extent of saying that whoever will sell land to the Government in terms of compulsory acquisition, will be adequately compensated by the Government, within a short period of time.

This Bill also states that those who will not have been compensated within two years will be given accommodation and be taken care of by the Government. I do not really think there has been law like this. It is a wonderful law.

The Temporary Speaker (Sen. (Dr.) Lelegwe): We do not have the numbers to put the question.

Sen. Mwangi: Mr. Temporary Speaker, Sir, I can see that we do not have the numbers to vote for the Bill because it will require a minimum of 24 Members. Perhaps, we can postpone the voting to tomorrow.

Thank you, Mr. Temporary, Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Lelegwe): I defer putting of the question to tomorrow, Wednesday.

(Putting of the Question on the Motion deferred)

Let us move on to the next Order.

BILL

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO.3 OF 2019)

(Sen. (Dr.) Zani on 9.7.2019)

(Resumption of debate interrupted on 9.7.2019)

Sen.M. Kajwang: Thank you, Mr. Temporary Speaker, Sir. I rise to support the amendment to the Public Finance Management (PFM) Act. This is a very straightforward amendment and has everything to do with automation of revenue collection systems in our counties.

I want to congratulate the Mover of this amendment Sen. (Dr.) Zani whom we call the “general” when we go to our party politics, for bringing this amendment which is worded so candidly. The main amendment says that every county shall, in consultation with the National Treasury, design, develop and implement, a county revenue collection system.

Having chaired the CPAIC, I believe that every county needs to have an automated revenue collection system. It is one way of ensuring that we optimize own source revenue and also get rid of something that we learnt when we were discussing issues to do with Migori County, called under-carboning. Under-carboning is where revenue collection is manual. The revenue collector charges the market woman Kshs50, but deletes the carbon copy and then enters Kshs20 on the carbon copy. In between collection and submission to the county, the county has already lost Kshs30. An automated revenue collection system will bring about integrity in the system.

It is not automatic that there will be transparency and integrity because we have seen counties with automated revenue collection systems still having a lot of problems.

Allow me to first paint a picture on the state of automation in our counties. We have IFMIS that has been deployed to all counties. It is being used for accounts receivables, accounts payables, purchasing, partial budgeting, general ledger and reporting. In addition to IFMIS, we have the Integrated Payroll and Payroll Database (IPPD) which is being used to manage the payroll.

The third system in the counties is the Local Authority Information Management Systems (LAIFOMS) which is an old system that was supported during the days of the defunct local authorities. LAIFOMS is still being used by certain counties for recognition of own source revenue.

The fourth distinct system that we have in the counties is the revenue collection systems. In Nairobi City County, for example, we had JamboPay provided system. Other counties have systems that have been provided in partnership with banks, or in partnership with academic institutions. Strathmore University has been vending a particular revenue system.

Mr. Temporary Speaker, Sir, there are problems with the four distinct automated systems in counties. We know the problems of IFMIS. When governors come to the Senate or when they speak in the public domain, they have always indicated that the implementation of IFMIS has not been completed. They have said that the downtimes in IFMIS hinder them from doing their work effectively. They also believe that IFMIS is structured in a manner that still thinks of a centrist government rather than a devolved structure of government. This was clear when Kiambu County came before us. When we were looking at budget execution extracts from IFMIS, it was clear that there was still some customisation that needed to be done in that system.

These four distinct systems do not talk to each other. There is very little integration, if any, between IFMIS, IPPD, LAIFOMS and the own source revenue collection system. That means that sometimes you have to enter data in LAIFOMS then carry that data on a piece of paper to IFMIS to do a second data entry. That is not the efficiency that information systems are supposed to provide. The other challenge is that they are supported by different players. IFMIS is supported by National Treasury and

Planning, IPPD is supported by the Ministry of Labour and Social Protection and LAIFOMS is not supported by anyone.

When we had the Governor for Kirinyaga County, who in her past life was involved in setting up these automated systems at the national and county level, she confirmed that support for LAIFOMS had been discontinued. It was interesting to learn that her Kirinyaga County was still using LAIFOMS for recognition of own source revenue. It is risky for the counties to use systems whose source codes are unverified and whose support cannot be guaranteed. If LAIFOMS collapses one day, a lot of counties will suffer.

We have seen a number of own source revenue systems in our counties. One poignant case is that of Nairobi City County. In Nairobi City County, the Auditor-General flagged certain issues with their automated revenue collection system. He said that the system that they were using at that point was not transparent. Officers in Nairobi City County Government had no visibility and access to the system hence they could not generate reports. If they wanted to get cash collection reports or utilisation reports, they had to go to the system vendor. It was not clear whether the system vendor was doctoring the reports or whether he was giving them the accurate report.

This is not a trivial matter. When we came out of the last general election, there was a call that we needed to open the servers. When a constitutional body that was mandated to set up an information platform with the qualities similar to the qualities that have been proposed by Sen. (Dr.) Zani was unable to provide transparent access to the servers, the Supreme Court ruled that the outcome of that election could not be ascertained. Therefore, Kenyans were subjected to a fresh round of elections.

Nairobi City County had been collecting Kshs10 billion every year using a system that was not transparent and it was using servers that could not be opened to the users. As a result, the County Assembly of Nairobi City acted on the recommendations of the Auditor-General and it recommended that Nairobi City County Government terminates the contract with the system service provider. When the matter came to the Senate, the Senate took the same position as the Nairobi County Assembly.

Unfortunately, the Governor, who was the loudest critic of that solution when he was a Senator, was the first one to extend the term or duration of that service in Nairobi City County. When we pressed on further, Nairobi City County Government said that they would now host the revenue collection systems in-house. They ended up purchasing the source code and put it in-house without going through competitive tendering. This is one issue that the CPAIC or the Ethics and Anti-Corruption Commission (EACC) needs to look into because a system collecting Kshs10 billion every year cannot be implemented in such a pedestrian manner. If that is allowed, all hell will break loose.

