

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Thursday, 14<sup>th</sup> February, 2019***The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.**[The Speaker (Hon. Lusaka) in the Chair]*

PRAYER

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

IN THE COMMITTEE

*[The Temporary Chairperson (Sen. (Prof. Kamar) in the Chair]*THE PETROLEUM BILL (NATIONAL ASSEMBLY  
BILLS NO.48 OF 2017)*(Resumption of Debate interrupted on 13.2.2019)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Hon. Members. We want to start. We are ready to begin with The Petroleum Bill (National Assembly Bills No.48).

The amendments will be led by Sen. Olekina. We had reached new Clause 13A. We proceed to new Clause 13B.

Sen. Olekina, proceed.

*New Clause 13A*

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-  
THAT the Bill be amended by inserting the following new clauses immediately after clause 13 –

Establishment of the  
Petroleum Regulatory  
Authority.

13A. (1) There is established the Petroleum Regulatory Authority.  
(2) The Authority is a body corporate with perpetual

succession and a common seal and shall be capable of—

- (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
  - (c) borrowing and lending money; and
  - (d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.
- (3) Except as otherwise provided in this Act, the Authority shall be independent in the performance of its functions and exercise of its powers and shall not be subject to the direction or control of any person or authority.

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Mover, proceed.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clauses immediately after clause 13 –

Functions of the  
Authority

**13B.** The functions of the Authority shall be to—

- (a) regulate, monitor and supervise petroleum operations in Kenya in accordance with this Act, the regulations made thereunder and the relevant petroleum agreement;
- (b) provide such information and statistics in relation to petroleum operations in Kenya to the Cabinet Secretary as may be required from time to time;
- (c) regulate the importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;
- (d) collect, maintain and manage petroleum data;
- (e) receive and review an application for a non-exclusive exploration and where it is satisfied that it is warranted, grant a non-exclusive exploration permit;
- (f) co-ordinate the development of petroleum infrastructure and promote capacity building in upstream petroleum operations;
- (g) enter any area, structure, vehicle, vessel, aircraft or building that has been, is being or is to be used in connection to upstream petroleum operations;
- (h) inspect and test any machinery or equipment that has been used, is used or shall be used in upstream petroleum operations;
- (i) take or remove, for analysis, testing or for use in evidence in connection with the commission of an offence under this Act, samples of petroleum or other substances from any area where any upstream

- petroleum operations are being carried on;
- (j) inspect, take extracts from, or make copies of any document relating to any petroleum operations;
  - (k) assess field development plans and make recommendations to the Cabinet Secretary for approval, amendment or rejection of the plans;
  - (l) assess tail-end production and cessation of upstream petroleum operations and oversee decommissioning by a contractor;
  - (m) verify the measurements of petroleum production to allow for estimation and assessment of royalties and profits of oil and gas due to the National Government;
  - (n) verify the recoverable cost of oil and gas due to the parties to a petroleum agreement;
  - (o) audit contractors for cost recovery;
  - (p) monitor in consultation with the Competition Authority established under the Competition Act conditions of contractors' operations and their trade practices to ensure that competition and fair practice is maintained;
  - (q) provide information to the relevant authority for the collection of taxes and fees from upstream petroleum operations;
  - (r) set, review and approve contracts, tariffs and charges for common user upstream petroleum facilities;
  - (s) make proposals to the Cabinet Secretary in relation to regulations which may be necessary or expedient for the regulation of the petroleum sector or for carrying out the objects and purposes of this Act;
  - (t) work with the relevant statutory authorities to formulate, enforce and review environmental, health, safety and quality standards for the petroleum sector;
  - (u) develop guidelines, in consultation with other statutory authorities, in relation to the implementation of treaties, conventions or protocols affecting the upstream petroleum sector that have been ratified by Kenya;
  - (v) regulate contracts on upstream petroleum operations not specifically provided for under this Act;
  - (w) advise the Cabinet Secretary in the evaluation of the bids and applications made for upstream petroleum blocks; and
  - (x) perform any other function that may be conferred on it under this Act.

