

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 18th July, 2018

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM MERU COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Hon Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting staff from Meru County Assembly.

I request each member of the delegation to stand when called out, so that they may be acknowledged in the Senate tradition.

They are:-

- | | | |
|-----------------------|---|----------------------------------|
| (1) Mr. Dennis Munene | - | Office Administrative Assistant; |
| (2) Ms. Doreen Ngugi | - | Office Administrative Assistant; |
| | | and, |
| (3) Ms. Sarah Nkatha | - | Office Receptionist. |

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

I thank you

(Applause)

VISITING DELEGATION FROM ROCKFIELDS JUNIOR SCHOOL, NAIROBI COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would also like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Rockfields Junior School, Nairobi County.

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

I thank you

(Applause)

VISITING DELEGATION FROM ULULINZI SECONDARY
SCHOOL, MAKUENI COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, lastly, I would also like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Ululinzi Secondary School, Makueni County.

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

I thank you

(Applause)

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, thank you very much for giving me this opportunity to join you in welcoming the students from Makueni and Rockfields Junior School who have come to this House. It is a wonderful thing for students to come to this House to engage and see what is happening. I can see future Senators and doctors among them. There could even be presidents and prime ministers among them. It is a good thing for students to come and see what happens in the House, as they prepare and think of what they will become in future. We want students to come and engage with us. They need to see exactly what happens in this House, so that they can be leaders that we can reckon with in this nation in some years to come.

I also join you in welcoming the county assembly staff from Meru County. It is a good thing for them to be in the House we are part of devolution. So, when they come to this House and engage with us, it is a wonderful thing because they will pick a leaf from this House. When we go to the county, they will also relate with us. Since we want devolution to work, they need to come to this House and learn from us. I am sure they will learn something from our debates.

Mr. Speaker, Sir, thank you for giving me the opportunity to welcome all who have come here to engage with us.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, first of all, I acknowledge the staff from Meru County Assembly. Welcome to the Senate. At some point we were worried about their budget and the contest between them and the 'king' of Meru. We are glad that you resolved that dispute.

I also welcome the students from Ululinzi Secondary School, Kibwezi East Constituency, Masongaleni Ward. This school has sent three batches of students. It is an upcoming secondary school that started recently. I hope that they will learn some lessons, particularly the History and Government class.

Rockfields Junior School, *karibu* Senate. We hope that you will learn some lessons. The few times I have met students out there and asked them a few questions about counties, I discovered that the only county they remember is County No.001. All schools remember that county, but they do not remember the rest. We need to do more to make sure that our students remember the registration numbers of our counties. That is very important.

I thank you.

Sen. (Eng.) Maina: Mr. Speaker, Sir, I rise to welcome the staff from Meru County Assembly and the students from Makueni County. For the staff from Meru County Assembly, I am happy to say that some of us observe that they are doing a good job. They should continue with their present Governor, Hon. Kiraitu Murungi. It is good for them to come here. The only message they should take back home is that this House is concerned that services should be accorded to the people at the minimum economic levels. This House will be pleased to hear that counties are using money in the right way and have programmes to improve the lives of the people. I believe that, that is the policy guiding Meru County.

Mr. Speaker, Sir, I also encourage the students from Makueni County that it is good that they have come here. They should make a decision today that they want to be Senators in this country one day. As students, what they get motivated about will come to be. This is so true that in the United States of America (USA) President Bill Clinton got motivated to become a President when he was a student leader and made a visit to the White House to meet President Kennedy. I, therefore, believe that some of these students will become Senators and Members of the National Assembly for the betterment of this country. They should feel welcome and this House will do everything possible to make their education better.

I thank you.

Sen. Wario: Mr. Speaker, Sir, I also join you and my fellow colleagues in this House in welcoming staff from Meru County who have come to join us this afternoon. I also extend my welcome to Rockfields Junior School from Nairobi County, as well as the school from Makueni County.

Students choose what they want to become in future. Therefore, it is important that students from different schools come to visit the Senate to see for themselves. I welcome them and tell them that they are the future Governors, Senators and Members of the National Assembly. We may also have the future president amongst them.

Thank you, Mr. Deputy Speaker, Sir.

The Speaker (Hon. Lusaka): Next Order!

PETITIONS

NON-RECRUITMENT OF LOCALS BY FLOWER FARMS, INSTITUTIONS AND COMPANIES IN KAPUTIEI-NORTH WARD, KAJIADO COUNTY

Sen. Seneta: Mr. Speaker, Sir, thank you for giving me a chance to read this Petition on behalf of the citizens of the Republic of Kenya and residents of Kaputei North Ward in Kajiado County.

“We the citizens of the Republic of Kenya and residents of Kaputiei North Ward, Kajiado County draw the attention of the Senate to the following:

(1) That we are aggrieved that a majority of the flower farms, institutions and other companies operating in Kaputiei North Ward in Kajiado County do not employ locals, thus denying the community opportunities for economic and social advancement.

(2) That the majority of these flower farms, institutions and other companies do not advertise for jobs in the local dailies or public places within the ward or public offices.

(3) That despite making huge profits from their operation in our ward, these farms do not invest back in the community, through Corporate Social Responsibility (CSR), which has entrenched a sense of exploitation and marginalization among the local people, as well as anger and resentment towards these farms.

(4) That we have made the best efforts to have these matters addressed by the relevant authorities, all of which have failed to give satisfactory responses.

(5) That none of these issues raised in this Petition is pending in any court of law; constitutional or any other legal body.

Therefore, your humble Petitioners pray that the Senate investigates this matter and;

(a) initiates legislation to provide for a mandatory minimum percentage of employees in a farm, comprising both skilled and unskilled workers who must be recruited from the local community;

(b) that this House recommends that flower farms, institutions and other companies be required to advertise for their jobs in public places and in local newspapers in the areas where they operate;

(c) recommend that flower farms, institutions and other companies be required to include in their boards of management representatives from the local communities and engage them in decision-making, including during recruitment exercises;

(d) recommend to the relevant line Ministry and State agency to take action against any owner or managers of these farms found culpable of the grievances raised in this petition.

THAT, the Senate initiate legislation to provide for mandatory CSR by farms carrying out operations in an area so as to uplift the general living standards of the people in that area and in that community.

It is counter-signed by myself, Sen. Mary Yiane, nominated Senator, Kajiado County.

Mr. Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.226, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me an opportunity to add my voice. I want to commend the Senator from Kajiado, Sen. Mary Seneta, for this petition. This petition is valid and is coming in handy. We are in a situation where we are talking of job creation in this country. We are saying that jobs are not available. In a situation where a factory has been erected in a community, in all fairness, members of that community need to benefit from that factory. There are some jobs that will need

skilled personnel while others can be done by the locals. If the locals do not know how to pluck flowers in the flower farm, then the farm should train the locals so that they can do that job and benefit from the farm.

When there is a factory in a local community, there is need to engage the local community in order to get the goodwill of the people. Once you get the goodwill of the community, they will support you in various ways. They will supply the labour and protect your investment. In a situation where a factory is erected in a community and it is providing for that community economically, there is no way that factory can fall. All the residents and the locals will ensure that they support the factory so that it stands.

Mr. Speaker, Sir, the Senator has also raised the issue that the factory does not even engage in CSR. It is unfair for a factory to be erected in a community and become insensitive to the needs of the community. There is need for that factory to be engaged in CSR so that even the community knows that the factory is there and that it is supporting and helping them in various ways.

There is need in all ways, even for the relevant authorities to take action. The Senator has just mentioned that the locals have complained to the relevant authorities who have decided to turn a deaf ear to their complaints. It is unfortunate that the relevant authorities are not taking action. It is important for this Senate to pursue this petition so that the relevant authorities are accountable and taken to task so that they serve the people of that community. The authorities there are employed to give a service to the community.

The Senator has mentioned clearly that when it comes to recruitment, they do not advertise the jobs because they do not want the locals to know. They have their own private arrangements of employing people. This should come to a stop. There is need for the locals in Kajiado to be engaged and know that these jobs are available and they have been advertised so that they can also apply and get shortlisted competitively. They had better apply, get shortlisted and then they fail at the interviews stage. But if they are not given an opportunity even to apply, it is very wrong. We are talking of job creation but if a factory cannot support job creation where it is erected, then it is not serving the people of this nation.

The Speaker (Hon. Lusaka): Hon. Member, I hope you understood the petition. You are talking about a factory, but the petition was talking about flower farms.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I was looking at the flower farm as a factory in terms of its engagement. There is need for some legislative way of doing things so that if a factory is erected in a community, then it should also serve the people in that community and benefit them so that the locals can enjoy and see that the presence of the flower farm is there to their advantage.

I want to suggest that this petition should be referred to the relevant committee so that it pursues it and ensures that the residents of Kajiado benefit from that flower farm.

Sen. Were: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this petition. I want to thank Sen. Seneta for coming out in defense of her people. However, we need to remember that Kenyans are allowed to work in any part of this country. The only thing she should be pushing for is that these flower farms should have a certain quota for the locals but it should be left open for the rest of Kenyans to go and work in those flower farms. She should further find out why these flower farms are not employing locals so that we go back to find out what the key issues are. As we deal with the quota

that is to be assigned to locals, we should also look at issues that these flower farms have against the locals.

Thank you, Mr. Speaker, Sir.

Sen. Halake: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this petition. Allow me to congratulate Sen. Seneta for speaking up for the people of Kajiado. I know there are issues around local unemployment and the rights of Kenyans to work anywhere in the country. But I think this petition is about more than just the process. It is a fundamental underlying problem of unemployment of people in the counties, unemployment of youth, but also where is the local content? Where are the locals in the big scheme of things?

When we attract investments into our county or even in our country some of the benefits that should be accruing should be that there will be local employment, local capacity development, transfer of technology or know-how to local units and people. By virtue of the fact that a certain investment is in a county or in a locality, then something changes for the better for the communities around there.

There is a host community she is talking about. These communities bear the burden of all the other negative effects of what these flower farms bring. Therefore, they should get some benefits out of it. When it comes to the water in their taps going dry because the water has been diverted to the flower farms, it is the local community that would bear the brunt of whatever insecurities will arise out of that or whatever else comes with it.

So, it is only fair that when investments come to the local communities or to our counties, there is a commensurate benefit. This is the essence of the economics of foreign or local direct investment. If an investment comes to the county in Kajiado, Isiolo or any other county, the host community should have something to show for it. This is the spirit in which I think the hon. Senator is bringing this petition before this House, to make sure that we look after the communities that host and bring the right environment in which these factories and flower farms are operating.

Mr. Speaker, Sir, some of these things are rights issues. Right now, globally, one of the things that is being pushed is that businesses must provide for the rights of the people. What are some of these rights? Rights in business means that sustainability is looked at beyond just CSR, to a sustainable model. Some of these farms do not come with sustainable models of engagement whereby the environment sometimes is depleted and the locals are not benefiting. So, it becomes an unsustainable investment where the locals are disenfranchised as opposed to being empowered and having any economic gains by virtue of these investments.

There is the issue of youth unemployment or unemployment generally in the counties. But if investments within these counties do not provide the requisite employment and the economic empowerment that goes with it, then what is the value of the host communities forgoing some of the opportunity cost of the water that they should be receiving and they could have also done irrigation and other activities. Be that as it may, I think we need to make sure that the businesses that come to our counties respect the rights of the people of that locality, empower the communities in that locality, respect the customs of that locality and look at environmental and other sustainability issues in that locality so that the local communities are the better for it and it becomes non-extractive.

So far, the situation in most counties is that these investments are becoming an extractive industry. They come and extract from the counties but do not give back. This is the spirit in which the communities in Kajiado have approached Sen. Seneta to come before this House to make sure some of these injustices and rights issues in employment are looked into by the Senate, which is there to protect the interests of counties and their governments.

I stand to support and I hope that this will be taken seriously because this problem is not just affecting Kajiado County. It is affecting many counties and a solution has got to be sought. I know that this House is in a good position to do so through the committee that will be assigned.

I beg to support.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I know Sen. Mary Seneta is a patriotic Kenyan and is never frivolous. I believe that she has brought this petition with a very clear mind that we are one indivisible nation called Kenya.

Mr. Speaker, Sir, in the last Parliament, there was a crude attempt in Kiambu County to pass a local law to exclusively employ people from Kiambu in Kiambu. This Senate took a very strong view against it. As I support the petition to the extent that local people must not be ignored in employment; that the farms that make big money within the locality should at the very least participate in construction of recreational centres, schools, health facilities and other things, we should not lose sight of the bigger picture that we are a united nation and people are free to work, move, settle and own property anywhere and everywhere.

Therefore, Mr. Speaker, Sir, I encourage that whichever Committee you are going to assign the Petition to must look at critical things like simple jobs of cleaning. Surely, those workers should not come from too far. If flower farms are appropriating water resources to the exclusion of the community, that should not be allowed. If they employ foreigners –like we have been crying about Orientals and others – that should not be allowed. More importantly, flower farms – and, indeed, any other investors – should know that wherever they operate, they must balance the interest of Kenyans at every level of employment and the benefits that come out of it.

Mr. Speaker, Sir, I am speaking like this knowing that the distinguished Senator – who talks to me quite a lot – knows that her county is very cosmopolitan. I believe that in saying that locals must be considered, she is not narrowing her prism to the Maasai nation, but to all people who live within that locality. This is because there are many other people from this country who have settled, live and work in Kajiado County.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I rise to support this Petition.

Mr. Speaker, Sir, we have been having challenges concerning CSR. I agree with Sen. Wetangula that this is not, in any way, trying to ensure that only one particular tribe is employed in that area. I know that all of us, as Senators, come from areas which harbor multinational companies. The biggest beef they have been having with the locals is about employment. Looking at what is happening in Turkana County over the issue of oil and many other things, it is because there has been no agreement or engagement with the multinational companies. In this case, it is the flower farms in Kajiado County.

Therefore, Mr. Speaker, Sir, we are looking forward to the Petition being dealt with. I presume that it will come to the Committee on Labour and Social Welfare, where I sit. We must agree that we can use this as a yardstick so that in future, we can come up

with the appropriate laws. Therefore, even before allowing some of these companies to set up shop in our localities, there should be a community agreement. For example, in the mining rules, there is a Community Mining Development Agreement (CMDA), where they agree on the percentage in terms of the CSR and employment opportunities.

This is fair because it ensures that the spirit of Article 10 of the Constitution on equality, equity and in achieving social justice in this country is upheld. We hope and believe that the people who live within that locality, ward or county should be given an equal opportunity. This should not be based on their tribe or where they come from, but because they come from that specific place. It is not only about the Maasai Nation, but the more than 42 million Kenyans in this country.