The commissions that are being paid to the system vendors vary a lot. There is a county where for every Kshs100 collected, the service provider takes Kshs7 for no effort. That is because they do not go out to collect the revenue. They just provide a platform. There needs to be some pricing module. In the case of Nairobi City County, it was not 7 per cent. It was something like point two or one per cent, but there needs to be some consistency. When we went to Lamu County, a county that had received Kshs3 billion from the national coffers, we realised that it had three revenue collection systems. We

also learnt that they hardly collect Kshs100 million. Sen. (Prof.) Ongeru was perturbed by that. The cost of implementing the system was equivalent to what they collect in a year and there were commissions of 7.5 per cent.

When the funds are collected by the service providers, they are put in a fund which is supposed to be set aside and the service provider is not supposed to access it. In line with the Public Finance Management (PFM) Act requirement, whatever is collected must first be swept to the County Revenue Fund before any commissions are deducted. However, we have seen cases where the service providers are deducting their commissions at source and where the funds of the Escrow accounts have been set up. The county governments have absolutely no control. Therefore, when the service providers collect that money, they first invest it in short-term financial instruments; make serious profits before remitting the money to the counties.

As we legislate to make it mandatory for counties to implement these systems, we can draw from that experience for us to guide them appropriately so as to avoid the mistakes of the past. As a way forward, I wish to recommend to Sen. (Dr.) Zani that we should not just consult the National Treasury and Planning because we also have the Information and Communication Technology Authority (ICTA) who have the responsibility of coming up with frameworks, policies and guidelines on implementation of information technology solutions in Government. We, probably, might need to ask ourselves if we can have that consultation with the National Treasury and Planning and ICTA. At the moment, it is the ICTA that has the mandate of developing an enterprising architecture for Government information systems in this Republic. It is also the authority that has the mandate to come up with specifications, guidelines and frameworks that everyone must follow when doing acquisition.

Mr. Temporary Speaker, Sir, there is something that is emerging called integration frameworks. It is a concept that information systems used within a particular domain should be able to talk to each other, and that data should be able to flow seamlessly between them. As I had explained earlier, between the Integrated Financial Management Information System (IFMIS) and the Local Authority Integrated Financial Operational Management Systems (LAIFOMS), there is virtually no integration. The IFMIS, LAIFOMS, Integrated Payroll and Personnel Database (IPPD) and the revenue collection system are all operating in silos.

The ICT Authority must help us to identify an integration framework so that if County 'Y' decided to choose Solution 'A', and County 'Y' decided to choose Solution 'B', it does not matter the name of the solution; they must meet certain specifications. If they are put in the live production environment, it should be easy and possible for data to move between one system and the other.

Once again, of importance also is business continuity. Some of these systems are hosted on desktops sitting in offices of service providers. Sometimes counties do not even know where their data is sitting. Once again, going back to the example of the Independent Electoral and Boundaries Commission (IEBC) during the last elections, there was a furore when it turned out that citizens' data was sitting somewhere in Europe, and people were asleep there when we needed it. Many counties do not know where their

data sits because they have not come up with ICT policies, strategies and a governance framework that can help them to manage some of these assets.

Sen. (Dr.) Zani, you might want to reflect on the role of the ICT Authority on these issues. I would support a situation where counties can procure a solution which suits their purpose. I would not recommend a situation where we force one solution across all counties. This is because we will be repeating the mistakes of IFMIS and those of the Managed Equipment Scheme (MES). We might want standardisation, uniformity and consistency. We might even want to get the best and deploy it across, but that was the rationale and argument behind the MES. We are, therefore, now paying millions of shillings for things whose value does not merit what we are paying for. We must allow counties that freedom to select, develop and procure their systems as long as they conform to the enterprise, architecture and integration framework that would have been defined.

Finally, as I mentioned earlier, we must have a proper transition out of LAIFOMS. The IFMIS must be made to capture details of own-source revenue, and that module exists. I do not understand why, every year, we allocate IFMIS billions of shillings in the budget, yet we are not able to activate the module that will do own-source revenue recognition. Just the same as budgeting, the cases of Kiambu and the other counties that have the national Government projects in their budget execution reports, those reports came from IFMIS. We must ask ourselves whether, on IFMIS, we are pouring money down the drain.

Mr. Temporary Speaker, Sir, even when it comes to e-procurement, you have a bigger advantage over many of us because you have been out there, at some point in your life, in the counties where we have the theatre of procurement and action. We know that there is a lot of frustration when it comes to e-procurement. For instance, that someone coming from the remotest corner of Samburu County, who is a service provider, will not be able to compete with a service provider who lives in Nairobi. This is because all these things are now being done on the e-procurement platform, and the person in Nairobi will definitely have an advantage. We must, therefore, find a way of ensuring that the e-procurement module of IFMIS works, not just for the mighty, but even for the small suppliers out there in the counties.

Mr. Temporary Speaker, Sir, earlier on in my Statement as the Chairperson of the County Public Accounts and Investments Committee(CPAIC), I alluded to the ruling of the Court of Appeal on the issues to do with own-source revenue. The Court made an observation that the Senate should only be overseeing nationally allocated revenue, and that county assemblies should oversight locally generated revenue.

Mr. Temporary Speaker, Sir, if you look at Turkana County, it receives close to Ksh11 billion from the Exchequer, and only generates Kshs100 million locally. That means that the County Assembly of Turkana will be restricted to one per cent of the budget, yet they are responsible for a 100 per cent of the budget. If the county assembly is responsible for coming up with the budget, then we cannot restrict them to only one per cent of that budget. That is why I said, on advice from our legal counsels, that we have decide that, that observation was *obiter dictum*. It is not binding because it was not captured in the orders that were issued by the Court of Appeal.