**Sen. (Prof.) Ongeru:** Madam Temporary Chairperson, I second.

*(Question of the New Clause 13B proposed)*

*(New Clause 13B read the First Time)*

*(Question, that the New Clause 13B  
be read a Second Time, proposed)*

*(Question, that the New Clause 13B  
be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, Division will come at the end.

*New Clause 13C*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Mover.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new Clause immediately after Clause 13 –

Powers of the Authority.

13C. (1) The Authority shall have all powers necessary or expedient for the performance of its functions under this Act and in particular, the Authority shall have the power to—

- (a) ensure that contractors uphold the relevant laws, regulations and petroleum agreement terms;
- (b) ensure optimal levels of recovery of petroleum resources;
- (c) promote well planned, executed and cost-efficient operations;
- (d) ensure optimal utilization of existing and planned facilities;
- (e) ensure the establishment of a central database of persons involved in upstream petroleum operations;
- (f) manage upstream petroleum data and provide periodic updates and publication of the status of upstream petroleum operations
- (g) take such action as is necessary to enforce the requirements in a petroleum agreement or any regulations and to protect the environment, the health and safety of workers and the public;
- (h) ensure and facilitate competition, access and utilization of facilities by third parties;
- (i) prescribe the form and manner in which any application for any authority, consent or approval under this Act shall be made;
- (j) investigate complaints or disputes arising from upstream petroleum operations;

- (k) enter, inspect and search any premises at which any undertaking is carried out or an offence under this Act is being committed or is suspected to have been committed;
  - (l) issue orders either requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled in furtherance of its powers under this Act;
  - (m) impose such sanctions and civil fines not exceeding five hundred thousand shillings per violation per day, as may be prescribed in regulations to secure compliance with orders issued under this Act;
  - (n) enforce local content requirements;
  - (o) issue operational permits and non-exclusive exploration permits in accordance with this Act; and
  - (p) ensure enforcement and compliance with the national values and principles.
- (2) The Director Public Prosecutions may, on the request of the Authority, appoint any officer of the Authority or an advocate of the High Court to be a public prosecutor for the purposes of prosecuting offences under this Act.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-  
THAT the Bill be amended by inserting the following new clauses immediately after Clause 13-

Board of  
Directors of  
the Authority .

- 13D.** (1) The management of the Authority shall vest in a Board of Directors which shall consist of—
- (a) a chairperson appointed by the President;
  - (b) the Principal Secretary in the Ministry for the time being responsible for petroleum or his or her authorized representative;
  - (c) the Principal Secretary in the National Treasury or his or her authorized representative;
  - (d) three county executive committee members responsible for petroleum nominated by the Council of County Governors;
  - (e) the Director-General appointed under section 23 of this Act; and
  - (f) one person shall be nominated by the Kenya Private Sector Alliance appointed by the Cabinet Secretary;
  - (g) one person with knowledge and experience in matters relating to petroleum and serving in an institution of higher education appointed by the Cabinet Secretary.

(2) A person shall be qualified for appointment as a chairperson under subsection (1)(a) or a member under subsection (1)(f) and (g) if that person—

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya in any of the following fields—

(i) engineering;

(ii) physical sciences;

(iii) law;

(iv) finance;

(v) economics; or

(vi) energy;

(vii) any other relevant degree.

(c) has had at least seven years relevant professional and managerial experience;

(d) is a member in good standing of the relevant professional association; and

(e) meets the requirements set out in Chapter Six of the Constitution.

Madam Temporary Chairperson, I ask Sen. Faki to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Terms of office

of the

chairperson

and members

of the Board .

**13E.** (1) The chairperson of the Board of the

Authority shall be appointed for a term of four years and shall be eligible for re-appointment for one further term.

(2) A member of the Board appointed under section 13D(1)(f) and (g) shall hold office for period of three years and shall be eligible for re-appointment for one further term.

(3) The chairperson and members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The chairperson and the members appointed in accordance with section 13D(1)(f) and (g) who shall be appointed immediately upon the coming into force of this Act shall be appointed for such shorter terms than prescribed in subsection (1) or subsection (2) so their tenures do not end on the same date.

Madam Temporary Chairperson, I ask Sen. Ochillo-Ayacko to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Gender,

regional and

ethnic

balance .