I beg to support.

Sen Olekina: Thank you, Mr. Speaker, Sir. I rise to support this Petition by my dear sister, Sen. Mary Seneta. In this whole country, there is only one person called Senator Seneta.

Mr. Speaker, Sir, this issue of local content is very important and we cannot wish it away, just like that. The Turkana and Maasai are complaining. In fact, at some point, I feel as if we, the Maasai, are completely under siege. Because of lack of education, we have sold off all our land and even when these companies come to our place, they disregard our interests completely. This is a recipe for disaster.

For example, when you go to Kilgoris, you will find a sugar company and it took the intervention of the Governor and myself to calm down the temperatures because the Maasai were up in arms. The Maasais will be up in arms in Kajiado because they must be employed.

Mr. Speaker, Sir, the Petitioners are right in saying that legislation should come from this House. I know that this is the House of unity because it unites all of us in this country, but we must not forget our rights. The Maasai are people who are pushed away. Our water is used and we are not compensated for it. Our environment is contaminated. We are asking for CSR; we are asking for things to be done for us but we are not considered.

If we cannot come here and defend the Maasai; that we have to think about local content and that the Maasai of Kajiado County have to be given those jobs--- How do you explain the fact that you are born in an area where there is a big factory or a big flower farm, and you cannot be given a job there? This issue is very emotive and we cannot just wish it away.

Mr. Speaker, Sir, I will be very honest that at some point, I actually supported Kiambu County because they cared about their people. We went into devolution to try and stop rural-urban migration. Now, where we have land – which apparently happens to be in Maasai land – people are encroaching into our lands because we had no concept of title deeds. Sen. Orendo and I have been trying to solve the problem of Kedong Ranch. There are so many flower farms which are situated in Kedong Ranch and yet the Maasai do not benefit from them.

Mr. Speaker, Sir, the Maasai will not stay like that; they will demand what is rightfully theirs. You cannot sit here and tell us that a company will come and set up shop there, it is owned by people who import all their manpower. They do not want locals to be in that company because the locals will know whatever is happening there; for

example, the fact that the available water is not able to sustain that environment. Our environment is being degraded and the best people to defend it are the locals.

Mr. Speaker, Sir, I am glad that in the Committee on Energy, we are dealing with this Local Content Bill supported by Sen. Moi. I am one of those people who believe that we should define local; but let us go “local local”. What is “local local?” Recently, a Maasai man was killed in the Standard Gauge railway (SGR) when he had gone to look for a job. If you do not want the Maasai to get jobs, it will get to a point where we will take our spears and do what we know best; to defend ourselves.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Order! Order!
What is your intervention, Sen. Halake?

Sen. Halake: On a point of order, Mr. Speaker, Sir. We are supporting this Petition very much. However, because we have put our names to support this Bill, it does not mean that we are going to call for---

Mr. Speaker, Sir, is it in order for my brother to call for an uprising, using spears? I know that it is the same thing in my community. I agree with him that the most cosmopolitan counties are the ones that are, perhaps, the less educated and the most welcoming ones. However, I do not think it is in order for this House to say that people should take the law into their own hands, when we are law makers ourselves.

(Sen. Olekina stood up in his place)

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

As much as I understand your passion for the Maasai community, it is not a license to advocate for violence or means other than what the country stands for, including the Constitution, that you advocate for. You are, therefore, out of order to say that the people should use arms or rudimentary weapons.

(Laughter)

Sen. Olekina: Mr. Speaker, Sir, the HANSARD will bear me witness that there is nowhere I said that the Maasai should pick up spears and go fight. I said that we will pick up spears and do what we know best; we will become Morans! We will not take on any other jobs.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Order Member! You are out of order! Please, wind up what you are saying and remain relevant.

Sen. Olekina: Mr. Speaker, Sir, if we do not defend our people, who will defend them? I want to be on record saying we must defend devolution fully. We must consider people in counties and their resources which can benefit them. The only thing we, as the Maasai nation know is that the Maasai Mara Game Reserve and our land have been taken by the foreigners. It is them who are benefitting from it and our land. This House has the

ability to do what the petitioners are asking for and ensure proper legislation is in place to take care of those people.

Mr. Speaker, Sir, the majority of our population is made up of youth. Looking at the statistics even in Maasailand, the youth are the majority. I will give the House accurate statistics. In Narok County, for example, almost 65 per cent of the people who voted for me were youths aged between 18 and 35 years. Many of them are jobless. Therefore, when I say we need to defend them and come up with proper legislation that will assist them, I am not calling for them to arm themselves.

However, if we force them to go back to their traditional way of life, roam around and, of course, they will end up stealing because they have to fend for themselves. When there was an issue in Trans Mara and I went there, I told the Maasais not to be lazy. I told them if they are given jobs to do, they must report at the place of work at 8.00 a.m. If they are supposed to report there at 7.00 a.m. I told them to be there. This is not only about our rights as Maasais, but it also our responsibility as well.

I know certain challenges are there and this is what the Committee ought to address. When there is an allegation that those jobs are not advertised locally, what is it that this company is hiding? Is it the way they are using the water? Are they contaminating the water? When you do research on the flower farms in Naivasha, you will find that many people have come up and claimed that Lake Naivasha is highly contaminated.

It is only the local people who will be able to know whether that lake is highly contaminated or not. This is because their animals, including cows, sheep and goats will die from drinking that contaminated water. All I am asking is equal treatment of all our people. For example, Kikuyu, Kalenjin, Maasai and, indeed, all communities in this country are equal. If we were to be factual and speak the truth, if a Maasai goes to Kiambu to look for employment, it will be very difficult for him to get a job unless he will be employed as a watchman.

I support.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir for giving me this opportunity. I stand to support the Petition by Sen. Seneta. I have realised that in her prayers, among others in the Petition, she is asking for enforcement or recognition by way of legislation to cater for that discrimination.

I need to pinpoint that area of discrimination of minorities and marginalised communities is well captured in Article 56 of the Constitution of Kenya 2010 on specific application of rights. Article 56 of the Constitution is very categorical on what the State ought to do. It says:-

The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—

- (a) Participate and are represented in governance and other spheres of life;
- (b) Are provided special opportunities in educational and economic fields;
- (c) Are provided special opportunities for access to employment;
- (d) Develop their cultural values, languages and practices; and
- (e) Have reasonable access to water, health services and infrastructure.

The Constitution is sacrosanct and supreme. Therefore, whatever law designed by Sen. Seneta or the relevant body ought to capture what is enshrined in the Constitution.

Mr. Speaker, Sir, I need to state that the same problem with Sen. Seneta in Kajiado County is not only inimical there, but in areas like Machakos County and its surroundings. In Machakos, for example, we have over over 100 companies. Mavoko Town Council being a cosmopolitan town has so many of those companies; some local and others multinational, but yet Machakos youth are not employed. Always I have a heap of files of young people; both men and women, asking me to intervene for them to get some opportunities from those companies. I face similar challenges like Sen. Seneta. Therefore, such legislation in this Petition is quite handy.

Masinga Dam Company is shared by Embu and Machakos counties. We have Kenya Electricity Generating Company Limited (KenGen), Kenya Power (KP). I have sat many times with the Chief Executive Officers (CEOs) and I ask them why is it that only lower cadres or positions like watchmen and sweepers are given to Kambas from this area. However, high cadre positions like the CEOs and others, are not given to Kambas yet there many learned Kambas, including myself. Why are we not given the opportunity to serve in those positions? We do not know when these jobs are advertised. We are given a raw deal. A legislation of this nature or magnitude will help.

Last but not least, Sen. Seneta, in her Petition, touched on a very sensitive issue of CSR. This issue is very complex even to bigger institutions of high learning. I want to submit that social responsibility is not mandatory of any corporate, it is just discretionary. There are two schools of thought about it. One believes as long as a company is paying taxes to the national Government, that is it. It has no business in social responsibility. Whereas the other humanitarians, socialist and political scientists like the Chair, believe otherwise.

Institutions or companies operating in certain areas in the country, especially in developing States, ought to bring certain benefits to the local communities. I have seen that being explained very well by a Senator across the political divide. However, some of those benefits cannot be better than employment and well-structured labour relations so that they do not exploit local people.

I support the Petition.

The Speaker (Hon. Lusaka): Hon. Senators, the Petition stands committed to the relevant Standing Committee. In this case, the Standing Committee on Labour and Social Welfare. In terms of Standing Order 226(2), the Committee will be required in not more than sixty days from the time of reading the prayer to respond to the petitioners by way of a report addressed to them and laid on the Table of the Senate.

Next petition, Sen. Lelegwe.

CONFERMENT OF MUNICIPAL STATUS ON MARALAL TOWN
BY THE COUNTY GOVERNMENT OF SAMBURU

Sen. Lelegwe: Thank you, Mr. Speaker, Sir, for giving me this opportunity to read this Petition by the residents of Samburu County, Maralal Municipality.

“We, the under signed Kenyan citizens and residents of Samburu County hereby petition the Senate concerning unconstitutional and irregular conferment of municipal status upon Maralal Town by the County Government and, in particular, draw the attention of the Senate to the following-

(1) THAT, many residents of Samburu County own property around Maralal Town through group ranches;

(2) THAT, the County Assembly of Samburu has, without public participation, approved the conferment of municipality status upon the town of Maralal, leading to the gazettment of the same by the Governor of Samburu County on 22nd May 2018;

(3) THAT, the above action is inimical to the interests of residents of Maralal Town, adjacent group ranches and Samburu County in general;

(4) THAT, the consequence of the conferment of municipal status upon Maralal Town will likely be that by-laws and regulations will have to come into effect requiring-

(a) all premises within the jurisdiction of Maralal Town to be ratable and levied, yet most the premises now fall within the group ranches which confer specific rights and duties;

(b) that administrative functions within electoral boundaries shall be transferred without attendant legal foundations and/or mandatory public participation while being enforced;

(c) criminal sanctions come into play on matters that were hitherto ordinary, mainly activities common among pastoralists;

(d) take-over and/or occupation of the adjacent group ranches without consent, most of which are communal group ranches and owned; and,

(e) property of residents be subjected to taxes and/or controls, despite the absence of consent and/or approval through public participation, which is mandatory.

(5) THAT, relevant agencies like the National Land Commission, group ranch leaders, elders, herders and livestock traders have not been involved nor has their opinion been sought regarding this matter, which is contrary to the requirements of the Constitution of Kenya, 2010;

(6) THAT, implementation of Municipality programmes will likely have huge financial implications on residents of the county, thereby loading over to them unnecessary burdens;

(7) THAT, the residents' right place to raise this Petition is the Senate because it represents counties and serves to protect the interests of counties and their governments, which interests have been infringed on.

(8) THAT, the consequence of the purported declaration of the municipality will be a restriction to residents' rights, including property rights and the risk of annexation of property, imposition of levies for use and restriction on use, including imposition of criminal sanctions.

NOW THEREFORE, your humble petitioners pray that the Senate conducts an inquiry into the review of Maralal Town boundaries and the subsequent gazettment of the town as a municipality in Samburu County and makes appropriate recommendations."

The Petition is dated 12th July, 2018.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order 225, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Yes, Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I rise to support this Petition by the hon. Senator for Samburu. The Petition reminds me of the old days when the former President of the Republic of Kenya and the then Minister for Local Government would go around the country declaring certain markets to be cities, urban centres and municipalities.

I remember when the late Hon. Oloiptip, who was a good friend of mine, came to my County of Siaya - then Siaya District - and in one day declared five markets to be urban centres and municipalities. They were Yala, Ugunja, Ukwala, Bondo and Ndori. In doing so, he also declared that the President had given every centre about Kshs100 million to jumpstart them. People were very excited and, the next day, a road was named after hon. Oloiptip in Siaya Town for declaring five markets in Siaya to become urban centres and municipalities.

However, after a year, people were really frustrated because the rates went up and they did not receive any benefit from those centres. The signage on the main street in Siaya reading "Oloiptip Road" was removed and the road was named something else.

I know as a matter of fact that Article 184 of the Constitution was enacted to control the habit that the Government, at that time, had formed of creation of urban centres and cities, as some kind of gift or reward to the community, which did not bring any benefit to the community. Article 184 requires that legislation be made to control the establishment of these cities and urban areas, and the manner in which they are to be classified. Before any place can be classified as an urban area or a city, the provisions of the Constitution and the Urban Areas and Cities Act should be complied with.

Mr. Speaker, Sir, looking at the Urban Areas and Cities Act, I am not sure whether Maralal Town qualifies. The starting point is what the distinguished Senator for Samburu has said; that the county government should be able to provide public participation in anything that they do and decisions they make. The complaint of the petitioners is that there was no public participation. So, the first necessity and important consideration, which is in the Chapter that states that devolution is important because it brings governance to the grassroots, seems not to have been complied with.

Mr. Speaker, Sir, for purposes of reminding ourselves of what the Act and the Schedule requires for any area to have in order to qualify for a municipal status, one would want to look at Section 9 of the Urban Areas and Cities Act. The first important consideration is the population. The Act itself says that the governor can actually declare a place to be a municipality, notwithstanding the provisions that relate to population.

However, all the other considerations are mandatory. Reading through them, I am not sure whether Maralal qualifies. Saying that a town does not qualify to be a city or an urban area is not negative; it is to ensure that in order to reach there, there are certain essential facilities which should be there.

Mr. Speaker, Sir, I will look at five of them, which are important, for purposes of qualifying an area to become a municipality. One of them is Paragraph (c) of Subsection 3, which says that a town must have a demonstrable revenue collection or revenue collection potential. Many of the urban areas that are created all over the country are not run on the basis of their potential for revenue collection or that they can collect sufficient revenue in order to manage their affairs. In fact, everybody seems to be waiting for what

comes from the national Government, which then trickles down to some of these markets and cities.

The other important one is that it should have infrastructural facilities, which include but not limited to street lighting. I do not know whether there is street lighting in Maralal Town because it is quite some time since I went there. The municipality should also have markets and fire stations. Also, it should have a capacity for functional and effective waste disposal. If cities like Nairobi or Kisumu or Mombasa or all our cities, do not have the capacity for functional and effective waste disposal, I wonder whether Maralal Town could be having that infrastructure and facility.