As a result, we had said that we would go to the Supreme Court of Kenya to challenge it. However, there is nothing to challenge in the Supreme Court, and the CPAIC will continue to ask questions relating to own-source revenue whenever governors appear before it. I encourage county assemblies to also robustly oversight the money coming from Nairobi. Obviously, what we must do is to come up with a framework where we do not duplicate what the county assemblies are doing.

Mr. Temporary Speaker, Sir, counties should not be afraid of software. We should not be embarrassed when we see some of these service providers making serious money. For example, if a technological solution is collecting Ksh10 billion in Nairobi, assuming the commission is only one per cent, that will be just about Kshs100 million. We must, therefore, ensure that as we do this - I do not know how Sen. (Dr.) Zani will ring-fence this – we pay greater attention to our local innovators. These include the boys and girls at i-Hub, i-Lab, Strathmore University and all other innovation hubs.

Mr. Temporary Speaker, Sir, earlier on, we were talking about gambling and the fact that some companies are making Ksh100 billion a year out of it. Basically, the only intellectual property they have is the software that is used for those transactions. Gambling has become a software business, the same as taxis, hotels and airline businesses. We should not grumble too much when we see some amount going out to some of these service providers as commission, because that should be the pay for their intellectual property.

Mr. Temporary Speaker, Sir, I support this amendment and believe that it will provide a lot of value to counties. It will also add a lot of value to the work of not just the CPAIC, but to the Committee on Finance and Budget. It will also add a lot of value to all the oversight Committees in this House that have been grappling with the perceptions of theft, corruption and under collection of revenues in the counties. I hope it will help the great County of Migori because six years down the line, we learnt that Migori has failed to acquire an automated revenue collection system because of procurement challenges. I hope that when we make these amendments, the people of Migori will now see to it that they must account for own-source revenue in a much more transparent manner.

Mr. Temporary Speaker, Sir, I beg to support.

Sen. (Eng.) Mahamud: Mr. Temporary Speaker, Sir, let me also support this very important Bill that seeks to amend the Public Finance Management (PFM) Act, as proposed by Sen. (Dr.) Zani. The proposals are very good; one, because it is targeting improvement in own-source revenue collection by counties.

As we know, own-source revenue is one of the sources of revenue that counties should be targeting and making use of. However, there is currently a lot of dependence on the sharable revenue from the National Treasury. We know that the national revenue raised in this country is projected, and sometimes there is under-collection.

The same case also applies to own-source revenue, because there is no seriousness on the part of the county treasuries to collect it. Even if they collect, there are concerns about the presence of a lot of pilferage. As such, the funds collected do not find their way into the county revenue funds. There is generally a total misuse of that source of revenue.

Mr. Temporary Speaker, Sir, counties may have different streams of own-source revenue. However, it is important that legislation is brought forward, so that these matters are dealt with. For the last few years, attempts have been made at all levels. As you are aware, we tabled a report in this House, an effort which was led by the National Treasury, with efforts being made by the Council of Governors (CoG) and various other stakeholders.

This effort was geared towards coming up with a policy and eventually a legislation which would deal with the PFM Act, so that we can enhance own-source revenue collection in counties. Our Committee on Finance and Budget is looking at that report. That notwithstanding, the fact that this has come before us and our Committee is looking at it is very important, because we must start from somewhere.

Sen. (Dr.) Zani has proposed that we must bring legislation, so that we compel county treasuries to develop, design and implement a revenue collecting system, of course, in consultation with other stakeholders. We have discussed that with her at the legislative proposal stage and also the public hearing stage, where we have gone through public hearing with other stakeholders. I hope that nobody is opposing this particular piece of legislation.

The only issue that some people have raised is that maybe instead of every county developing its own source of legislation, they could have a working system, which they can customize to their needs. This because in Article 90 of the Constitution, counties are obliged to only use financial management systems that comply with the requirements to the national legislation.

The National Treasury, under Section 12 (2) (e) of the Public Financial Management Act, is mandated to design and prescribe a financial management system for both levels of Government. This is to ensure that the systems in place are integrated. As Sen. M. Kajwang' said, both the national Government and counties have to continue using IFMIS. The issue of the Integrated Payroll and Personnel Database (IPPD) was brought much earlier than all those systems, because they deal with payrolls and both levels of Government.

The system that is developed should be able to integrate and be easily useable with the other systems, instead of discarding what was there before. From this point of view, it is important that a system that is designed has features that can be adapted by various counties for their own needs.

Our Committee has looked at it and discussed the same with Sen. (Dr.) Zani. We think that there is need to mandate the National Treasury, Council of Governors (CoG), the Kenya Revenue Authority (KRA) and the County Revenue Authority (CRA) to develop a system that can be used by the counties in terms of collecting own source revenue. Thereafter, each county is obligated to customize that system for their own use. This is a very important piece of legislation.

The Bill then proposes a report requirement every two years. However, we think that, that period is very long. We want it reduced to one year and have made that amendment.

Mr. Temporary Speaker, Sir, the other issue is that failure to implement that system will require the penalty of stoppage of funds to the counties under Article 225 of

the Constitution. I think it is important to bring it to the Senate, so that it triggers that process. If we leave the National Treasury alone, we could have some rogue behaviour from some national entities that sometimes act very arbitrary in total violation of the law. Therefore, the Senate must be involved in that particular process.

We have the other policy before us that will again translate into legislation. This should be looked at holistically with regard to own-source revenue collection. This piece of legislation is a good precursor, where we can look at the bigger picture to be put in place.

We have proposed some amendments, which we have also shared with Sen. (Dr.) Zani. I will suggest that the other colleagues look at the amendments of the report we will table today. This will ensure that as it comes to the Third Reading, we will make the best decision. Additional comments and amendments, like what Sen. M. Kajwang' has proposed, can be brought in, so that we make this a very good piece of legislation that will help our counties to raise own-source revenue.

Counties must be obligated to raise their own revenue. Frankly, there is no seriousness. As the Senate, year in, year out, we engage with the National Treasury and the National Assembly about shareable revenue, whereas that is not the only source of revenue. Many counties can raise a lot of monies, especially the big cities; Nairobi *et cetera*. This must be properly moped up, so that the benefits accrue to the citizens of this country.