**13F.** In the composition of the Board of Directors, no more than two-thirds of the members shall be of one gender and the Board shall also reflect the regional and ethnic diversity of Kenya.

Madam Temporary Chairperson, I ask Sen. (Dr.) Musuruve to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Conduct of

business of

the Board .

**13G.** (1) The conduct and regulation of the business of the Board shall be as provided in the First Schedule of this Act.

(2) Subject to the provisions of the First Schedule, the Board shall regulate its own procedure.

Madam Temporary Chairperson, I ask Sen. Omogeni to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move:-

THAT the Bill be amended by inserting the following new clauses immediately after clause 13-

Vacancies in

the Board.

**13H.** (1) The office of the chairperson or a member of the Board of Directors, as the case may be, shall become vacant if the holder—

(a) dies;

(b) by notice in writing addressed to the President or the Cabinet Secretary, as the case may be, resigns from office; or

(c) is removed from office under any of the circumstances contemplated in section 13I.

(2) The President or the Cabinet Secretary, as the case may be, shall notify every resignation, vacancy or termination in the Gazette within fourteen days.

Madam Temporary Chairperson, I ask Sen. Outa to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 13-

Removal of

chairperson

or a member  
of the Board.

**13I.** A chairperson or a member appointed under section 13D(1)(f) and (g) may be removed from office for—

- (a) any violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the chairperson's or member's, as the case may be, functions or otherwise;
- (c) physical or mental incapacity to perform the functions of the office;
- (d) being absent from three consecutive meetings of Board without reasonable cause;
- (e) a failure to disclose to the Board of Directors any interest in any contract or matter before the Board;
- (f) being convicted of a criminal offence;
- (g) incompetence; or
- (h) bankruptcy.

Madam Temporary Chairperson, I ask Sen. Mutula Kilonzo Jnr. to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Director-  
General.

**13J.** (1) The Cabinet Secretary shall, on the recommendation of the Board of Directors, appoint a Director-General who shall be the chief executive of the Authority and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

(2) The Cabinet Secretary shall appoint the Director-General from a list of three names of persons submitted by the Board of Directors after a competitive selection process.

(3) A person shall be qualified for appointment as the Director-General if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya in the fields of—
  - (i) petroleum geosciences;
  - (ii) petroleum engineering;
  - (iii) petroleum economics;
  - (iv) finance; or
  - (v) petroleum law.
- (c) has at least seven years relevant professional experience;
- (d) is a member in good standing of the relevance professional association: and
- (e) meets the requirements set out in Chapter Six of the Constitution.



(4) The Director-General shall hold office for a term of three years and shall be eligible for reappointment for one further term of three years.

(5) The Director-General shall be the secretary to the Board of Directors but shall have no right to vote at any meetings of the Board of Directors.

Madam Temporary Chairperson, I ask Sen. Madzayo to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Removal from  
office of  
Director-  
General.

**13K.** (1) The Cabinet Secretary may remove the Director-General from office in accordance with the terms and conditions of service only for—

- (a) inability to perform the functions of office due to physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution or any other law;
- (e) bankruptcy; or
- (f) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Cabinet Secretary removes the Director General from office, the Director-General shall be given—

- (a) sufficient notice of the allegations made against him or her to the Authority; and
- (b) an opportunity to present his defence against the allegations.

Madam Temporary Chairperson, I ask Sen. Madzayo to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Staff of the  
Authority.

**13L.** The Authority may, in consultation with the Public Service Commission, appoint such staff as it may require for the proper discharge of the functions of the Authority under this Act, and on such terms and conditions of service as the Board, on the recommendation of the Salaries and Remuneration Commission, may determine.

Madam Temporary Chairperson, I ask Sen. Were to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-  
 THAT the Bill be amended by inserting the following new clause  
 immediately after Clause 13-

Remuneration  
 of the  
 members of  
 the Board

**13M.** The Authority shall pay its members such remuneration, fees or allowances for expenses as may be determined by the Salaries and Remuneration Commission.

Madam Temporary Chairperson, I ask Sen. Were to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-  
 THAT the Bill be amended by inserting the following new clause  
 immediately after Clause 13-

Protection  
 from personal  
 liability.