So, without going through all these conditionalities which are also contained in the First Schedule, the Senate needs to look at it and see whether this urban area qualifies to be a municipality. It would be helping the people in Maralal Town to ensure that they are not loaded with financial burden that they cannot bear. I remember in the old days, many urban areas in the former Central Province resisted classification as municipalities because of fear of paying rates, whereas in some areas in the country, people are very enthusiastic about creation of municipalities. In our country, the difficult thing about developing of cities and urban areas is that we put up structures without planning.

Mr. Speaker, Sir, although this law requires that there should be an integrated development plan, it is never in place, and if it is, it is not well-considered or well-articulated. So, we are dealing with a problem of bad planning or lack of planning after the event. Instead, we should begin with planning so that we develop our environment in a way that it is a pleasant place to live in and where people can be provided with the essential services.

This would be a trendsetter and a good precedent for this Petition to come to the Senate so that the Senate can advise governors and county governments on what to consider. If the Petition is committed to the committee, they should not just look at Maralal Town, they should look at the issue broadly in order to advise other counties and governors on how to classify some of these areas as municipalities or cities, for that matter. That function is not with the county governments. The national Government and the President has to play a role when you want to create a city.

Mr. Speaker, Sir, if you look at the First Schedule to this Bill, you will find that even some of the municipalities that we have today do not actually qualify. You will find what they are required to provide in terms of facilities in the Bill on page 25. It is quite a long list of what municipalities - not aspire to be - but what they should have in place in order to qualify to be a municipality.

I support this Petition and hopefully, it will serve other counties and governors so that we have a model that can be used to built on the Constitution, the County Governments Act and the Urban Areas and Cities Act.

Thank you.

(Interruption of debate on Petition)

COMMUNICATION FROM THE CHAIRVISITING DELEGATION FROM PCEA IMANI SCHOOL,
MAKUENI COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I have a brief communication to make.

I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from PCEA Imani School from Makueni 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, wish them a fruitful visit.

I thank you.

Sen. M. Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. Allow me to welcome the school from PCEA Imani School from Makueni County. I hope that they will benefit from the deliberations that we have today.

(Resumption of debate on Petition)

The issue raised by Sen. Lelegwe is serious. I have had the benefit of looking at the Gazette Notice. Even when you determine this issue, I am concerned that the County Government of Samburu has attempted to take remedial actions because they have now advertised for public participation. However, the Gazette Notice that grants Maralal as a municipality is in place and was done on 17th May, 2018.

So, in 60 days, if you commit this Petition to whichever committee, I am afraid that the County Government of Samburu is going to circumvent the law by attempting to justify a wrong after the fact. I thought, maybe, a resolution to declare that that Gazette Notice was done without public participation would help.

In fact, by virtue of the section read by the Senate Minority Leader, Sen. Orengo, there should be a charter that would dictate the issues that Sen. Lelegwe is complaining about. In Makueni County, we have something called ‘The Wote Charter,’ which I can share with you. It is a charter that would tell you the extent of the municipality; the size of the land that would be affected and the rates.

Mr. Speaker, Sir, as I support this, I am concerned that there would be a problem if this is not addressed immediately. After 60 days, the Governor will come and say, ‘‘I have done my public participation.’’ Remember, the Governor of Kericho County, Hon. (Prof.) Chepkwony, was impeached on an issue like this one. What is even more serious is that the law requires the county assembly to pass a resolution.

If the County Assembly of Samburu passed a resolution and the Governor gazetted, there was no public participation. Under the Standing Orders, we would be faced with a challenge that we would have to question the proceedings of the County Assembly of Samburu, hence leading to a crisis.

Therefore, Mr. Speaker, Sir, I request that you give directions to address these concerns: Our Standing orders forbid us from questioning the proceedings of an assembly. Secondly, did the County Assembly of Samburu consider this issue? Is the

Petition the right route to pursue because there is already a gazette notice? Thirdly, there is already what is perceived to be a public participation.

I have seen the notice by Sen. Lelegwe of a public participation that is going to be done in the next one week. So, do we send our committee to go and do a public hearing while they are doing public participation? Do we move a resolution to say that the County Government of Samburu should degazette the Municipality of Maralal quickly? We need some solution.

My concern is that knowing how our committees are operating and the concerns we have, the fact that we have too many committees running and we are going on recess, the Petition by Sen. Lelegwe would become academic if you do not take some action that is immediate and faster than the period prescribed under the Standing Orders.

Lastly, we have the Kenya Urban Support Programme (KUSP) that is coming under the conditional grants. Is it an opportunity to speak to the county assemblies as to how they can tap into the potential and the money that this Senate has provided through KUSP? What they are doing is plainly wrong and Sen. Orengo has pointed to it. It appears that they would do academic things and it would violate what we intended to do.

I support this Petition and thank Sen. Lelegwe for pointing out this issue. I am concerned that I have pronouncement that a leader told our good Senator that “they will deal with the Senate.” This Petition would go nowhere. So, we must prove to them that this Senate is not a Senate that can be taken for granted.

Thank you.

Sen. Olekina: Thank you, Mr. Speaker, Sir, once again for giving me an opportunity to comment on these issues that deal with the Maasai nation. On the issue of municipalities, there was a demonstration in Narok County two weeks ago. Today, as we stand here, the residents of Narok County have gone to court to try and seek redress because of the intention of the County Government of Narok to declare a municipality. These are issues that we must tackle in this House.

Mr. Speaker, Sir, Sen. Orengo spoke about the Urban Areas and Cities Act. However, I am concerned about this Act because when you look at Section 9(4), it says:-

“Notwithstanding the provision of Subsection 1, the county governor shall confer the status of a municipality to the headquarters of the county even where it does not meet the threshold specified under Subsection 3(a).

This House can save this nation. The reason why these governors are trying to confer the status of municipality to their centres is because they will not access this money from the Kenya Urban Support Program (KUSP). It is not because they want to bring services closer to the people.

Mr. Speaker, Sir, I sit in the Senate County Public Accounts and Investment Committee (CPAIC). Some of the challenges we are trying to deal with in terms of the audit queries have got to do with the amounts of money that these counties are raising. They are always over budgeting and overestimating their local revenues, yet they do not have the capacity to raise that money. These are facts; that our counties are not able to raise money to sustain themselves as required by this Act.

The other issue of concern, Mr. Speaker, Sir, is public participation. Section 8 of this Act is very clear on how this process should be carried out; it is why I think we can stop this thing. An *ad hoc* committee must be set up to consider whether it should recommend this municipality to be declared to the Assembly or not. The composition of

this *ad hoc* committee must include representatives from the Architectural Association of Kenya (AAK), the Law Society of Kenya (LSK), the Institute of Certified Public Accountants of Kenya (ICPAK), the business community and the Kenya Institute of Planners (KIP).

Similarly, Mr. Speaker, Sir, it is imperative that this House be informed by the committee – which I hope will expedite its findings – through a report as to whether any *ad hoc* committee was set up to carry out public participation on this issue. For example, we know that based on the last census, Maralal had about 30,000 people. The Act is very clear that for a place to be conferred as a municipality, it is supposed to have a population of about 250,000 people.

I concur with my colleague, Sen. Mutula Kilonzo Jnr., when he said that this is something that we must expedite and find a way to stop it. People in Narok are in court today because of the same problem. In Maralal or Samburu, they circumvented the rule of law and the Governor went ahead to say that it is going to be a municipality. Why are we doing this? Is it because of these conditional grants? We cannot even provide local services to the people; it is just about this money! This is just another huge channel of corruption, which we must stop.

Mr. Speaker, Sir, apart from the markets, you must also show that you have a plan. It is not just about coming up with a plan; you must show that you have a plan on how you are going to deliver services to the people. According to the Act, you must show, in the integrated plan, that you can raise local revenue to support yourself. It is not about just depending on the national Government to send money down to the county level.

Therefore, Mr. Speaker, Sir, I support this Petition and I hope that you will consider what Sen. Mutula Kilonzo Jnr. has said; to find a way to move this. As we do so, I hope that we can amend this Act, because the governors will just go around it, stand up and say “look, the Act gives me the powers!”

With those few remarks, Mr. Speaker, Sir, I beg to support.

(Interruption of debate on Petition)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM SITOITO SECONDARY
SCHOOL, NAKURU COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to make a brief communication. I acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Sitoito Secondary School, Nakuru 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 wish them a fruitful visit.

I thank you.

(Applause)

Proceed, Sen. (Dr.) Ali.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I also wish to welcome the students from Sitoito Secondary School from Nakuru County to the Senate.

(Resumption of Petitions)

Mr. Speaker, Sir, the issue of municipalities being announced without due process and public participation is not only restricted to Maralal or Narok; it is all over the country. We just saw, in the *Kenya Gazette*, Wajir County just appointing managers, deputy managers and chairpersons of boards without following procedures. Nothing has been passed through the county assembly and there was no public participation at all.

Mr. Speaker, Sir, Article 184(1)(c) of the Constitution provides for public participation by the residents in the governance of urban areas and cities. This has never been done anywhere. When you talk about membership, when you look for representation from the AAK in Wajir County, they are not there. The representatives of the LSK come on and off when there are cases. There are no associations of urban areas or cities, yet we are told that we must have all these members.

Out of the nine members of the County Executive Committee (CEC), four will be appointed by the governor. On the other five members, who are supposed to come from organisations – which do not exist in certain areas – the governor can go, pinpoint and pick whoever he wants and pass it. Therefore, in this case, I do not think these things will be helpful at all. Therefore, I urge that this issue should be discussed in general all over the country.

Mr. Speaker, Sir, on the issue of gazettment of members in certain areas, as Sen. Mutula Kilonzo Jnr. has said, if the county assemblies have already approved that, then the committee which will be formed should do this job urgently. This is because when you want to appoint anybody, the people must have the requisite qualifications and you must have the monies. The county assemblies should also be involved so that the leaders are aware of some of these issues.

However, the Executive just gazetted and appointed these members. In doing so, we will create a lot of problems to those areas. Section 13(3) of the Act, requires that the CECs ensure gender equity, representation of Persons of With Disability (PWDs), youths and marginalised groups when appointing members of the cities and municipal boards. Most of these people who will be appointed will just be political appointees, who will not be very helpful in doing these things.

Mr. Speaker, Sir, the other membership, which I talked about earlier, do not exist because, for example, they do not stay in Wajir County. You do not want to bring other people from outside the county, because when you are appointing these board members, they must have lived in that area or have houses in the county for more than five years. Therefore, anybody who lives in Nairobi, Mombasa or anywhere else cannot be appointed. They will just come for meetings and things like that, but they do not stay in the counties. Those issues will create more problems than the way things are right now.

The boards are expected to budget and submit their budgets to the county governor. I feel that the municipalities and their bosses will be conduits for money to be eaten by the county governors, thus, they will not be helpful to the communities. As

earlier stated by Sen. Orengo, we used to have municipalities, town councils and urban councils which were not useful at all. Therefore, it will not be helpful for the governors to take the county money, which is not used prudently at this particular time, and give it to municipalities, urban areas or the small centres.

I want to urge the House to follow up on this issue and make sure that these things do not continue unabated.

I support.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I also wish to support the Petition that has been ably presented by the distinguished Senator for Samburu County. The first point of call should be this House's Committee on Delegated Legislation which will look at and possibly vacate the gazette notice that has purported to confer the status being complained about to Maralal Town, which will bring to a halt most of the attendant issues thereto. The Committee that you may refer the Petition to can then deal with the rest of the issues.

One can see the driving force behind the distinguished Senator bringing a Petition signed by 61 honorable residents of his county who are opposing the governor's action. Many governors are driven by very extraneous factors in arriving at these rather irrational decisions. First, I would want to believe that the governor is eyeing the money for the urban support programmes. Second, he probably wants to create a municipality for him to create jobs for his cronies. Three, and more important, he wants to create a municipality then convert the public land into leaseholds and subdivide then into plots then share them out as they always do. This is something that the distinguished Senator has a duty to his people. I laud him for doing so.

A municipality comes with attendant issues. As Hon. Senators said, there are people who have group ranches or freehold properties that will quickly be brought into the dragnet of taxation. However, many villagers and rural people do not have incomes to pay rents and rates for their land. The upshot ends up with this land being auctioned regularly in lieu of rate payment as punishment. This has dispossessed many Kenyans of their properties in urban areas. This House, as the protector of counties, their governments and their people, has a duty to stand firm on this.

The courts of law have held, and this Parliament has a legal duty to follow court precedence, that any decisions that affect people in any part of this country that are undertaken without public participation are nullity. They are nullity because one single person in the name of a governor cannot purport and pretend to be the custodian of the interest of people without consulting them.

Do the people of Maralal want a municipality? Do they know what a municipality portends to them? Do they know what they will lose by having a municipality? Do they qualify to have a municipality? All these answers will inform the Committee that you will refer this Petition to, to make a decision that will help the people of Maralal.

I want to tell the governors out there - who we ought to work with very closely - they have absolutely nothing to lose by working with the Senators. The Governor for Samburu County could have consulted the Senator so as to find out if the steps he was taking were in the interest of the people and whether he was following proper legal steps as provided in law. It does appear that this was not done. This House remains the House of reference and the House of appeal by the people of this country.

People come to this House by way of Petition because they see this House as a bastion of justice. They see it as a place where interest that would have otherwise been pursued elsewhere, including the judiciary, can be best prosecuted on the Floor and in the Committees of this House. I urge the Committee that you will refer this matter to, to move diligently and within the prescribed time to bring a report that can help the people of Samburu.

We have said this before and I want to say it again, the Committees of the House that you refer a Petition to take far too long in prosecuting these petitions and bringing outcomes to this House, to the extent that a matter as urgent as this, may end up taking one year to conclude. That is why I suggest that the Committee on Delegated Legislation should be the first point of call. I expect them within less than one week, they should have looked at the gazette notice so as to see if it meets the legal requirements to stand as a legal document.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir. I would like to support this Petition. We know that the Constitution is very clear on how we come up with urban areas and cities. That is why we have the Urban Areas and Cities Act. However, we also know the Constitution stresses very much on public participation and that is why we do have devolution. We need to amend that part of the Act which says that ‘notwithstanding these other requirement, the governor can go ahead---.’ This could be unconstitutional because it is like the governor is given power to override the requirement of public participation.

Coming back to the issues raised by the petitioners, we do have group ranches which are basically private lands that have freehold titles. The initial Maralal Town had its boundaries. By trying to come up with the municipality, the governor is trying to encroach on private land without the consent of the public. We need to make sure that the public does not lose their land because, as it has been said, the main victims here will be the pastoralists who subdivided the community land into group ranches.