With those many remarks, I beg to support.

The Temporary Speaker (Sen. Lelegwe): Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir, for allowing me to support this Bill. Kenya is one of the countries known for high level innovation when it comes to Information Communication Technology (ICT). We cannot afford to leave behind that benefit to our own use. Sen. (Dr.) Zani has articulated that very well.

Automation of revenue collection has always enhanced revenue collection, even borrowing from i-tax in KRA. This is a step in the right direction. I am of the view that this system should be centrally developed by the CoG. This is so that they all participate in it, together with experts in revenue collection, for example, KRA and the other stakeholders. I agree with Sen. M. Kajwang' that it should include the Ministry of ICT in this process.

Once the system is developed centrally, the different counties can then customize the system. Just develop a general framework then customize that system for the specific needs. For example, counties with agricultural produce can have a code for coffee, while the ones that are pastoral can have a code like 'camel' or 'cow'. Those small adjustments will show the different dynamics that are taken care of.

I believe that once the system is developed, there is a proposal by the Commission on Revenue Allocation (CRA) to give 2 per cent for counties that exceed their expectations. This system will make that target easier, if they collect revenue that is properly captured, not forgetting that systems are as good as the people who use them. If this system is used by corrupt people, it will equally be corrupt. However, there will be a record somewhere for the entire trail, if the system is well developed. This will help us understand that from one step to the next, there is an audit trail.

Once the system is developed centrally, other stakeholders, for example, the Auditor-General, who audits all counties--- If there is a centralized system, developed in the same manner, it makes the audit process easier. They do not have to learn. Especially, if you allow them to have their own system, it means that they will be developing systems year in, year out. In terms of audit trail and the efficiency of the Auditor-General, one centralized system that is customized to the needs of specific counties is a good thing.

In terms of the Bill recommending that funds be withheld, I agree with Sen. (Eng.) Mahamud.

Mr. Temporary Speaker, Sir, this Bill also recommends that funds be withheld. I agree with Sen. (Eng.) Mahamud regarding supervision by the Senate. We can always say: let the counties have a system and put it in the law. However, if there is nothing that stops them from not taking care of that, then they will just continue with the *status quo*, and there will be no change. So, they will not be compelled to develop the system.

There is one submission from the Institute of Certified Public Accountants of Kenya (ICPAK) that said that there was one county that had 11 systems of revenue collection. Why do you need 11 systems just to collect revenue for a county that is well known? As you are aware, the revenue streams for counties are very few. Why do you need 11 systems just to record a revenue collection?

Since we do not have a specific law that takes care of revenue, this Bill has come at the right time. It should have been brought like yesterday. It is good that Sen. (Dr.) Zani was ahead of the pack and brought it on time. If Senators care about counties, then all of us should support this Bill.

I support.

Sen. Were: Thank you, Mr. Temporary Speaker, Sir. I also want to add my voice and support this Bill by Sen. (Dr.) Zani, on setting up of a county treasury that will establish a county revenue collection system.

This is long overdue. As we seek to strengthen devolution, it is important to create a link involving the county, through the county treasury, the National Treasury and the Kenya Revenue Authority (KRA). This collaboration will ensure that the system of collection of revenue at the county level is smooth, and the current loopholes we see will be sealed.

It will also lead to improved collections. Therefore, as counties collect money, they will also be able to receive more money according to the new formula from the CRA). It is, therefore, important that they streamline their collection methods, so that it is easy to tell how money is coming in, where it is coming from and where it is placed for use. This will be an improvement to the current system where we have seen money being spent at source, instead of it coming into the system. This will ensure that it is planned for accordingly.

Mr. Temporary Speaker, Sir, this Bill also proposes a bi-annual reporting system that is vested upon the County Executive Committee (CEC) Member for Finance, who reports to the people's representative, which is the county assembly. This will also ensure that people participate in the process of revenue collection. The report will give the status of revenue collection in the county, which will help stem crazy taxes that we see in the

counties. For example, there was a county that was collecting chicken tax and the people were not represented in that decision. Through the county assembly the public will have a say on what kind of tax is meaningful and conducive to the people.

Let me add my voice to an amendment that Sen. (Dr.) Zani could consider involving the Senate especially in the reporting system, so that even more work that is done by the Committee on County Public Accounts and Investments is reduced, because they will be informed way ahead. The Committee on Finance and Budget will also be informed way ahead on what is required as they interrogate or grill governors on their financial systems.

Mr. Temporary Speaker, Sir, revenue collection in counties, especially collection of market cess, is usually done by certain people, and I know this system will render them jobless. Sen. (Dr.) Zani should consider what the county should do with these market cess collectors because that has also been their source of livelihood.

With those many remarks, I support.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to support the Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019).

From the onset, I want to congratulate Sen. (Dr.) Zani for coming up with a very timely amendment to the PFM Act. I am one of those people who believe that the PFM Act should be entirely overhauled, so that it falls into devolution. This is because when the PFM Act was enacted, it was pre-devolution and there are so many things that are happening now in terms of technology, which we must take into consideration.

We have had a big issue regarding counties collecting own source revenue. In fact, from our last meeting with CRA, the CRA was trying to come up with avenues to reward counties that collect more money through fiscal responsibility. This Bill in essence tries to deal with that issue and encourages counties to be prudent in their revenue collection. One of the biggest problems that we find is that in many of these counties, either there is a lot of capacity challenges in terms of the accounting officers or just pure corruption.

Mr. Temporary Speaker, Sir, when we were looking at the accounts of Kiambu County, we were shocked to see that counties were merely using templates from the national Government - whether it is true or not - to account for or prepare their budgets. Some of those templates also include the issues to do with revenue collection. If you ask many of the counties to provide you with a chart of accounts showing all their revenue streams, you will be surprised that not all counties can accurately give you all their charts of accounts.