**13N.** (1) Any matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall not, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for an injury to that person, that person's property or any of the persons' interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

Madam Temporary Chairperson, I ask Sen. Were to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-  
 THAT the Bill be amended by inserting the following new clause  
 immediately after Clause 13-

Funds of  
 The Authority.

**13O.** (1) The funds of the Authority shall consist of—  
 (a) such moneys as may, from time to time, be appropriated by the National Assembly for that purpose;  
 (b) levies, not exceeding one half of a percent on the sales of petroleum products;  
 (c) such other moneys or assets as may accrue to or vest in the Authority in the exercise of its powers or the performance of its functions under the Act;

- (d) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;
  - (e) interest from bank deposits; and
  - (f) any revenue from other sources including loans, grants, gifts, or donations approved by the Cabinet Secretary.
- (2) All revenues generated by the Authority including levies shall be paid into the Consolidated Fund.
- (3) Any funds retained by the Authority shall make part of the funds of the Authority by way of appropriation.
- (4) Penalties are excluded from the funds of the Authority.
- (5) The Cabinet Secretary responsible for matters relating to petroleum may make Regulations to provide for a levy prescribing—
- (a) the amount in Kenya Shillings payable per cubic metre of crude oil;
  - (b) the amount of Kenya Shillings payable per one thousand cubic metre of marketable natural gas;
  - (c) when the relevant levy may be applied; and any other requirements for implementation of the levy.
- (6) There shall be paid out of the funds of the Authority, all expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

Madam Temporary Chairperson, I ask Sen. (Dr.) Musuruve to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 13-

Investment of  
funds of the  
Authority.

**13P.** (1) The Authority may invest its funds in any securities which for the time being trustees may by law invest in trust funds, or in any other securities which the Cabinet Secretary may, from time to time, approve for that purpose.

(2) The Authority may place on deposit with such a bank as it may determine, any moneys not immediately required for the purposes of the Authority.

Madam Temporary Chairperson, I ask Sen. Mutula Kilonzo Jnr. to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 13-

Financial  
year.

**13Q.** The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Madam Temporary Chairperson, I ask Sen. Mutula Kilonzo Jnr. to second.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 13-

Annual  
estimates .

**13R.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

Madam Temporary Chairperson, I ask Sen. Were to second.

**Sen. Olekina:** Madam Chairperson, I beg to move that the Bill be amended by inserting the following new clause immediately after Clause 13-

Annual Report

**13S.** The Board shall, within a period of three months after the end of each financial year, submit -

(a) to the Auditor-General, the accounts of the Authority in respect of that year together with —

(i) a statement of the income and expenditure of the Authority during that year; and

(ii) a statement of the assets and liabilities of the Authority on the last day of that financial year; and

(b) to the Cabinet Secretary, an annual report in respect of that year containing-

(i) the accounts of the Authority and statements referred to under paragraph (a);

(ii) the Authority's performance indicators and any other related information;

(iii) a report on the operations of the Authority during that year; and

(iv) such other information as the Cabinet Secretary may request.

**Sen. Olekina:** I request Sen. Pareno to second.

**Sen. Pareno** seconded.

**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-  
Accounts and Audit

- 13T.** (1) The Authority shall keep or cause to be kept proper books of account in which shall be recorded all the income and liabilities, expenditure, assets, undertakings, funds, activities, contracts, transactions and any other business of the Authority.
- (2) The Authority shall ensure that all moneys received are properly brought to account, all payments out of its funds are properly made and authorized and that adequate control is maintained over its assets and liabilities in accordance with this Act and any other written law.
- (3) Within a period of three months after the end of each financial year, the Authority shall prepare annual financial statements in accordance with the provisions of section 81 of the Public Finance Management Act, and submit them to the Auditor- General or to an auditor appointed under subsection (4), for audit.
- (4) Within a period of six months after the end of the financial year, the Auditor-General shall report on the examination and audit of the accounts of the Authority, to the Authority and to the Cabinet Secretary, and in the case of an auditor appointed in accordance with Section 81 of the Public Finance Management Act, the auditor shall submit a copy of the report to the Auditor-General and the Auditor- General shall submit the report to the Authority and Cabinet Secretary.
- (5) Notwithstanding anything in this Act, the Auditor-General may submit to the Cabinet Secretary a special report on any matter incidental to his powers under this Act, and the provisions of the Public Finance Management Act, on the same issue shall apply with the necessary modifications to any report made under this section.
- (6) The fee for an auditor, other than the Auditor-General, appointed under section 81 of the Public Finance Management Act, not being a public officer, shall be determined and paid by the Authority.
- (7) The Authority shall prepare the financial statements in a form that complies with the Public Finance Management Act.