Each group has its own part mainly for livestock keeping and other purposes. Unfortunately, somebody in the name of a governor has included part of their land in the municipality. By extension, they have to pay rates for that land. If they fail to do so, the land will be taken over by the county government which will be a clever way of dispossessing them of their land. Therefore, I believe that they have a right to petition the Senate for them not to lose their land through an Act which gives the governor that kind of power.

We have to move with speed and make sure that the governor does not have his way. This is because that way, the public will lose their land. As it has been said, the immediate benefit to have it upgraded is for them to access to the Kenya Urban Support Programme Fund.

It could have had a positive effect of, maybe, the municipality being able to raise its own funds. However, they are doing it by getting hold of private land, taking it to be part of the municipality, then expecting pastoralists who have just been using the land for grazing to start paying rates which is a very new thing to them. That is why they are resisting. As the Senate, we have to come to their rescue.

Mr. Speaker, Sir, there are also other issues whereby it has already been gazetted. I think we need to sit down quickly in the relevant Committee and come up with ways of saving these people of Samburu County.

I thank you.

The Speaker (Hon. Lusaka): Let us have Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir, for allowing me to contribute on this Petition by the people of Samburu County. I know from my experience as a former Minister of Local Government that one of the things under the defunct Cap 265 of the Local Government Act was the establishment of urban centres which may include municipalities, towns and small urban centres. At that time, they served a purpose of political convenience so that everybody felt good that they were given the mandate to establish their own wards and be able to have councillors who were able to propagate the interests of their wards.

Since the onset of the Kenya Constitution, 2010, and the establishment of 47 counties, the dynamics have changed. This has happened through our laws and the New Urban Agenda which was done by the United Nations General Assembly during its participatory process.

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

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

I had the honour of the distinction to be Kenya's chief negotiator in terms of the new Urban Agenda. The agenda is a paradigm shift from the casual way of doing things so that we are able to create wealth in a progressive and much more organised way. However, the way they want to do this in Samburu County by the governor declaring that it is already in the status of a municipality, is the wrong way of doing it. It is a way of trying to gain access to the conditional grants that are captured in the Kenya Urban Support Programme (KUSP).

Mr. Deputy Speaker, Sir, those resources are available, but predicated upon certain fundamental principles. One is that before you set up a municipality, you want to agree with the community around and they are agreeable to its being set up.

Secondly, it has had the effect of changing the land which is freehold to leasehold. Many of these communities around Maralal may not have the wherewithal to pay rates that will be established, let alone coping with the vagaries of weather which is already a menace in itself. That is the point of resistance in the first place. Residents of this region cannot accept a situation that will turn freehold land to leasehold. That is the first impediment that we are already experiencing in this Petition.

Thirdly, population dynamics do not justify the setting up of a municipality in---

The Deputy Speaker (Sen. (Prof.) Kindiki): Professor, you have three minutes to conclude your remarks. This is a Petition.

Sen. (Prof.) Ongeru: Yes, Mr. Deputy Speaker, Sir. They do not satisfy the criteria of there being 250, 000 people required to set up a municipality. For now, I think it is too premature to set up a municipality because there are certain functionalities that a municipality will confer to the residents of that place. For example, provision of water, health services, waste disposal management systems and the infrastructure.

We, therefore, need good physical planners and spatial planners to establish that credibility for land use. We are now pitching on the land use rights of various

communities. We need to educate them on the value that accrues to them when they change from this status to the next.

In future, this may be the way to go because it has the potential of creating wealth and adding value to the land. However, for now, I think it is too premature. We need to stop it at their footsteps before they cause further damage since the next step could be political chaos in which we do not want to go. While in principle that is the way to go in the future, in reality as it stands today, that could not be the position.

Mr. Deputy Speaker, Sir, although I am accepting that this Petition should be looked at and may give us the opportunity now to assess at what point of entry should most of our municipalities be able to come; it should be part of the national and county plans because it comes through as a process and should be properly programmed so that there is value-addition to the community rather than just casual political statement and convenience to satisfy the egos, simply because one wants to gain access to the KUSP fund. The funds are available when one has an organised system and there is public participation that we want; “a” “b” and “c”. They are available when everybody is in agreement that it is the way to go.

As for now, I think it is premature for the County assembly of Samburu and for any other place, including my county of Kisii to try and impose a municipality. We will have to look at the principles involved in creating a municipality and not doing it in such a casual manner. It has an economic implication and otherwise.

I support. Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Onger. Hon. Senators, we have taken quite a bit of time on this item. The Petition raises very critical issues. However, we are limited by time. I will only allow one last Senator; Sen. Halake, a maximum of three minutes, and then we shall commit the Petition.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. I was afraid that I would not be able to contribute to this Petition, yet it is something that is very close to my activist hat.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! How many hearts do you have?

Sen. Halake: I have many hats, Mr. Deputy Speaker, Sir. It is the ‘hat’ that we wear on the head and not ‘heart,’ the body organ.

The Deputy Speaker (Sen. (Prof.) Kindiki): Fair enough, proceed.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. I stand to support this Petition for many reasons. It poses many illegalities both constitutionally and also under the Community Land Act. There are many issues around the conversion of Maralal into a municipality, as the other Senators have alluded to.

First, is the question of Maralal Town qualifying as an urban area under the Urban Areas and Cities Act. I can attest to the fact that I was there a couple of weeks ago for a *harambee* and we could not even land in Maralal Town. We had to go and land in a community land where there is a conservancy and drive for two hours to Maralal High School where the *harambee* was. So, in terms of infrastructure, there is a lot that needs to be done before this town can be upgraded to a municipality.

That said, whatever motivated the Governor to convert this town to a municipality, whether it was because of the Kenya Urban support programme (KUSP) or something else, illegalities have been committed under Articles 110, 35, 69, 118, 174,

184, 196, 201, and 232 of the Constitution of Kenya, 2010 with regards to public participation. There is a reason there are so many articles of the Constitution that talk about public participation. I will not go into that.

Mr. Deputy Speaker, Sir, what has happened is that, since Maralal Town is small and may not qualify to be a municipality, there was a boundary alteration of sorts that included the community land and group ranches around Maralal Town for it to meet the threshold for being a municipality with regards to acreage. To leave out those communities whose land will constitute Maralal Municipal Town, is an illegality because they were never consulted. Again, under the Community Land Act (ownership and tenure system), protection of community land rights and the role of the county government are all clear.

From all these provisions under the recognition, protection and registration of community land rights, these communities were denied their rights because they were not consulted as per the many articles of the Constitution that I have mentioned. The alteration of the boundaries that now encroach into the community lands and conversion of land ownership from freehold to leasehold, as Sen. (Prof.) Ongeru has mentioned, is an illegality under the Constitution and under the Community Land Act.

So, the rights of the communities were denied. The community groups were not consulted and now the process is topsy-turvy. This is because the gazette notice went out in May, the municipality has already been gazetted, and public participation is happening after this.

Again, we need to move with speed so that this illegality does not become law and the disenfranchisement of the people of Samburu County is reversed by this House. This is something that is going on in other counties as well.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Abshiro. Hon. Senators, as I have indicated, this debate raises important legal issues that touch on the heart of devolution and the relationship between citizens and Government. In this particular matter, the County Government of Samburu has declared Maralal a municipality with the support of the County Assembly, but without the participation of the public as anticipated in Article 10 of the Constitution. This in itself presents a serious obstacle to democracy and the realization of the ideals of our Constitution.

Many of the Senators have spoken quite elaborately on the legal imperatives that have not been adhered to. I have also looked at this Petition and observed that some of the issues the petitioners are raising are weighty, including but not limited to, the fact that when this declaration by the County Government takes effect, the by-laws and regulations that are likely to ensue will affect residents significantly. Secondly, there is likely to be takeover and/or occupation of the adjacent group ranches without consent. Thirdly, the property of residents will be subject to taxes and/or controls despite the absence of consent and/or approval through public participation, which is mandatory.

Therefore, pursuant to Standing Order No. 226(1), I commit this Petition to the Standing Committee on Justice, Legal Affairs and Human Rights. In so doing, I am also guided by the facts that have been presented before this House, namely, that there is urgency of this matter and certain acts are happening, even as we speak, retroactively to try and validate this action. Therefore, in terms of Standing Order No. 226(2), the Committee is required in not more than 60 days from the time of reading the prayer, to

respond to the petitioner. However, it can take a shorter time – and I will direct shortly - because that Standing Order does not require that the Committee takes the entire 60 days. It just says “within sixty days.” That means it can be within a month, a week, or a day depending on the urgency of this matter.

Therefore, hon. Senators, given the public interest in this matter, its urgency and for the convenience of this Senate, so that we do not act in vain or after the fact, I direct the Standing Committee on Justice, Legal Affairs and Human Rights to handle this matter raised by the petitioners and submit a Report before this House within 30 days from now, meaning in not more than 30 days. It could be earlier, but in not more than 30 days. It is so ordered.

(Applause)

Next Order!

PAPERS LAID

REPORTS, BILLS AND RESOLUTIONS ADOPTED BY EALA

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Wednesday, 18th July, 2018:-

Reports, Bills and Resolutions adopted by the East African Legislative Assembly (EALA) at the 5th Meeting of the 1st Session of the Fourth Assembly as follows:-

Report of the Committee on General Purpose on the Supplementary Budgetary proposals of the East African Community for the Financial Year 2017/2018.

Report of the Committee on General Purpose on the budgetary proposals of the East African Community for the Financial Year 2017/2018.

Report of the Committee on Accounts on the East African Community Audited Financial Statements for the Financial Year ended 30th June, 2016.

The East African Community Annual Report of activities for the period 2015/2016.

The Bills passed were:-

The East African Community Supplementary Appropriation Bill, 2018.

The East African Community Appropriation Bill, 2018.

The Bills read for the First Time were:-

The East African Community Customs Management (Amendment) No. 2 Bill, 2018.

The Administration of the East African Legislative Assembly (Amendment) Bill, 2018.

REPORT OF THE COB ON COUNTY GOVERNMENTS
BUDGET IMPLEMENTATION REVIEW FOR FY 2017/18

Report of the Office of the Controller of Budget on the County Governments Budget Implementation Review for the first nine months of Financial Year 2017/18.

REPORT ON THE COUNTY STATISTICS BILL, 2018

Report of the Standing Committee on Finance and Budget on the County Statistics Bill, (Senate Bills No. 9 of 2018).

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Next Order!

Sen. (Eng.) Mahamud, do you have a Notice of Motion?

Sen. (Eng.) Mahamud: Yes, Mr. Deputy Speaker, Sir.

NOTICE OF MOTION

NOTING OF REPORT OF CRA ON SECOND REVENUE SHARING
CRITERIA AMONG MARGINALISED AREAS

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

THAT, this House notes the Report of the Commission of Revenue Allocation (CRA) on the second policy and criteria for sharing revenue among marginalised areas, laid on the House on Wednesday, 4th July, 2018.

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

Next Order!

*(The Deputy Speaker (Sen. (Prof.) Kindiki)
consulted the Clerk-at-the-Table)*

Order, Senators! I invite you to look at your Order Paper. We need to relook the items appearing on the Order Paper from Order No. 8. I have seen that most of the Movers of different Motions and Bills are either not ready or not in the House. Therefore, for the convenience of the Senate, I direct that we defer the items on the Order Paper in Order Nos. 8, 9, 10, 11, 12, 13, 14 and 15. So ordered!

BILLS

Second Reading

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

(Bill deferred)

Second Reading

THE COUNTY STATISTICS BILL
(SENATE BILLS NO. 9 OF 2018)

(Bill deferred)

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

COMMITTEE OF THE WHOLE

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO. 6 OF 2017)

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILLS NO. 3 OF 2018)

THE FOOD SECURITY BILL
(SENATE BILLS NO. 12 OF 2017)

(Committee of the Whole deferred)

Next Order!

BILL*Second Reading*THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO. 12 OF 2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): The Mover can proceed to move the Bill.

Sen. (Eng.) Mahamud: Thank you, Mr. Deputy Speaker, Sir. I beg to move that The Salaries and Remuneration Commission (Amendment) Bill 2018, be now read a Second Time.

Mr. Deputy Speaker, Sir, this is an amendment to the Salaries and Remuneration Commission (SRC) Act No. 10 of 2011. In fact, in the---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud! Read the title of the Bill as it appears on the Order Paper.

Sen. (Eng.) Mahamud: Thank you, Mr. Deputy Speaker, Sir. I beg to move that The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 12 of 2018) be read a Second Time.

Mr. Deputy Speaker, Sir, this is an amendment to the Salaries Remuneration Commission Act No. 10 of 2011. As we were interviewing the candidates for the SRC as the Standing Committee on Finance and Budget, we realised that the current Act has got some gaps and hence the need for the amendments. There are two amendments. In the current Bill, there is no timeframe given for the nomination and recruitment of the commissioners. The idea of the amendment is to provide for notification of the expiry of the term of the Commission because there is no such requirement in the current Bill.

So, this Bill attempts to amend Section 7 of the Salaries and Remuneration Commission Act by providing for a timeframe within which the organisations that are required to nominate persons to that Commission should undertake that exercise. We think that once the Commission's term expires, then within 21 days of that period, all parties that are required to nominate the commissioners should initiate action.

Mr. Deputy Speaker, Sir, that is the provision we are making because the current Act does not provide for timelines for the process of selection of the commissioners by the various nominating bodies. Hence, it is left to the discretion of various nominating bodies to nominate the commissioners at their will, which creates confusion. Therefore, there is need for the law to be amended to clearly specify the timelines for the nomination process to ensure that the vacancies are filled within a given timeframe.

Section 9 of the current SRC Act of 2011 does not provide for the vacancy arising as a result of the expiry of the Commission's term. In fact, under Section 9 of the current Act, the office of the chairperson or a member of the Commission becomes vacant if the holder dies, resigns from office by a notice in writing addressed to the President or is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

There is no provision for the expiry of the term of the Commission. In fact, what this amendment is providing for under that section of the Act is that we must introduce

the element of expiry of the term of the commissioners. This is not listed in the requirements. As such, there is no express requirement for notification of a vacancy, resulting from expiry of term, in the Gazette within 14 days, as is provided for vacancies arising from the circumstances contemplated under Section 9(1). A notification of vacancy in the Gazette is, therefore, necessary to prompt the simultaneous nomination of the commissioners by various nominating bodies.

Mr. Deputy Speaker, Sir, we are proposing two amendments under Section 7 to provide for that timeframe of starting the process of nomination and to provide for the vacancy arising because of expiry of the term of the Commission.