I challenge my colleagues to look at the financial statements presented by various county governments, and they will be surprised. If you compare 2016/2017 and 2017/2018 financial years, or any that you choose to, the figures will be different. You will see that in this account it is zero but in the previous year, it had about Kshs40 million. These are fixed assets; they are revenue streams.

Mr. Temporary Speaker, Sir, I hope that we will take these amendments seriously and the National Treasury will look at them, so that they can start being proactive thinking. We have got 47 different county governments and each of them should have certain revenue streams. For example, in Narok County, we have revenue that comes

from the Maasai Mara Game Reserve, parking services and cess collection. What I like about the first amendment is that it calls for consultation between the county treasury and the National Treasury.

The National Treasury will be able to see the revenue streams and define them as general revenue collection system, but be specific. In this manner, later on, we will not come up with excuses and say that they were given a template by the Integrated Financial Management Information System (IFMIS) or IFMIS was not working properly.

This will not only help counties to generate more revenue or own source revenue, but also help the country in general to be able to say County 'X' is doing well here; let us learn from them, so that we can improve.

Mr. Temporary Speaker, Sir, when you travel particularly to Gatwick Airport in the United Kingdom (UK), you will see a big screen, which tells you that in Scotland the amount of money that the country has collected from tourism is 'X' amount. I would like to encourage Sen. (Dr.) Zani to think about incorporating an aspect of using technology to show competition amongst county governments. For example, if Nairobi City County Government has 'X' amount of money through parking services, everyone in Kenya should know.

Mr. Temporary Speaker, Sir, it is wishful thinking, but something that is tenable. This country has been a first in many. All these multinationals that come to this country chose to become cashless. If you go to Carrefour right now, you will not pay with Kenya shillings; you use electronic wallet. It would be good if at one given time, the entire country is cashless. We should sit down and take an application to see how the 47 county governments collect their revenue. This will also help the CRA to come up with proper avenues of how to reward those counties on fiscal responsibilities.

The other thing that I find attractive in this amendment is that it will encourage competition. If CRA looks at how much a particular county has generated in terms of their online platform and reward them for doing that, it will help counties to set up realistic budgets and goals in terms of their Own Source Revenue (OSR), and not come up with figures to inflate their budgets which they never achieve.

One of my biggest pet peeves is where a county government that only collects a Kshs100 million receives Kshs5 billion from the sharable revenue, and comes up with a budget of about Kshs10 billion. Where will they collect the other revenue?

I am happy to note that the Senator has thought about transparency. If you look at all county governments, as I speak right now, there are many loopholes on OSR. The Judiciary is not helping. This House will be shocked to learn that there is a ruling from the Judiciary that says that this House has no business looking at OSR.

The best we can do is to come up with legislation that will circumvent that decision. We are tasked by the Constitution to defend, oversight and ensure that the laws that we come up with protect county governments. Right now, most counties have one revenue stream. Everybody knows that it is where money comes from and they do not look at the other issues. That is why, in most cases, we complain and say that in some of our counties, we only rely on one revenue stream and forget the rest. For example, in Narok County, we heavily rely on Maasai Mara Game Reserve. Samburu County heavily relies on tourism and the same applies for Isiolo County, yet we say that there is a lot of

economic growth. It is no wonder many people are suggest that these counties should fall because they are not collecting any revenue. It is time to use technology wisely.

I will be happy if Sen. (Dr.) Zani adds another amendment to this Public Finance Management Act in terms of the rewards that looks at the use of technology more broadly, to identify all revenue streams.

If you go to Narok County, you might find that we have about 10,000 plots, which is one revenue stream. However, if you compare the amount of money collected from plot rents, it is not commensurate to the amount of the plots that we have. Narok County produces almost 70 per cent of all the wheat that is consumed in this country. However, the amount of cess, which is taxes charged on vehicles that transport wheat, is not equal to the amount of wheat that we contribute. Therefore, this Bill will not only help ensure transparency, but also help counties become innovative on how they can identify all their revenue streams.

Mr. Temporary Speaker, Sir, these amendments that are introduced by Sen. (Dr.) Zani will also help the national Government to become more realistic. It will help in our fight to have more money sent to county governments. If we have one central location that shows the amount of money which is generated locally, it will ease the work of the Auditor-General in terms of looking at all these. It will end this constant excuse given by county governments that the Integrated Financial Management Information Systems (IFMIS) was down. There is no way it will be down because we will know that Nairobi City County, for example, collected a billion shillings from parking services. So, there is no way counties will tell us that the system was down.

I agree with the previous speaker, my colleague, Sen. Farhiya, that we may need to consider how to encourage young companies that are into the revenue collection system to fit in. Sen. (Dr.) Zani should propose an amendment to Section 160A, which will give companies that have invested heavily in a revenue collection system an avenue to consult. If the capacity of a particular county is still below average, yet there is a company that is doing business there, and has a good revenue system, we should include other revenue collection companies that can offer the same services.

The KRA collects revenue for all businesses in Kenya, be it Government entities or private bodies. When you pay Value Added Tax (VAT), they still retain a certain amount of about 6 per cent. I am not sure how we will address the issue of the taxes which are paid to the national Government. This is because in the Finance Act there was an amendment that requires each county government to charge an extra 15 per cent on the licences and fees that becomes money that is owed to the KRA. So, we may want to look at that and say whether this amendment will help KRA to increase its collection. If each county is in the automated system, once they charge the 15 per cent---

For instance, if a licence fee is about Kshs6,000 the law, as it is right now, requires each and every county to charge an additional 15 per cent, which is money that will be submitted to the national Government. So, we may want to find a way which might help or also deter many counties from utilizing this system because the national Government will be able tell how much they collect from their licence fees.

With those many remarks, Mr. Temporary Speaker, Sir, I fully support this amendment Bill. Once again, I thank Sen. (Dr.) Zani for thinking about the issue of own source revenue.