**Sen. Olekina:** I request Sen. (Dr.) Musuruve to second.

**Sen.(Dr.) Musuruve** seconded.

**Sen. Olekina: Madam Chairperson,** I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Delegation of  
powers or  
functions to  
committees or

agents **13U.** (1) The Authority may, by resolution either generally or in any particular case, delegate to any committee of the Authority or to any member, officer, employee or agent of the Authority, the exercise of any of its powers or the performance of any of its functions or duties in accordance with this

Act.

(2) A committee, officer, employee or agent of the Authority shall be appointed in writing and the instrument of appointment shall set out the term of

the appointment, the duties of the appointee, the appointee's reporting requirements, functions, authority and powers conferred on the appointee.

(3) Any instrument issued by the Authority under subsection (2) may be varied or revoked by the Authority at any time.

(4) The Authority shall pay such allowances and fees to the members of such committees or such officers, employees or agents as the Salaries and Remuneration Commission may recommend. Powers of committees or agents.

**Sen. Olekina:** I request Sen. (Dr.) Musuruve to second.

**Sen.(Dr.) Musuruve** seconded.

**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

**13V.** (1) A committee, member, officer, employee or agent appointed under section 13U may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—

(a) enter upon any premises at which any undertaking is carried out in relation to upstream petroleum operations or an offence under this Act is or is suspected to have been committed;

(b) inspect and test any process, installation, works or other operation in relation to upstream petroleum operations which is or appears likely to be carried out in those premises;

(c) be accompanied by a police officer if there is a reason to believe that any serious obstruction may occur in relation to an inspection or inquiry under this section;

(d) require from any person the production of any book, notice, record, list or other document which appears to the committee, officer, employee or agent to have relevance to the inspection or inquiry, which is in the possession or custody or under the control of that person or of any other person on that committee's or agent's behalf;

(e) examine and copy any part of any book, notice, record, list or other document which appears to have relevance to the inspections or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as he

believes may afford evidence of an offence under this Act;

(f) require information relevant to the committee, officer, employee or agents'

inspection or inquiry from any person whom the committee, officer, employee or agent has reasonable grounds to believe is or has been employed at any such premises or to have in that person's possession or custody or under the person's control any article referred to in this subsection; or

(g) exercise such other powers as may be necessary in connection with the inspection or inquiry and other powers of his appointment under section 13U.

(2) A member of a committee of the Authority, officer, employee or agent entering upon any premises under this section may be accompanied by such persons and may enter with such equipment as may be necessary.

(3) Where—

(a) the premises to which this section relates are unoccupied;

(b) the owner, occupier or person in charge thereof is temporarily absent; or

(c) entry thereon is refused or obstructed, the member of the committee, officer, employee or agent may use such force as is reasonably necessary to effect entry:

Provided that in the case of an entry under paragraph (a) or (b)—

(i) reasonable steps shall be taken prior to entry by the member of the committee, officer, employee or agent to find the owner, occupier or person in charge of the premises to be entered; and

(ii) the premises shall be left by the member of the committee, officer, employee or agent as effectively secured against trespassers as they were found.

(4) Where it is suspected that an undertaking is being carried contrary to any licence, permit or regulations issued under this Act, an officer or agent of the Authority may, in the course of his or her duty, lock up, seal, mark or otherwise secure—

(a) any building, room, place, receptacle or item of plant;

(b) any goods or materials in a factory; and

(c) aircraft, vessels, vehicles or containers.

(5) A person who, unless authorized by the Authority or any other competent authority, opens, breaks, alters or in any way interferes with a lock, seal, mark or other fastening placed by a member of a committee, officer, employee or agent in accordance with this section on any building, room, place, receptacle, item of plant, goods, or materials, commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both .