Mr. Speaker, Sir, under Article 230(2)(b)(vii) of the Constitution, the Senate nominates a commissioner to the SRC, on behalf of county governments. That is why it is very important that we initiate this amendment, as the Senate. In fact, it is within our mandate to do so. It is my request that this House enacts this amendment so that there is clarity in the way the commissioners of the SRC are appointed.

With those few remarks, I beg to move and ask Sen. Orengo to second the Bill.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud! Are you sure?

Sen. (Eng.) Mahamud: Of what, Mr. Deputy Speaker, Sir?

The Deputy Speaker (Sen. (Prof.) Kindiki): You appear to be dazed.

Sen. (Eng.) Mahamud: No, Mr. Deputy Speaker, Sir. I am sure.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay.

Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I beg to second this Bill. There are a lot of gaps and lacunas in the law and I think it begins from the Constitution itself. The fact is that there are provisions of the Constitution that we need to look into because they do not provide answers to situations that may arise in the conduct of public affairs in the country.

Mr. Speaker, Sir, this Bill talks about a very important Constitutional Commission, the Salaries and Remuneration Commission (SRC). It is important that the law is clear, because Commissioners, for a very good reason, hold specific terms and tenures such that once they expire, there is need for a step to be taken. Therefore, if the law is not clear, then the gaps created in the law may create problems which may not be addressed in any circumstances. This is because there are matters where there is no discretion to intervene on the part of any public officer or any State officer.

Therefore, Mr. Speaker, Sir, in seconding this Bill, the starting point is to broadly talk about the need to review the Constitution, especially on the question of these commissions. Over time, we have looked at how the Constitution has worked. Indeed, some of those who have served in these Commissions are also beginning to think that there is need to review the Constitution as it stands now. I, therefore, support this Bill based on that wide consideration so that the Republic and the people of Kenya should find the need for a constitutional review in order to address these gaps in the law.

Mr. Speaker, Sir, in addressing the question of the SRC, I have looked at the law and the amendments which have been proposed by my friend, Sen. (Eng.) Mahamud, the Chairperson of the Committee on Finance and Budget. In the memorandum of objects and reasons for this Bill, he has clearly set out why these amendments are necessary. It will be merely a repetition for me to go through the arguments in favour of the

amendments to this Bill. As is normal, the provisions as they are in the law at the moment are set up in *extensor* at the back of the Bill in page 272 and 273. Therefore, one will see the need for amendments and why they should find favour with the Senate.

With regard to the amendment to Clause 3 of the Bill, the provisions that are found in the Act itself are in Section 9 and in page 273 of the Bill. It sets out the circumstances under which the position of the Office of the Chairperson or the members of Commission shall become vacant. It also enumerates three instances where there will be a vacancy in the office of the Chairperson or a member of the Commission. However, on the question addressed by this Bill in Clause 3(ba) which says:-

“Ceases to hold office by virtue of expiry of the term of office of the office holder under Article 250(6)(a) of the Constitution;”

That had not been provided for under the Act and, therefore, in order to fill that gap or lacuna, this amendment is important. If you go back to that provision, you would find that, indeed, Article 250(6)(a) of the Constitution is not well considered in the Act in terms which it can make sure that there is a basis upon which a vacancy can be filled within the necessary timelines.

There are instances where normally, for example, a seat of a Member of Parliament (MP) falls vacant - including the Senate and the National Assembly. Determination of a vacancy where there is no specific provision can be addressed by way of a petition in the High Court. We do not have similar provisions. The Constitution has, indeed, spelt out instances when the seat of an MP, including a Member of the Senate, can become vacant. However, it is possible that there may be circumstances where a seat may become vacant in instances where the constitutional provisions may not be helpful, either in the case of the Senate or the National Assembly, for the Speaker to issue writs that those seats have become vacant.

Therefore, that procedure does not necessarily apply in a question to be addressed by the court when somebody challenges the result of an election. There are instances where somebody can go with a petition and say that as far as they are concerned, there should be a determination that that seat is vacant. However, because we lack a similar provision in relation to this Commission, it is, therefore, commendable that this lacuna should be addressed. The SRC serves a constitutional role which cannot be usurped by any other constitutional commission, State office or agency. Therefore, when there is a gap in the law, it means that it stands unresolved until there are circumstances under which it can be addressed under the Constitution and the law.

Mr. Speaker, Sir, the other provision found in Section 2 is that there should be timelines. There was a time when Parliament used to enact legislation and where, in the Act itself, there was no provision for commencement. It was possible, under the old order that a law could be passed, but because the President had not designated the date of commencement or had not caused the Act to be published in the Gazette, then that Act would – for all intents and purposes – be moribund, even if it had been assented to by the President.

By the sheer fact that it had not been published and gazetted as an Act of Parliament, then that law would remain in the archives. There are cases which come to mind and I know quite a number of such legislation where the President, at that time, by a dint of the provisions of the old Constitution, could control what was happening in

Parliament. Even where he had assented to an Act of Parliament, he would just sit on the enactment of an Act of Parliament.

Now at least, in the Constitution, we have timelines that if the President does not assent to a Bill, or it is not published, then certain consequences follow. The one for not assenting, at least, there were constitutional provisions. On the question of gazettment, there were no clear provisions. In this one, because there are no timelines, then it depended on whether you liked the commission and its functions or you did not like it, then you could make a decision, either way, depending on your discretion. This is a necessary provision because it will make the commission functional by abiding by these timelines.

There have been vacancies, for instance, in the Independent Electoral and Boundaries Commission (IEBC). First of all, I do not see the question whether there are vacancies. It is a matter which is debatable. The second question would be, are there vacancies if they have not been declared? This is why I was proposing that this could be the trigger for a more healthy debate to look at commissions as a whole and find out if they are lacking similar provisions.

The Chair of Committee on Finance and Budget could take it up, if it is such a body that falls under their mandate or it would be a spark to other Committees and Members of the Senate to similarly take it upon themselves to bring a Bill to the Senate to address such legal gaps.

Finally, law makers find themselves in a very difficult position. We make laws because we want those laws to serve the country. After making those laws, we set up circumstances under which those who implement those laws should function. Thirdly, you make such laws to give enabling tools for such commissions to operate. It is sometimes a bit of a concern that after giving commissions of this nature such tools, they do not function in a manner which Parliament envisaged.

One day when somebody will look at this Bill and, probably, following what is in the HANSARD and reading what the Chairman of the Committee on Finance and Budget said; he will say the mind of the maker of this Bill was the following---. It is important for prosperity to know why we are making these laws. This Bill is meant to achieve the functions and dictates of the Constitution as required. In fact, in the Schedules of the Constitution, some of these laws were required to be made within a certain period after the enactment of the Constitution 2010.

When Parliament establishes a Commission and some which have powers that go beyond Parliament like this Commission, On the question of salaries and remuneration, there are powers which are outside the limits, or the competencies of Parliament, unless those laws are changed. Once Parliament has given these tools; these commissions, State offices or agencies should play the statutory and constitutional role in accordance with the law.

Sen. (Eng.) Mahamud has now seen why it is important to have these provisions; that there is a gap in the law. He is not doing this to please himself as Sen. (Eng.) Mahamud or the people of Mandera County, but he is doing it for the Republic, in the name of the people.

Having set this enabling constitutional and statutory environment, those who are going to apply this law should be up to the task, do their work and perform their functions in accordance with the dictates of the Constitution and in honour of the sovereign power

of the people who delegate all these powers to us, as Parliament or other agencies of Parliament.

Without further ado I beg to second this Bill and commend the Chairman for moving it.

(Question proposed)

Sen. Mwaura: Thank you, Mr. Speaker, Sir. I rise to support this Bill because it provides an opportunity to ensure that whenever the expiry of the term of commissioners arises, there is no doubt as to when the new commission should be effected.

Mr. Speaker, Sir, the last Parliament was very interesting because I remember there was a proposal by the National Police Service Commission (NPSC) to have Mr. James Muhoro to sit in the Salaries and Remuneration Commission (SRC) to represent them. People were confusing him with the former Director of Criminal Investigation, Mr. Francis Muhoro. As a result, I stood on the Floor of the House to explain to Members that it was not the case. It was a very heated debate and I was even de-whipped from a Committee. It is because salaries issues are emotive.

The people who end up serving in this SRC have got a very serious mandate to ensure that we keep ourselves to the limits of our provisions or the budget. Ms. Sarah Serem did her job, I am sure she is not very popular with us. I have seen she has been nominated to become an ambassador. I wish her well.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Why are you speaking on behalf of everybody?

Sen. Mwaura: Mr. Deputy Speaker, Sir I have said I am sure. It is only a probability, I beg your indulgence.

The Deputy Speaker (Sen. (Prof.) Kindiki): You should have said 'you are not sure.'

Sen. Mwaura: Mr. Deputy Speaker, Sir, I may not even be sure her name will go through Parliament.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Are you anticipating debate? Do not go there!

Sen. Mwaura: Mr. Deputy Speaker, Sir, we also have the nomination of Mr. Ben Chumo who has been nominated to be the new Chair of the SRC. For all intents and purposes, even if the law says that you are innocent until proven guilty, I have an issue with his nomination.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Those nominees' approvals are pending before Parliament. The Standing Orders do not permit you to anticipate debate, so find ways of saying the same things differently.

Sen. Mwaura: Mr. Deputy Speaker, Sir, I am not anticipating debate because this issue is before the National Assembly. I am giving my personal opinion as a Senator. The appointing authority should withdraw the nomination of one Mr. Ben Chumo by virtue of being arrested and the pending matter before the court about his past role as the Chief Executive Officer (CEO) of Kenya Power.

There are also issues to do with procurement of faulty transformers. When we established the independent offices and constitutional commissions under Chapter 15 of the Constitution, we anticipated some kind of a fourth arm of Government which will

provide oversight to the other three arms and that members who would serve in those positions would be of character beyond Caesar's wife.

When a person is appointed as a commissioner or a chair of a constitutional commission, they must be confident so that people do not cast any doubts or aspersions on their integrity. So, this is not a matter to debate about. However, we need to ensure that we bring back the gusto of constitutional commissions because most of them look like appendages of the Executive.

I was surprised to see in Executive Order No. 1 of 2018, some of them are listed as subservient to the various Ministries. There is a difference between a statutory body and constitutional commissions. This is an issue that as Senate, we may want to pronounce ourselves on, going forward.

These commissions are well funded. In fact, the salaries of the members of the secretariat who serve there are some of the best within the public service but the output of these commissions remains to be seen. Of particular concern for me is the fact that we have the provision of Article 59 of the Constitution that creates the Kenya National Human Rights and Equality Commission (KNHREC) which is divided into three; the Kenya National Commission on Human Rights (KNCHR), the Commission on Administrative Justice (CAJ) and the National Gender and Equality Commission (NGEC).

As country, we should not be bogged down by the fact that we must give jobs to Kenyans. We should merge these commissions so that we can have value. The former KNCHR under leaders such as Maina Kiai, Prof. Florence Jaoko Simbili and the former Sen. Hassan Omar, did a commendable job.

Today, we were supposed to interrogate the alleged abuse of human rights in the Standard Gauge Railway (SGR) but we did not get any representation for some of the people that were supposed to appear in the Committee on Labour and Social Welfare.

Having said that, if you look at the Salaries and Remuneration Commission (SRC) law, you will find that the Commission is a professional body which, requires the various arms of Government; the Judiciary and Parliament to be represented. We have come from having a robust interview process to ensure that the interests of counties are represented. I hope and believe that we will have an individual who will do so.

At the same time, there has been zeal by SRC in the past, hiding under their mandate to provide for opportunities to embarrass Members of Parliament (MPs). That is not their role. Whenever they reduce salaries, the first port of call is salaries for MPs. I beg to differ. If you properly analyze the various salaries of people in the Executive, you will realize that MPs are only used as scapegoats. Even if they were to reduce the salaries of MPs to zero, I can assure you that the wage bill will still be way over the Kshs685 billion that is the current situation.

The Deputy Speaker (Sen. (Prof.) Kindiki): How can the wage bill be higher than it is now if you remove all salaries of Members of Parliament (MPs)?

Sen. Mwaura: Mr. Deputy Speaker, Sir, it is because Ministries, Departments and Agencies are still hiring.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is it mathematically possible to zero rate benefits of parliamentarians and still get a higher figure?

Sen. Mwaura: Yes, Mr. Deputy Speaker, Sir. As we speak, people are still recruiting. I am sure that there are some agencies that have advertised, and therefore, they

should not use Members of Parliament (MPs) as scapegoats or Public Relations (PR) exercise or imagine that it is only when their benefits are reduced to the point that they become paupers, beggars and appendages to other whims, that the problem will be solved.

Mr. Deputy Speaker, Sir, this Bill is timely. It provides us with an opportunity to ensure that there is no lacuna in law. I remember getting a call from one of the commissioners because he was the only one who remained in the SRC because the terms of all the others came to an end sometimes in November last year. He was wondering whether to constitute a commission because unlike other commissions, the term of members is staggered because they become members upon nomination.

There was wisdom in the constitutional provision for commissioners to serve for six years and the term is not renewed unless they go to another commission. This provision will help so that there is smooth running of the commission. We know that we have a pending case in court between Parliament and SRC and some of those lacunas of law in terms of making judgment have arisen. The courts have pronounced themselves that the commission is the commissioners and not the secretariat. So, despite the fact that there is a competent secretariat, decisions should be made when there is a fully constituted commission or there is a provision to ensure that they raise the quorum that is provided in law.

If that is not addressed in this Bill, it is something that we may want to uptake. Kenyans remember very well the contestation we had with the Independent Electoral and Boundaries Commission (IEBC) with regard to what would constitute the quorum of plenary. Such matters must be universal in adherence to provisions of Chapter 15 on constitutional bodies so that it is not seen like we legislate a quorum for every commission because they all range from seven to nine members so that there is impartial application of the law.

Mr. Deputy Speaker, Sir, it is true that the SRC continues to play a critical role in ensuring that there is equal pay for equal work done. However, this matter is not yet done. The disparities of salaries within the Public Service Commission (PSC) remain. Salaries of people who have similar qualifications and have been in school and graduated together depend on where they are employed.