I thank you.

Sen. (Prof.) Onger: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also congratulate Sen. (Dr.) Zani for looking forward and thinking aloud. I sit in the County Public Accounts and Investments Committee (CPAIC) and one of the most miserable pronouncements we get from those who appear before us to answer audit queries regarding own source revenue collection is the manner and nature in which the resources are collected. Sometimes there is under-collection of revenue, but you do not get to know what happened underhand. It is opaque because you never get to know the true and real values, and figures collected when it comes to own source revenue.

Secondly, it is occasionally used to attract the equitable share. If they hike their revenue collections and fall short of them, there is one thing they use to attract reward from the National Treasury. Unfortunately, this has to be amended. We noticed that, that has been one of the constant sources of pending bills. They inflate their revenue collection, but do not meet their targets. Therefore, projects cannot be fulfilled under their Annual Development Plans (ADPs) and County Integrated Development Plans (CIDPs) that last for five years.

This Bill is a simple amendment that seeks to insert new Section 160A, which is about county government revenue collection system. Section 160B sets out the reporting mechanism and Section 160C is the compliance section. What are the penalties if one is non-compliant? Section 160A clearly stipulates that we should have a mechanism of collecting own source revenue.

Sen. M. Kajwang' referred to the Local Authority Integrated Financial Operations Management System (LAIFORMS). Some of the current systems are extremely opaque. They are not transparent because we never get to know how much money is collected by those who operate the systems. Therefore, it is easy to conclude that money has been stolen. That is the mischief that this amendment Bill seeks to cure; to ensure that we have a transparent, efficient, effective, verifiable, secure and accountable system.

I thank Sen. (Dr.) Zani for thinking about that because the system will incorporate transparency, efficiency, effectiveness, verifiability, security and accountability. Therefore, one will have to account for the resources of a particular county in the County Revenue Account, because we noticed that some county governments operate multiple accounts.

The PFM Act stipulates that money received must first go to the County Revenue Account. The mischief is always on own source revenue because it is never put in the County Revenue Account. I am sure that you know about this having been a speaker in one of our counties. Some of this money never sees the light of day; it just disappears in a mystic way. Therefore, this is an effective way of tracking down how revenue is being received by county governments.

I heard a colleague say that we may have to look for ways of amending this law because we have attendants who collect revenue in market places. We do not have to do that. An effective method should be simple to an extent that a girl, who operates a

telephone in the market, can use it without any struggle. I do not see any difficulty in this. It should be easy to use; I do not see the need for any amendment. It is all about training and we should do it by ensuring that it is simple. We should not create complexities like the one we have in IFMIS.

When I was an accounting officer, I was told that IFMIS can only be operated by so and so until I got into it and realised what was going on. Unfortunately, the IFMIS is an opaque system though it is being lauded by the Government as being efficient. It is true that it can be efficient when used properly, but it can be totally inefficient when opaque people operate it. There is an element of personal responsibility, which will be required by the county treasury.

This Bill seeks to place the authority and responsibility on the county treasury. The Bill later asks the county treasury to be accountable, and if they fail to be accountable, they are to be punished by the same law. There is a lot of fraud of resources that goes on, and it is one of the things that this Bill seeks to stop. I happened to have been the Minister for Local Government. When the local authorities were in place, they used to collect more own source revenue than what is being collected today by the county governments, yet they have the manpower and machinery.

What has gone wrong? When you ask, you will be told that the streams of revenue are not being displayed in a manner that is required by the law. Secondly, the revenue collected is not being banked in the County Revenue Account. Instead, it is being used at source, which is illegal. This law will now pin down the county treasury and the county executive, for it will force them to put this money into one account. What they get from the national shareable revenue based on the current Exchequer hardly represents 10 per cent of the annual budget.

This is a very small amount of money to expect to run the county, with so many devolved functions. I would have expected that one way we can collect more resources in the counties is to exhaust the revenue streams collection. That way, we can say to the national Government that the county governments can only perform up to a certain level. Beyond that level, we must then demand that the sharing of resources must, indeed, be equitable and not skewed. It must be equitable in the sense that if the agricultural sector or health sector is fully developed, then there is no business of retaining colossal sums of money in the centre, like is the case of the health sector. They are retaining about 91 or 92 per cent of the resources at the national level, and what flows to the county level is only about 8 to 9 per cent. This is terrible and unacceptable.

If you have exhausted your own-source revenue and can demonstrate that you are transparent and present your accounts in an accountable manner, then you are equally entitled to demand for fiscal responsibility. You should, consequently, get more of the equitable share from the national Government. This is because this process has been transparent, where the National Treasury, county treasuries and KRA is involved. I dare say that because the only people who know how to run this system are those in the ICT authority.

We can seek their input in ensuring that this system is secure, and that we are not taken for a ride. They will ensure that we are not running a system that can only benefit a

few individuals who want to defraud the system. This Bill is also seeking to minimize any losses or violations of the existing Public Finance Management (PFM) Act.

Mr. Temporary Speaker, Sir, the third element that I like about this Bill is that it creates the identity of the national Government *vis-a-vis* the National Treasury. This identity is very important because, at the moment, I see a resigned attitude by county governments when they appear before the CPAIC. They usually say: “We are waiting for the National Treasury to give us directions,” yet they have all the means at their command. They can regulate their own resources and get a fairly big chunk of money from their own-source revenue. We, therefore, want to bequeath them, through these amendments, an element of independence and distinctiveness; that, yes, the county treasury exists to follow the PFM Act regulations.

Mr. Temporary Speaker, Sir, the only other way I see us benefiting from this Amendment is to cure the mischief which was recently created by the Court of Appeal, when they said that the Senate has no business looking into own-source revenue. These are resources that are being acquired from the public, and anything that has been acquired from the public is subject to public scrutiny. The only way you can subject those funds to public scrutiny is by oversighting whether it has been collected, and ensuring that it has gone to proper use. Therefore, by bringing in these amendments, it gives us the leverage of saying; “sorry, these are public funds that have been collected through revenue streams, as clearly defined by law. Therefore, this money belongs to the Wanjiku and Muraya of today, and needs to be accounted for.” There is no way anybody can run away from that oversight responsibility.