There was a circular that the former Head of Public Service, Amb. Francis Muthaura issued about the classification of state corporations called the Blue Book that in itself has created a huge disparity. If you look at job groups within Government, from job group A all the way to T, the higher cadres of staff get huge perks and are well remunerated but it is not the case with the lower cadre of staff. This also affects the National Police Service in terms of motivation. So, based on these amendments and serving for the sixth term, the new SRC will engage to ensure that we reduce these disparities so that Kenyans of equal qualifications can also be compensated based on the work done. However, at some point, we will have to make a political decision other than just going for the salaries and packages of Members of Parliament, who are sometimes nothing more than glorified social workers and welfare dispensers. We have to reduce the number of members of our public service. That is something that the Government must be serious about if we have to cushion the financing of our budget.

Mr. Deputy Speaker, sir, currently, as we all know, we have a budget of about Kshs3.1 trillion and the ordinary revenue that is supposed to be collected is about

Kshs1.9 trillion. Even then, it is not guaranteed because it depends on the new revenue rules and measures that the Cabinet Secretary for National Treasury has presented. Therefore, it means the cash crunch that we see, including the delays in terms of salaries being paid to the point that in some counties we have had situations where---

The Deputy Speaker (Sen. (Prof.) Kindiki): Please, wind up; you have less than a minute.

Sen. Mwaurya: Mr. Deputy Speaker, Sir, in some counties employees are being paid salaries after three months. This is a question of cash flow and there is no proper management. These are issues that we will canvass about.

The Bill is timely and will help us to ensure that we have a functional Commission, which is impartial. It will be a Commission that does not misinterpret its mandate to focus on reduction of the salaries of Members of Parliament only. The Commission should speak to the true aspirations of a country that can sustain itself.

I support.

Sen. Were: Thank you, Mr. Deputy Speaker Sir, for the opportunity to contribute to this Bill. The Salaries and Remuneration Commission is an important organ in this country. It is concerned with setting and regularly reviewing the remuneration and benefits of state officers. It also advises the national Government and county governments, among other roles, on the remuneration and benefits of all public officers.

According to Article 230 (2)(b) of the Constitution, the Salaries and Remuneration Commission consists of the following persons appointed by the President-

“(b) One person each nominated by the following bodies from among persons who are not members or employees of those bodies-

- (i) The Parliamentary Service Commission;
- (ii) The Public Service Commission;
- (iii) The Judicial Service Commission;
- (iv) The Teachers Service Commission;
- (v) The National Police Service Commission;
- (vi) The Defence Council; and
- (vii) The Senate, on behalf of the county governments;”

Therefore, this important role and taking into consideration of all these people that they deal with, we do not need a lacuna in the law. Any sort of gap in the law brings about instability, not only in the SRC, but in all the other organizations.

Mr. Deputy Speaker, Sir, this Bill seeks to bring about timelines to replace commissioners at the expiry of their term. The various commissions and institutions, including the Senate and the Defence Council, will start their nominations of representatives simultaneously, so that we do not have commissioners at the SRC having different terms of service. This will give the SRC stability and some sort of continuity in the organization. We cannot have an unstable Commission playing such an important role in this country.

Timelines for the nomination process will also ensure that these vacancies are filled as soon as possible, so that the work they do is continuous. Work will not be kept on hold because commissioners are not in place or there is no quorum for the commissioners to deal with the issues that are before them.

Mr. Deputy Speaker, Sir, with those few remarks, I support this Bill.

Sen. (Prof.) Onger: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to add my voice to the Salaries and Remuneration Commission (Amendment) Bill, 2018. What is targeted here is Sections 7 and 9. As it stands today, there is no direct and express indication on how to declare these vacancies open for competition.

After a commissioner has been appointed and stays in office, he or she will quietly walk out and that position becomes vacant. Therefore, there is no urgency in the law that requires the Commission to trigger the appointment of that individual. Therefore, this is the essence of this Bill that is before this House. First of all, it is the declaration of a vacancy in the SRC. What appears in the general law is only the vacancy of commissioners, but it does not expressly say so in the SRC Act.

Therefore, it is important that we spell out quite clearly what is required to establish that when these vacancies arise, they should be gazetted that there is a vacancy arising out of a particular position. Besides that, they should also provide the timelines for filling that vacancy. That is why I said that it is a straightforward amendment.

When we say that we want to fill these positions, we want to look at the Constitution afresh. There are areas that we now see a lacuna in this Constitution. When we promulgated the Constitution in 2010, there were prevailing circumstances that were of necessity that were included in the Constitution. Why do I say so? If you look at this particular amendment, you will notice that the procedure for nomination was until the first General Elections after the commencement of this Act. It also provides that the President shall consult with the Prime Minister. That was then and it is not the case now. That is why we say that there is need to review this Constitution. At that time there was a consultative process in the prevailing circumstances. The same is also repeated in Section 10. It is not a bad idea because consultation is the way forward in any event.

Mr. Deputy Speaker, Sir, eventually, we need to relook at our Constitution and Acts of Parliament that we have created and align them to the prevailing constitutional dispensation. It is critical and important otherwise, we will have different pieces of legislation appearing in the Acts of Parliament, including the Senate that will confuse the future generations. For example, in the prevailing circumstances today, we do not have the position of a Prime Minister. What do we do with this kind of law?

Mr. Deputy Speaker, Sir, at some stage, we need to do a miscellaneous amendment to reflect the reality of the Constitution as it stands. Therefore, the clamor for amendment to the Constitution is not out of place. Any Constitution that is made within five to seven years, there should be an amendment of that Constitution to reflect the prevailing circumstances.

What this Bill before this House is teaching us expressly is the fact that now it is time for us to relook at our Constitution and the political prevailing circumstances and see how this can be fitted so that it is brought in harmony with whatever amendments we want to create in the current statutes. It is very important because then we give conflicting signals. Of course, the way it appears here, it sets out the principle of consultation. Even in the devolved system, it also sets out the principle of intergovernmental relationship between the national Government and the county governments. Therefore, it is important for us to sit down and look at it more objectively.

Mr. Deputy Speaker, Sir, talking about the Salaries and Remuneration Commission (SRC), sometimes we create constitutional commissions because we want to

confer on them some independence so that whenever they make decisions, those decisions are not appendages of the Executive. What comes out should be a well-seasoned and well-argued principle on how to proceed particularly with the matters of remuneration. That is why there is a wider representation in this Commission. That way, you can pick up different varying views of various entities that are involved in coming to the global interest of the SRC, particularly as it relates to various sectors of our society be it the Judicial Service Commission (JSC), the Parliamentary Service Commission (PSC), the Public Service Commission (PSC), the Teachers Service Commission (TSC) and other relevant commissions. That is why there is that synergy which is being brought within that body. On its own position, they should not be expected to behave adversely to any one of those commissions. They should look at the issue at hand objectively and come out with a solution.

Without picking any bones, I agree with Sen. Mwaura that unfortunately, Parliament became a scapegoat of certain decisions. It is unfortunate. Once you confer a right to somebody, you do not just come through the backdoor and take it away in the name of rationalization. It is wrong in principle. You should have rationalized that in consultation just like we are saying here that whenever we want to make appointment to these vacant positions, there must be some order in which they come within such a timeline and space so that the law flows smoothly without any difficulty.

Mr. Deputy Speaker, Sir, I support this important amendment. I also make a point that may be that there are such similar Acts of Parliament which are not in consonance with the main body of the Constitution. May be the main body of the Constitution in itself has some *lacuna*. I do not want to take credit, but I can say, those of us who were in Serena, we brought in a concept of consultation which is now the main beckon of reference in the process of consultation, be it the national and county governments, the Senate and the National Assembly and within the intra-commissions.

That element of consultation stands out clearly as a way of negotiating proper conclusion on any contentious issue that may arise within this country. They are many. This nation is bound to have such several contentious issues. The way to go is not to fight about it, but to look at the law soberly and see where we can amend that law to help us move forward. I thank you for that support.

I support the amendment of this Bill, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Onger. Proceed, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I also stand to support the amendment to the Salaries and Remuneration Commission Act.

We have in the Constitution ten commissions that have been put into place and each is very important, starting with the Kenya National Commission on Human Rights (KNCHR) and the Equality Commission that strives to ensure that there is equality of representation up to the Parliamentary Service Commission (PSC) that serves within Parliaments, the JSC and the Public Service Commission (PSC) among others.

Right now, we are talking about the SRC. As I sat here listening to my colleagues speak, I could hardly contain myself, but remember what happened in the independent commission. We saw commissioners that came up and resigned. Up to now, we do not know whether that resignation was taken and what the membership of that Commission is yet these members for the various commissions are expected to work round the clock. If

you look at the composition of the Commission itself under Article 250, each commission should consist of at least three but not more than nine members.

Mr. Deputy Speaker, Sir, at any one time, these members have been chosen from different regions and professions. Therefore, they bring something into the commission even in terms of the decisions that have to be made. If one member is missing from those commissions, it cannot be taken for granted that a lot of work that these members will be bringing is lost out on the work of that Commission.

Under Article 252 of the Constitution, the chairperson and member shall be identified and recommended for appropriate appointment in the manner prescribed by national legislation. Legislation to ensure the beginning and the end of the commission's work is the work of Parliament. Therefore, this is a responsibility that we have. Under Article 251 of the Constitution, the issue of principles of removal of the commissioners is also put into place. However, it does not delve clearly into the issues of retirement, some sort of disbandment and even when the whole Commission's life has ended and there is not an appropriate process to ensure that people come on board.

Mr. Deputy Speaker, Sir, this Bill, therefore, seeks to amend Sections 7 and 9 of the Salaries and Remuneration Act of 2011. It specifically goes to ensure that the process of selection of the commissioners is done within a specific timeframe. That point is very clear that we do not have a staggered process. One of the Members indicated that sometimes there are problems of having members, some who have served for one year and others who have served for two years. It is two sides of a coin. Sometimes, it can work as an advantage because of institutional memory, but clearly, it creates a problem in terms of understanding even when the various terms for those various people end.

The problem is to ensure that the expiry term of the commissioners is clear. This Bill proposes to do this through an amendment that has to be put in a *Gazette* and that notification should enable people to know exactly what should happen. It also gives a clear procedure for nomination which is relevant and tends to be repeated over time across the board, that the relevant nominating body will start with an advertisement and people who are qualified will make applications and then move to interviews. Finally, with a selection panel, they ensure that the right people come on board.

There are also times when it is important to ensure that regional and gender balance has been put in place such that at the end of the selection, you have ensured that the process has followed the rules that have been put in place.

Mr. Deputy Speaker, Sir, the panel will also comprise a chairperson and four other members drawn from the executive and professional organizations. This is standard practice. The work that these commissioners do, right from the beginning, is important and is hinged on the objects of the Commission as clearly stipulated in Article 249 of the Constitution. First and importantly is to protect the sovereignty of the people under the various responsibilities of those commissions; to secure the observance by all and to ensure that all the state organs actually practice values of democracy and keep the values and principles that are important. Last but not least, to promote constitutionalism.

Mr. Deputy Speaker, Sir, there has been a disconnect on when commissioners come on board and when their term actually expires. This Bill comes at a time when there is some crisis. This is because a new team for the Salaries and Remuneration Commission (SRC) should come on board and the process of selecting the chairperson and other members has already progressed yet there is no proper legislative framework to

proceed with that process. This is, therefore, a straight forward Bill and it is timely. It will help create order, not only for the SRC, but also for the other commissions whose terms for beginning and expiry are not very clear.

I beg to support.

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

Order, Senators! There being no other interest, I call upon the Mover to reply.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, allow me to thank hon. Senators for contributing to this very important Motion. I specifically want to thank Sen. Orengo, Sen. Mwaura - who is my deputy - Sen. Were, Sen. (Prof.) Ongeru and Sen. (Dr.) Zani---

Sen. (Dr.) Zani: On a point of order Mr. Deputy Speaker, Sir.

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

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir.

(Sen. (Eng.) Mahamud remained standing at the dispatch box)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud! You know the Standing Orders; you resume your seat when another Member is on a point of order.

Proceed, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. Is it in order for the Senator, who is replying to this Bill, to refer to it as a Motion yet it is a Bill?

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes; it is a Motion on a Bill. Therefore, he is in order.

Sen. (Dr.) Zani, when you look at your Order Paper, you will see that it is Order number 16, which reads; the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 12 of 2018). It is in the form of a Motion and that is why he moves. It is a Motion on a Bill.

(Sen. (Eng.) Mahamud approached the dispatch box)

Proceed Sen. (Eng.) Mahamud. Ordinarily, you should wait in your chair to be told to proceed. I am saying this because by the time I called your name, you were halfway through the journey.

Nevertheless, proceed.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, allow me to thank the Members for their contribution to this very important Bill and for supporting it. As they have said, a number of our laws need to be amended. From the comments by Sen. (Prof.) Ongeru, I have noticed that the current Salaries and Remuneration Commission Act has reference to "the Prime Minister in consultation with the President." However, the provision in Clause 7(4) and 7(10) state "until after the first general election." This means that the provision does not hold after the general elections.

Nonetheless, Mr. Deputy Speaker, Sir, I thank you very much.

I beg to move and, at this juncture, request under Standing Order 53(3), that the putting of the question for this Bill be deferred to a later date.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you sure that it is Standing Order No. 53?

Sen. (Eng.) Mahamud: It is Standing Order 55(3).

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay!

I direct that the putting of the Question be deferred to tomorrow.

Sen. (Eng.) Mahamud: Thank you, Mr. Deputy Speaker, Sir.

(Putting of the question on the Bill deferred)

Let us move on to the next Order.

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 13 OF 2018)

That is Order No. 17. Who had the Floor last time? I cannot see Sen. Cheruiyot. The Bill is deferred

(Bill deferred)

Next Order.

MOTION

REGISTRATION OF PERSONS WITH DISABILITIES (PWDs)

THAT, AWARE that the National Council for Persons with Disabilities was established through the Persons with Disabilities Act, 2003;

FURTHER AWARE that registration of persons living with disabilities is a function of the National Council for Persons with Disabilities;

ALSO AWARE that persons living with disabilities are estimated to be about 10 per cent of any given population;

COGNIZANT that for purposes of registration of persons living with disability, it is a mandatory requirement for one to undergo medical examination by a registered medical officer in a registered and certified health facility;

CONCERNED that of the nearly four million Kenyans living with disabilities who reside in Kenya, there is a very small fraction of the number which is duly registered;

AWARE that medical services are now a devolved function;

FURTHER CONCERNED that without proper registration, many persons living with disabilities are denied services because they lack the necessary proof of disability;

ALSO CONCERNED that owing to lack of accurate data on persons living with disabilities, the government at both levels cannot plan properly for this category of people;

NOW THEREFORE, the Senate calls upon the National Council for Persons with Disabilities in collaboration with Ministry of East African Community, Labour and Social Protection and county governments, to carry out a nationwide registration of all persons living with disabilities in order to determine their exact population to facilitate effective service for this marginalized group of our society.

(Sen. Khaniri on 7.6.2018)

(Resumption of Debate interrupted 7.6.2018)

I cannot see Sen. Khaniri here, but he had moved the Motion. There is still a bit of time for debate. I can see a request from Sen. (Dr.) Zani; you have the Floor.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Motion on the registration of Persons with Disabilities (PWDs). This has been a big problem for a long time. The big question begins with the spread of the various sorts of disabilities. Some disabilities are clear and easy to see, while others are not because they border on certain conditions that may not be visible. For example, if we talk about people who are altruistic or who tend towards schizophrenia, it becomes very difficult to pinpoint. We also know that there are many families which hide children living with disabilities instead of looking for formalities and processes to ensure that the children are helped.

First, we should not just be talking about the registration of PWDs, but we should come up with a clear classification of the various sorts of disabilities. We should ask ourselves whether it is possible, at any one level, to identify the specific schools or mainstream industries that will be helpful for a particular child. There are schools that deal with children with disabilities, but which struggle to ensure that they have been mainstreamed, maybe in terms of education or even by engaging them in various social activities. The whole nexus of getting into that point actually begins with a form of registration for the PWDs.

Mr. Deputy Speaker, Sir, even though the National Council for Persons with Disabilities (NCPWD) was established through an Act of 2002, it has not been able to satisfactorily move towards the registration of PWDs. I suspect that this is because our social, environmental and cultural awareness of the productivity of PWDs is not intact. There has not really been enough education and recognition in this area. Nowadays, when we have the Olympics, we have the Paralympics games which are for the PWDs. Consequently, we have seen PWD winning medals by riding bicycles or engaging in other games. However, most of this happens more in the west than it in developing countries. A feeling of acceptance begins there because these people should be looked at as functional and productive members of the society. For this to happen, that person needs to be given chance to do that.

Mr. Deputy Speaker, Sir, sometimes resources targeting members of the PWDs are given. However, without an appropriate registration process, it becomes very difficult

to identify who they are, where they are, what they are doing and how they can be helped. Yesterday, in this House, we debated the County Statistics Bill, 2018. Part of that Bill clearly stated that we need to have the respective county statistics offices to have statistics about the various counties. One important statistic that we should have in these offices is the statistics of PWDs. We should know the nature of disabilities and how extreme or how not severe they are. The statistics should also indicate the schools they are attending and the feeding programs that have been put in place.

Mr. Deputy Speaker, Sir, what mechanisms have been put in place administratively to look for those who are living with disabilities and have not been brought to the fore? What sort of punishment mechanisms have been put in place for members of various families who are living with people with disabilities and are putting them in hiding?

The Motion clearly indicates that there are four million Kenyans living with disabilities. I am sure that if we look at any the database, we will not find the four million, but fewer. A lot of this depends on the proactiveness of the members. There are certain members, for example, who have been very proactive in one way or another and have been able to impinge themselves within a particular organisation. This could be the Kenya Society for the Blind (KSB) or other organisations dealing with matters of disability. They have mainstreamed themselves to these organisations. However, some have been unable to do this. For those who are unable to do this, it becomes very difficult for them. This is particularly so when they have to undergo medical examination when they are referred to registered and certified health facilities. They may be seeking help for specific conditions that they have yet they are unable to be seen or processed because there are no enough personnel to deal with them.

Mr. Deputy Speaker, Sir, part of the statistics of registration is a planning strategy which would allow organisations, members and various groups to streamline their resources, to see how they can address the needs of the various members with different disabilities. This is so that they can prepare for this in advance and be keen on what is happening.

In this Motion, the Senate calls upon the National Council for Persons with Disabilities (NCPD) in collaboration with the Ministry of East African Community, Labour and Social Protection and county governments to carry out a nationwide registration of PWDs. This will enable us determine their exact population and facilitate effective service and be able to ensure that this group of people, who are marginalised, are brought to the fore.

Mr. Deputy Speaker, Sir, it is in this very House and generally in this Parliament that we have talked over and over again about the need to have facilities for Members of Parliament who have disability that is, for example, aligned to a mobility issue. Part of that planning will enable them to use wheelchairs to get to the right places. From the Orange Democratic Movement (ODM) party, where I sit, we have tried to ensure that they are brought on board by having a PWDs league within the party. They are able to come up with plans. As part of mainstreaming, this will be one of the important leagues within the party apart from the women and the youth.

Mr. Deputy Speaker, Sir, any person born into this world does not choose the way they will born; they do not choose the family they want to belong to or the sort of person they will be. It is the responsibility of any society, country and the world to try and

ensure that the people who have disability are accommodated. The best way to ensure that this happens is by beginning to have that registration. The second is to ensure that a way is put in place to ensure that the milestones that they are able to achieve---

Occasionally, through various media outlets, we find some of the big achievements that they have had. We see pictures of people who do not have limbs having achieved things that those with limbs have not been able to. There are people who do not have legs or hands but they have been able to achieve a lot. The spirit of allowing somebody to live fully and explore all their potential as a human being is very important.

Mr. Deputy Speaker, Sir, this Motion seeks to give PWDs the dignity of recognition. When we talk about recognition, the first thing that is done by our parents when we are born is to ensure that we have some sort of registration in the form of a birth certificate. Later on, we get our qualifications and credentials as we move on. One of those for the PWDs is the registration of that disability, so that it becomes a statistic that becomes of interest for the country, to ensure that the person lives to contribute as a person and as a citizen of this country.

Mr. Deputy Speaker, Sir, I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mwaura, since you are standing in for the Mover, you may now reply.

Sen. Mwaura: Thank you, Mr. Deputy Speaker, Sir. I beg to reply and commend all the Senators who have contributed beginning with the Mover of the Motion, Sen. Khaniri who is not here with us, all the way to my International Fellowship Programme (IFP) and Ford Fellow, Sen. (Dr.) Zani.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator. What is IFP?

Sen. Mwaura: Mr. Deputy Speaker, Sir, IFP means International Fellowship Programme that was instituted by the Ford Foundation to identify social justice agents over a ten year period. I am very glad that Sen. (Dr.) Zani other distinguished Kenyans including the Governor for Kwale County and I were identified and we have since occupied public political space. So they were right.

Mr. Deputy Speaker, Sir, now that you have asked me---

The Deputy Speaker (Sen. (Prof.) Kindiki): Do not assume everybody has lived in your world.

Sen. Mwaura: Mr. Deputy Speaker, Sir, Sen. (Dr.) Zani is now a graduate of Oxford University, while I am a graduate of the University of Leeds.

Let me come to the Motion. Why register? It is because people do not seem to understand the concept of disability. It is never seen as a demographic that is legitimate. Sometimes people think it is one of those things that we leave for charity. That is where the problem is. Disability is any form of loss of body function that can be as result of injury, illness or a congenital condition. It is really tied to what we call impairment. However, disability is a social construct because it emanates from the interactions between persons with various forms of impairment on one hand and barriers majorly environmental and attitudinal. Environmental include the natural and the built. In cities and homes, particularly, it is the built environment, where we do not have a universal design as to accommodate the needs and concerns of PWDs.

There is also the negative attitude of looking down upon persons who have various forms of impairment. This can be traced to our cultures that seek to deemphasize the role of those who are born different. We can go on and give very clear examples of

how our languages may not even have names of certain types of disabilities or how proverbs and sayings seem to delineate the fact that say that PWDs are ungrateful or unhelpful. However, this has changed over time. I must commend the former Minister of Education, Sen. (Prof.) Ongeru. During his tenure we were able to pass the first ever policy on special needs. It is important to say that. The policy has since been revised to create a new policy on learners and trainees with disabilities that the President launched about a month ago.

Mr. Deputy Speaker, Sir, PWDs are there and cannot be ignored. In fact, the best way to say is that we may not know how to define it, but we know it when we see it. There are also invisible disabilities such as what we call psycho-social disabilities, schizophrenia, bipolar disorder and dementia. All these are mental health issues and are also types of disabilities.

When you see a deaf person, you may not know that they are deaf until they start signing to communicate with you. Therefore, we have a long way to go in terms of ensuring that we bring on board Persons with Disabilities (PWDs). Why do I say so? If you look at the level of education, we have 287 special schools in the country. We have about 2,900 special units in 23,000 primary schools in this country. Out of these, we only have about 90,000 pupils and students with disabilities. Where are the rest? This means that they are not in school.

Out of the total number of employed Kenyans within the public service, we have less than one per cent being PWDs. So, they are not in employment. PWDs are also missing in the empowerment programmes by Government. When you look at the 30 per cent preferential procurement for previously disadvantaged groups of people ably borrowed from broad based economic empowerment in South Africa, the uptake of such provisions is such that PWDs are only able to take two per cent of the 30 per cent. The rest are women and the youth, yet in actual sense, they should have been the ones who benefit the most. Why? This is because PWDs also have youth and women. So, they should have gotten the lion's share, but they still get the least because of the many years of discrimination and marginalization.

So, to the point where you have somebody, for example, having a company and looking for a job, for PWDs you have to empower them, make them believe that they can do business and help them register the company then they will qualify. Yesterday I was glad to host in my office some of the people that my office works with who have just signed a contract with one of the companies for employment. That is what we need to do. We have to go out there and source for opportunities for them. We have done that in the past. I must commend Safaricom because we have had another batch of PWDs, the third one, that we have posted there. We must also appreciate Barclays Bank and other such companies. Soon I am meant to have a meeting with the Agricultural Food Authority (AFA) because we all need to do so.

Mr. Deputy Speaker, Sir, it requires that kind of facilitation. These are not the kind of people that you will find ready for an opportunity; you have to sensitise them so that they can believe in themselves and take up the opportunities. We have to sensitise employers as well, to believe that PWDs are not going to add cost and become dead weight to their organisations. That is always the fear. If you see, for example, a wheel chair user, you will think that they need assistance. You will not see them as people who can work for you. I remember in this Parliament - I am not trying to cast aspersions on

anyone - there is a young man called Kizito, he was working in the legal office, but he passed through Parliament without being employed. This Parliament, in itself, does not have enough numbers of PWDs. So, we are lacking in numbers here.

In politics, Sen. (Dr.) Zani can bear me witness, when I first joined the first major political party, the Orange Democratic Movement (ODM), I was told to bring five PWDs as observers, not as delegates, to come and see how other human beings participate in a political process. I protested and through my work in the party I ensured that we have a representative PWD from the *Kijiji* level to the National Executive Council (NEC) of which I was the first secretary for disability affairs, a position that I insisted had to be created. I am very happy that out of the five people that I brought on board as observers, one of them ended up being a Senator in the last Parliament; Sen. Godliver Omondi. So, it has to be purposeful and well-coordinated if you have to ensure that the numbers count. PWDs are missing in the development agenda.

Sen. (Dr.) Zani: On a point of information, Mr. Deputy Speaker, Sir,

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Sen. (Dr.) Zani?

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I am waiting for Dr. Issack Mwaura to sit first.

Sen. Mwaura: I have not accepted the ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! What are you not accepting? Sen. (Dr.) Zani, do you want to raise a point of order?

(Senators Mwaura and Dr. Zani were upstanding)

First of all, both of you cannot be on your feet whether you are accepting the information or not. Sen. Mwaura, you must sit down. Resume your seat. Let us here from, Sen (Dr.) Zani. Is it a point of information?

Sen. (Dr.) Zani: It is a point of information. Mr. Deputy Speaker, Sir, in support of what the Senator ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! It is a point of information. Sen. Mwaura, would you like to be informed? Sen. (Dr.) Zani stop canvassing.

Sen. Mwaura: Yes, in the spirit of the International Fellowship Programme (IFP)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Zani, your canvassing has paid off. You can have the floor.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir, in the spirit of IFP and ODM, I want to inform Sen. Mwaura - he is aware of this - that since that time, ODM, as a party, has taken the issue of PWDs seriously. Right now, we have a process where they are almost becoming members of a fully-fledged league. In the election period, we went out of our way to encourage our PWDs to express their rights within the party; a move that very few other parties have engaged in. That is part of the process, Sen. Mwaura, if we are able to extend this even to the various other sectors like education and health, as you have mentioned, we will begin to create the space for the excellence that we can get from PWDs.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Zani, there is a very thin line between informing Sen. Mwaura and marketing your political party in the House.

Sen. Mwaura, proceed.

Sen. Mwaura: Thank you, Mr. Deputy Speaker, Sir. I accept the information and also inform Sen. (Dr.) Zani, that this is a result of the kind of work that some of us did when we were in your political party. If you can remember, I was there for 10 years. In fact, this is the only political party that had a lobby group for PWDs called “*Watu walemavu na Raila*” of which I was the Chairperson.

For your information, I was working behind the scenes to help some of your people even though I was on this side of the political divide, including Sen. Musuruve.

(Applause)

That I did when some people wanted to canibalise them including, as you know well, Hon. Danita Gati. Those are stories that we may want to share later.

The point is that, political parties need to be inclusive of PWDs. When you have a political party that has been around for long, PWDs are able to rise through the structures of the party. That is how, for example, I rose from an activist all the way to an advisor in the office of the Prime Minister and finally to being a Member of Parliament. However, when you have political parties that are formed two months to elections, how can they identify talent and grow people? That is how people fall through the cracks. That affects not only PWDs, but also women and youth because it takes time to build individuals to become self-advocates and advocates for others.

What is the benefit of registration? Currently, the law provides that when you register as a PWD, first, you will be exempted from tax. So, PWDs are not able to pay tax up to Kshs150,000. If you earn less than this amount, you are exempted from pay-as-you-earn tax (PAYE). That is a considerable amount of money. It is about Kshs45,000. It means if you earn more than Kshs150,000 you will still get a waiver of the Kshs45,000.

Mr. Deputy Speaker, Sir, that means that – I beg that you add me some time because a lot of time was taken if you do not mind because ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time was taken by who?

Sen. Mwaura: By the point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): You accepted to be informed.

Sen. Mwaura: We still have more time before the House adjourns, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is not your business Senator. Use your time well. If you must ask for more time, just do that. Do not say that you need time because there is no business. Who told you there is no business?

Proceed, Sen. Mwaura.

Sen. Mwaura: Thank you, Mr. Deputy Speaker, Sir. On the issue of exemption, the money is meant to help cushion Persons with Disabilities (PWDs) from the costs that arise from their various types of impairments. So, it is very important.