Mr. Temporary Speaker, Sir, let me come to Section 160B. What does it portend? It is merely a reporting of county revenue collection and its performance. I would suggest to the Mover of the amendment that instead of it being biannual, why not put it to be in sync with the quarterly reporting system that is in force?

This is because Bi-annually, it may create some difficulties being able to synchronise the quarterly reporting that is there in the PFM Act, the quarterly reporting by the Auditor General, the quarterly reporting by those who are accountable for resources, the National Treasury and also the--- I would suggest amendments to the effect that we do it on a quarterly basis.

I fully agree that this reporting must also include the Senate. This is because if we exclude the Senate, there will be pundits that will say that the Senate has no business to interfere. For example, I heard somebody today in a very miserable way saying that the Senate has a simple task of only taking part in division of revenue and has no more business. That is a very myopic way of thinking. The Senate, of course, has the bulk of functions that are being performed by the county governments, and we, therefore, need to do that.

Mr. Temporary Speaker, Sir, having been given a system that is transparent, efficient and accessible by everybody, if you are not able to perform as a county treasury, then you have no business asking for money from the equitable share that is required from the National Treasury. This is because you have miserably failed in your responsibility to account for even the very little resources that have been put through your stream.

I, therefore, agree with these penalties that if they fail, then we can recommend that they do not receive the equitable sharing until they comply with these simple requirements. If they do not do so, the report on the status of the county revenue collection and performance gives a very good chance for the county assemblies to impeach these people. After all, there is a clause on impeachment. One case for impeachment is impropriety in financial management. If they fall short of that, they can be impeached.

It also gives the opportunity for the county assembly to oversight the resources that are being collected by the county governments. It also gives an opportunity to compare resources; own-source revenue collection and the national equitable sharing that goes to the county and other funds that may come through other means that are available to the county government and how they have been shared.

It also gives us an opportunity to see whether the developments that are being carried out by respective counties are going to each ward in an equitable manner or whether certain counties are being favoured with resources to develop their areas at the expense of other wards.

I think there is so much that you can gain out of these simple amendments. Initially, when I looked at the amendment of the PFM Act, I asked myself what was going on. I almost questioned Sen. (Dr.) Zani until I went to the Bill itself and saw that it was seeking to make it better for everybody. Those who are willing to function can do so efficiently under this amendment. Those who want to continue with mischief will find it very difficult to implement these amendments.

With those few remarks I support the amendment and also request that the amendment for quarterly reporting be included in the submission of these annual reports.

I thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Pareno.

Sen. Pareno: Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to this debate. I thank my sister, who is also my Deputy Party Secretary General, Sen. (Dr.) Zani, for coming up with this very brilliant amendment to the PFM Act.

As I was up and about in the villages in Kajiado County, the cry of the people is that they are not getting services and money is not going where it is supposed to reach; right in the villages.

There is an outcry all over that there are no schools, roads and water. In fact, the village where I was, called Eiti in Kajiado East, in my ward, which is Kenyawa-Poka, the people there were crying because there was an acute shortage of water.

Mr. Temporary Speaker, Sir, you wonder where all this money goes to. This morning all of us received a report from the Office of the Controller of Budget that is, the County Governments Budget Implementation Review Report, which is a report for the first nine months for the 2018/2019 Financial Year. Having been in my county over the weekend and heard people crying about lack of water and lack of roads, I was curious to see what has happened in my county as far as the implementation of the budget is concerned.

In this Report, the revenue analysis of Kajiado County indicates as follows; that during the first nine months of the Financial Year 2018/2019 the county received Kshs4.43 billion as equitable share of the revenue raised nationally; Kshs452.51 million as a total conditional grant, Kshs731.06 million from own source revenue, and also had a cash balance of Kshs1.2 billion for the Financial Year 2017/2018. The total amount of money that was supposed to be available for budget implementation in my county amounted to Kshs6.81 billion. That is for the first nine months of this Financial Year, 2018/2019.

Mr. Temporary Speaker, Sir, I was shocked to read the weaknesses that we have in the management of these resources especially, in the human resource department. I am saying this because Sen. (Dr.) Zani is trying to tighten the loose ends about revenue collection and the management of this revenue. As you know, the management of this revenue is done by none other than the officers that are employed in this county.

Mr. Temporary Speaker, Sir, regarding Kajiado County, it is reported that during the year under review, the county executive employed 195 staff in various departments. This included recruitment of the Director, Supply Chain, Deputy Director of Budget - which is what we are talking about, the implementation of this budget - and an Accountant-General, which touches on the core of this Bill that Sen. (Dr.) Zani has brought to this House.

The Report indicated as follows-

“However, the respective personal files availed for audit did not contain necessary documents to show whether the employees had the requisite skills, qualifications, and competencies as advertised.”

Mr. Temporary Speaker, Sir, this is where we are losing money. How on earth do you employ people to manage your resources, and you do not check on their competencies and skills? How on earth can you manage a county in this manner?

This Report has also pointed out some weaknesses and it states as follows:-

“A further review of the human resource process and documentation showed that the county executive did not have an approved human resource establishment and job evaluation report to guide in the management and utilization of human resource, and to establish the required and optimum number of staff and skills required in each and every department. In addition, the payroll revealed that the county executive staff numbered 2,604 as at 30th June, 2018, out of which 2,594 were in the integrated personal payroll database and 110 in a different payroll for employees on contract terms, which was maintained in an excel software.”

This is contrary to Regulation 120(1) of the Public Finance Management County Government Regulations, 2015. Therefore, they have already contradicted the Regulations. Sen. (Dr.) Zani has come up with a Bill to tighten these laws, so that the regulations will ordinarily have to flow from the Act. Therefore, if you have regulations that contradict the Act, they shall then be null and void.