There is also the benefit of duty-free car importation. It is because cars are seen as mobility devices, to help persons with mobility difficulties due to physical disabilities to also move around. It is a big issue. The same also applies to those with developmental disabilities.

There is also the issue of retirement age. In the last Parliament, I was able to successfully move an amendment to increase the retirement age for PWDs from 60 to 65 years. It is because of the understanding that PWDs take longer to be employed. So, you

give them an extra five years so that they are able to compensate for the time lost when they are “tarmacking”. Some of the people that we help to get jobs, get them in their mid to late 30s, when their peers started working even in their early 20s.

There is also the issue of cash transfers for those with severe disabilities. Currently, about 46,000 households are benefiting. There is also the provision of assistive devices such as wheelchairs, crutches, including sunscreen lotions for persons with albinism.

Mr. Deputy Speaker, Sir, there is the issue of medical attention for those who are in constant need of medical attention. The law provides that, that should be the purview of the Government. You can also qualify for educational grants if you are in this state.

The law also provides that it is not just PWDs that who be registered, but also organisations of the PWDs. These are organisations that are run by PWDs themselves. There are also other organisations for PWDs, which work with the PWDs in the development process. These also need to be registered and it is an attendant cost. However, there have been a lot of challenges. I wish I had more time to talk about this, but let me just finalise. First and foremost, registration of PWDs is not like the normal registration like the way you are registered to get an Identity Card or when you are joining school. For the PWDs, you require a medical report. That means that a board of doctors must sit to declare you a disabled person. It is because the disability comes from the body. This is personal and we say ‘the person is political.’ They have to ascertain that there is some form of bodily loss of function of one or more organs. So, it is a technical area. You also have to pay for that board to sit, yet these are poor people. There is a directional covariance between poverty and disability, where poverty leads to disability and disability leads to poverty. So, there is that challenge.

There is also the issue of distance. You have got to go to where the boards are sitting. They usually sit in hospitals. You can imagine people who have mobility challenges; if you are visually impaired or totally blind, you require, for example, a guide to go with you. There is also the issue of language. As a result of low levels of education, language is also a great barrier.

Mr. Deputy Speaker, Sir, the other issue is dependency. As I said, you may even need an assistant. If it is a mother who has a child with severe disability, they need to plan to take their child to be registered. Of course, after that, there are a lot of delays because those reports have to come from the counties to Afya House. It takes an inordinate long time that leads to the PWDs being asked to pay bribes for their medical reports to be released for them to get the identification cards of disability. This is a real abuse and I have received a lot of complaints about it.

One would then want to ask: “What is the remedy?” The quick answer would be: “We have a census next year and a pre-census on 24th and 25th of August, 2018.” There is something called “the Washington Group of Questions”. These are questions that have been set internationally to help Governments and statistics bodies to capture data relating to PWDs. It is the first time that they will be used and there is a panel for that. However, remember that registering PWDs is not really an enumeration kind of thing. Even if you see the disability, you need to know the type and category, so that you properly assign label. That is important because it informs whatever intervention mechanisms that would speak to the programmes that the Government would want to establish or the allocation of resources.

In 2006 I was in Kajiado and went to some *manyatta* and found an old man, who was clearly disabled. In the same house there was also a deaf girl. We asked him the question: “Are you a person with disability?” The man said: “No, I am not.” Even that identification with that label of a PWD is seen as negative because of the taboo.

Yes, census will give us data. The global average is that in every population, there are about 10 to 15 per cent of people who have a disability or another. The 2009 census produced only 1.3 million PWDs. So, we anticipate that with 46 million Kenyans, based on the latest household survey of 2016 released by the Kenya Bureau of Standards (KEBS), there are about 4.6 million PWDs. We anticipate that this should be the case with the census. However, currently, the PWDs who are registered by the Council are about only 400,000, because of the challenges that have enumerated before. Administrative data is not adequate because people do not seek services because of the very areas of marginalisation. So, we still need to do a lot of awareness.

As I reply to this Motion, I support the idea of creating a special budget where we will have a nationwide specific census and registration of PWDs. In the last Parliament, we allocated about Kshs300 million and that is why we were able to move the numbers from 200,000 to 400,000. Despite that, majority of PWDs are still not registered. Therefore, they cannot access the benefits that I have just enumerated. In fact, the Government knows the number of elephants in this country, but not the number of PWDs. It is time we do so.

I commend the sponsor of the Motion and ask this House to unanimously pass it since it will help to ensure that, indeed, we bring out the real conditions of PWDs in Kenya. This will ensure that we have meaningful interventions of both the national Government and county Governments.

Mr. Deputy Speaker, Sir, I beg to reply.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, indeed. You have ended it well; that we should not just know the number of elephants in the country, but we also need to know the number of the PWDs.

Hon. Senators, Article 123(2) of the Constitution says that-

“When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.”

Pursuant to the provisions of the said Article, I rule that this matter does not concern counties. Therefore, the vote of the House on this matter shall be in terms “AYES” and “NOES”. It is popularly known as “a noise vote”.

(Question put and agreed to)

(Sen. Mwaura said Aye!)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. Mwaura! You know it is very easy to destroy your otherwise eloquent reply with what constitutes disorderly conduct; and the consequences are grave.

Let us move on to the next Order.

The Motions appearing under Orders No.19, 20 and 21 are supposed to be moved by the Chairperson of the Sessional Committee on County Public Accounts and

Investment Committee (CPAIC), Sen. M. Kajwang, who is not here. I cannot also see the Vice Chairperson. I, therefore, direct that Orders No. 19, 20 and 21 be deferred to tomorrow.

MOTIONS

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF KAJIADO COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Kajiado County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014 laid on the Table of the House on Thursday, 10th May, 2018.

(Motion deferred)

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF NAROK COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Narok County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Thursday, 10th May, 2018.

(Motion deferred)

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF TURKANA COUNTY EXECUTIVE FOR FY 2013/2014

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of Turkana County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Thursday, 10th May, 2018.

(Motion deferred)

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us move on to the next Order.

MOTIONFRAMEWORK TO PERMANENTLY ADDRESS
EFFECTS OF FLOODS

THAT, aware that several days of heavy rains recently have caused severe flooding in many parts of the country, resulting in multiple deaths and devastating damage to property and infrastructure;

NOTING with concern that, whenever Kenya experiences periods of severe drought, torrential rains usually follow;

CONCERNED that year in year out, the challenge of floods continues to recur, leading to loss of human and animal life, displacement of people and wanton destruction of property;

COGNIZANT that the number of Kenyans needing emergency food aid as a result of displacement caused by the current floods continues to rise by the day, and that the floods have also washed away many bridges and destroyed roads in many parts of Kenya;

ALSO CONCERNED that no effective measures, such as improved storm water harvesting, proper drainage infrastructure and preventing the destruction of riparian reserves and natural water courses, to mitigate and/or provide a lasting solution to the menace of flooding, have been taken;

NOW THEREFORE, the Senate calls upon the National Government to develop a lasting framework to permanently address the challenge of effects of floods by, among other things

(1) developing and enforcing regulations for preventing the obstruction of

(2) riparian reserves and natural water courses; and preventing and regulating the construction of informal settlements and ensuring prevention of construction on low lying areas and flood plains.

And further that the relevant government agency to execute this task submits a report to the Senate within three months of the adoption of this Motion.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Dullo is similarly not in the House. I, therefore, accordingly direct that Order No.22 be deferred to tomorrow.

(Motion deferred)

Let us move on to the next Order.

MOTION

THE STATUS OF EDUCATION IN NORTHERN KENYA

THAT, AWARE that Article 43 (f) of the Constitution of Kenya stipulates that every person has the right to education, and Article 53(1)(b)

provides that every child has the right to free and compulsory basic education;

ALSO AWARE that education is a basic need and a tool for intellectual empowerment and social-political development;

FURTHER AWARE that education is a shared function between the National and the County levels of Government with the National Government being responsible for Primary, secondary and Higher education while the County Government is responsible for pre-primary education, village polytechnics and home craft centers;

COGNISANT that both levels of Government complement each other in promoting sustainable education;

CONCERNED that the intake, uptake and quality of education in the Northern Kenya have adversely been affected owing to discrepancies in public resources allocation, insecurity, skewed staffing and teacher training in the region;

FURTHER CONCERNED that both the school completion rate and the national examination outcomes in region are poor and that the number of students from Northern Kenya who qualify for core courses in universities, colleges, technical schools and village polytechnics is minimal compared to other parts of the country;

NOTING WITH CONCERN that due to insecurity and other related concerns, the Teachers Service Commission (TSC) which is the body responsible for the employment and deployment of teachers, has in the recent past, taken steps to transfer non-local teachers from the northern region of Kenya to other parts of the country;

CONCERNED THAT, the transfers have led to shortage of skilled teachers which has been a major cause of the dismal performance in examinations in schools in the region;

NOW THEREFORE, the Senate resolves to task the Standing Committee on Education to conduct an inquiry into the challenges facing the education sector in Northern Kenya with a view to

1. evaluating the effect of the teacher transfers from the region and recommending to the Ministry of Education, policy measures to address the challenge;

2. evaluating the status of the education infrastructure in the region and proposing solutions to mitigate the current and looming challenges;

3. proposing mechanisms for enhanced resource allocation at both levels of government to facilitate improved education facilities; and

4. assessing school intake compared completion levels in the region in order to ascertain the impact of the challenges facing the schools and how these disadvantages the region compared to other parts of Kenya and proposing ways of addressing the challenges.

And that the Committee submits a report to the Senate within three months of adoption of this Motion by the Senate.

The Deputy Speaker (Sen. (Prof.) Kindiki): Similarly I cannot see Sen. (Dr.) Ali in the House. I, therefore, direct that Order No. 23 be deferred to tomorrow.

(Motion deferred)

STANDARD POLICY REGULATION FOR CONSTRUCTION AND
MAINTENANCE OF RURAL ACCESS ROADS

THAT, AWARE that infrastructure development and specifically, construction of roads is a key pillar of Kenya's vision 2030 whose objective is to spur movement of people and goods, promote trade and economic activities, encourage development and attract investments;

NOTING that there is a very strong correlation between a country's economic development and the quality of its road network;

CONCERNED that Government's efforts to expand the roads infrastructure are mainly focused on the urban and peri-urban areas of the country thus leaving rural areas with dilapidated or no access roads;

FURTHER CONCERNED that fifty-five years since independence and over five years after institutionalization of devolution, the Country's roads infrastructure is to a large extent still underdeveloped with only slightly above 9,000 kilometres of the about 178,000 kilometres of roads paved;

COGNISANT that, Part Two of the Fourth Schedule to the Constitution of Kenya (2010) mandates County Governments to manage county transport, including; roads, street lighting, traffic and parking, amongst other county public transport matters;

DEEPLY CONCERNED that, County Governments are continuously prioritizing routine maintenance works over sustainable and durable road quality works due to budgetary constraints;

NOW THEREFORE the Senate calls upon the Ministry of Transport, Infrastructure, Housing and Urban Development to develop and adopt standard policy regulations prescribing modern, eco-friendly and inexpensive technologies to be applied across the 47 counties for construction, upgrading and maintenance of rural access roads in order to ensure durability and sustainability of the access roads and also to reduce maintenance expenses.

The Deputy Speaker (Sen. (Prof.) Kindiki): Similarly, I cannot see Sen. Kasanga in the House. I therefore direct that Order No. 24 be deferred to tomorrow.

(Motion deferred)

Next Order.

ADOPTION OF REPORT ON THE FIRST EXTRAORDINARY SESSION
OF THE FP-ICGLR IN KINSHASA, DRC

THAT, this House adopts the Report of the proceedings of the First Extraordinary Session of the Plenary Assembly of the Forum of Parliaments of Member States of the International Conference on the

Great Lakes Region (FPICGLR) held in Kinshasa, Democratic Republic of Congo from 19th – 20th March, 2018, laid on the Table of the Senate on Tuesday, 15th May, 2018.

The Deputy Speaker (Sen. (Prof.) Kindiki): I cannot see Sen. Poghisio in the House. I therefore direct that Order No. 25 be deferred to tomorrow.

(Motion deferred)

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

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

Sen. Mwaura: Mr. Deputy Speaker, Sir, noting the continued absenteeism of Members and yet we have very heavy business in the Order Paper; and noting the fact that legislative time especially plenary sessions are very limited; and that Kenyans are very keen to see the content and substance of our deliberations, I beg that you rule concerning this matter. If we continue to have hon. Members absenting themselves and we keep on deferring the matters yet there is available plenary time for such matters to be canvassed and the nation to be seized thereof, I think it is not fair. I would indulge the Chair to rule on this matter so that it is brought to the attention of all distinguished and hon. Senators.

Sen. (Prof.) Kamar: Mr. Deputy Speaker, Sir, I just wanted to give information that two Members are officially---

The Deputy Speaker (Sen. (Prof.) Kindiki): Who are you informing, professor?

Sen. (Prof.) Kamar: Mr. Deputy Speaker, Sir, I cannot inform you; I know you are informed. I wanted to inform Sen. Mwaura and the House, arising from the question he has raised that Sen. Poghisio is on an official trip in Sudan and Sen. Dullo is out in the United States of America (USA). What may not have come to the notification of our clerks were the leave forms. I think what the House needs to get from you is that whenever a Senator is absent, they must request for permission so that it comes to the attention of the House that they are not there. I know these two Senators are away officially.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I think the matter raised by Sen. Mwaura is extremely important for several reasons. The first one being that we have a lot of business to transact and the time is limited. Secondly, the reason Kenyans have put us here in this position is so that we make use of the time and all the resources the public has entrusted on us including the resources of time.

Finally, this House and its business supersede any other commitment that a Senator may have. However, I take the sentiments that have been made by Sen. (Prof.) Kamar. Sometimes we have other commitments of an official nature, either in our counties or outside the country. I think there is need to synchronize that with the clerks ahead of time so that we do not look like we have items on the Order Paper that cannot proceed because of absence without that fact that a Senator is on official duty coming to light.

Having said that, I concur with Sen. Mwaura that the Chair will be extremely firm when it comes to Senators who have business to transact and sometimes they do not communicate their absence or they take it casually and come in when they want. So, it is expected that if you have business and it is appearing in the Order Paper, you must

communicate to the Chair in advance in case of any inconvenience. That should go on record.

ADJOURNMENT

The Deputy Speaker (Prof. Kindiki): Hon. Senators, having concluded or deferred the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 19th July, 2018, at 2.30 p.m.

The Senate rose at 6.10 p.m.