Mr. Temporary Speaker, Sir, this is the record of my county, Kajiado County. It goes ahead to say that:-

“In the absence of an approved self-establishment, the county executive is not in a position to know how many workers were required, how many are in post and how many

need to be recruited, which may lead to abuse of the recruitment process in the absence of open and objective recruitment processes.”

This is sad. If you do not even have a management system to know how many workers you have employed and how many you will require, you end up over-recruiting and wasting public funds. That is why Sen. (Dr.) Zani has come up with a Bill, for us to tell these counties that they need to do these systems and regulations right. Somebody, somewhere, must answer to these irregularities. I do not think it can be ignorance for somebody to just wake up and decide not to have a database of employees. This is open to abuse so that, at the end of the day, we just end up siphoning money that belongs to the counties.

Mr. Temporary Speaker, Sir, this analysis of Kajiado County, for this particular year alone, tells you why the more we need to strengthen the PFM Act. It also tells us why we should support this Bill, because it will cure many of the malpractices we have currently.

Mr. Temporary Speaker, Sir, when I looked at the observations and recommendations of the Controller of Budget (CoB), they said that, in fact:-

“Kajiado County does late submission of financial reports by county treasury to the Office of the CoB, which affects timely preparation of budget implementation reports, contrary to Section 166 of the PFM Act.”

That is the same Act that Sen. (Dr.) Zani is trying to strengthen.

It also goes ahead to say that-

“There was delay by fund administrators to submit quarterly expenditure reports on the Bursary Fund and the County Assembly Car Loan Fund, contrary to Section 168 of the PFM Act.”

There was also low absorption of the development budget. The report states that:-

“In the reporting period, the county obtained an absorption rate of 14 per cent compared to 18 per cent in a similar period in the Financial Year 2017/2018.”

The county suffers from a low absorption and late reporting, yet the people continue to suffer and cry that there is no water, boreholes and so on.

Therefore, Mr. Temporary Speaker, Sir, we need to come out clearly on this. I support Sen. (Dr.) Zani’s move in coming out clearly to try and make amends to ensure that our counties are run well, in as much as we are also supposed to oversight and ensure that county assemblies do not further violate the PFM Act. Therefore, I strongly feel that my county has not done well; they have done so badly and should improve.

I beg to support Sen. (Dr.) Zani’s amendment to improve on the PFM Act.

The Temporary Speaker (Sen. Lelegwe): The Mover to reply.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir. I beg to reply. Let me start by thanking all the Senators who contributed. These include Sen. Cherargei, who seconded; Sen. Ochillo-Ayacko, Sen. (Dr.) Musuruve, Sen. Halake, Sen. Seneta, Sen. M. Kajwang', Sen. (Eng.) Mahamud, Sen. Farhiya, Sen. Were, Sen. Olekina, Sen. (Prof.) Ongeru; and, finally, Sen. Pareno.

Mr. Temporary Speaker, Sir, it is very clear from the contributions that this system is very important. For avoidance of doubt, I want to emphasize that we are looking at an overarching system that can be cascaded and customised at the county

levels. Various issues like using technology and quarterly reports have been canvassed here. Also, ensuring that the system is simple, can be understood and can enhance revenue collection because this is very key within counties.

With those remarks, I beg to reply. Pursuant to Standing Order No.61 (3) I request that the putting of the question be deferred to a later date.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Thank you, Sen. (Dr.) Zani. I defer the putting of the question to tomorrow.

(Putting of the Question on the Bill deferred)

BILLS

Second Reading

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

(Bill deferred)

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILLS NO.1 OF 2019)

(Bill deferred)

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL
(SENATE BILLS NO.2 OF 2019)

(Bill deferred)

Second Reading

THE COMMISSION ON ADMINISTRATIVE JUSTICE
(AMENDMENT) BILL (SENATE BILLS NO.6 OF 2019)

Sen. Were: Mr. Temporary Speaker Sir, I beg to move that The Commission on Administrative Justice (Amendment) Bill (Senate Bill No.6 of 2019) be now read a Second Time.

Before I delve into the content of the Bill, I would like to give a background that led to the publication of this Bill. As you may be aware, on 15th May, 2018, I moved a Motion in this House to decentralize the Office of the Commission on Administrative

Justice, commonly known as the Ombudsman, in order for the Ombudsman to have an office in each of the 47 counties.

Mr. Temporary Speaker, Sir, on 17th May, 2018, two days later, the Senate adopted that Motion and resolved that the Ombudsman should have an office in each of the 47 counties. A year later, progress is yet to be made in establishing the said offices, although I would like to commend the Commission on Administrative Justice, led by Hon. Florence Kajuju, who has tried to at least put in the regional centres.

Mr. Temporary Speaker, Sir, however, the Motion requested that they do it in 47 counties. The challenge is that the Motion is always in motion. It is simply a statement that it is moving, but people are not obligated to adhere to what the Motion resolves. Therefore, having followed the Senators' deliberations during the debate on that Motion, it was clear that there was dire need for the presence of the Ombudsman in each county. It is for this reason, therefore, that I sponsored this Bill in order to outreach the establishment of the offices in legislation.

For the benefit of the Senators who were not there during the deliberations on this Motion, allow me to quickly run through the functions of the Commission on Administrative Justice. The functions of the Ombudsman office is taken from Section 8 of the Commission on Administrative Justice Act, which outlines various functions of the Commission. I will mention just a few verbatim, as picked from that Section.

They include: One, to investigate any conduct in state affairs or any act of omission in public administration by any state organ, state or public officer in national Government and county governments.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Sen. Were! You will have a balance of 56 minutes when this Order appears on the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The House, therefore, stands adjourned until tomorrow, Wednesday 17th July, 2019 at 2.30 p.m.

The Senate rose at 6.30 p.m.