(6) A person who resists, hinders or obstructs any committee, officer, employee or agent acting in the course of the committee's or agent's duty under this section or who wilfully fails to comply with any requirements

lawfully made thereunder commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings for each day or part thereof that the obstruction occurs. How Authority shall exercise its powers and functions.

**Sen. Olekina:** I request Sen. Outa to second.

**Sen. Outa** seconded.

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**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

**13W.** The Authority shall, in the exercise of its powers and performance of its functions—

(a) promote efficiency, economy and safety in the conduct of upstream petroleum operations;

(b) ensure that contractors carry out the upstream petroleum operations for which they are licensed to perform;

(c) promote competition in upstream petroleum operations to ensure the optimal performance of industry players;

(d) advocate and ensure transparency between upstream petroleum industry and the Authority;

(e) ensure fair balance in the interests of the National Government and other stakeholders in the upstream petroleum industry; and ensure full compliance of the petroleum agreement by all parties to the agreement.

**Sen. Olekina:** I request Sen. (Dr.) Zani to second.

**Sen. (Dr.) Zani** seconded.

**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

**13X.** The Authority shall, to the greatest extent possible and in accordance with this Act, consult and co-operate with other ministries, departments and agencies of the National Government in promoting effective upstream petroleum operations National Data Centre.

**Sen. Olekina:** I request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.** seconded.

*New Clause 13 Y*

**Sen. Olekina:** Madam Chairperson, I beg to move-



THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

<sup>National Data Centre</sup>**13Y.** The Authority shall establish a national data centre which shall be used for the storage, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations. Decisions of the Authority.

**Sen. Olekina:** I request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.** seconded.

*(Question of the New Clause 13Y proposed)*

*(New Clause 13Y read a First Time)*

*(Question that New Clause 13Y  
be read a Second Time proposed)*

*Question, that New Clause 13Y be part  
of the Bill proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*New Clause 13 Z*

**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

<sup>Decisions of the Authority</sup>**13Z.** (1) Where the Authority is required to make a decision under this Act, the Authority shall make that decision within sixty days of obtaining all the documents or information required under this Act or hearing all parties, where necessary, in relation to the decision.

(2) Where the Authority fails to make a decision within the period provided under this section (1), an affected party may apply to the Tribunal for the matter to be considered and determined by the Tribunal.

(3) The decision of the Authority shall be in writing and shall include the reasons for the decision.

(4) A decision of the Authority shall be served upon all relevant parties within seven days of making the decision and may be published in the Gazette as may be prescribed by Regulations.

(5) Where a decision of the Authority requires a party to do or refrain from doing something, that party shall comply with the decision of the Authority within the time prescribed in the decision. Appeal against decision of the Authority.

**Sen. Olekina:** I request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.** seconded.

**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

Appeal against

decision of the Authority

**13AA.** A party aggrieved by a decision of the Authority may appeal to the Tribunal within sixty days of receipt of the decision: Provided that the Tribunal may hear an appeal out of time if it is satisfied that there is sufficient cause.

The common seal of the Authority.

**Sen. Olekina:** I request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.** seconded.

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**Sen. Olekina:** Madam Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after Clause 13-

The common seal of

the Authority.

**13BB.** (1) The common seal of the Authority shall be kept in such custody as the Authority may direct and shall not be used except on the direction of the Board.

(3) The common seal of the Authority when affixed on a document and duly authenticated shall be judicially and officially noticed unless and until the contrary is proved, and any necessary order or authorization by the

Authority under this section shall be presumed to have been duly given.

(3) The Chairperson and Director-General shall authenticate the affixing of the common seal of the Authority by the signature of the Chairperson and the Director-General:

Provided that the Authority shall, in the absence of the Chairperson, nominate one member to authenticate the seal on behalf of the Chairperson.

(4) The Chairperson and Director-General may authenticate, by their signatures—

(a) any document not required by law to be made under seal and

(b) all decisions of the Board.

**Sen. Olekina:** I request Sen. Were to second.

**Sen. Were** seconded.

**Sen. Olekina:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new Schedule immediately before the Schedule –

**FIRST SCHEDULE (s. 13F)**

**CONDUCT OF MEETINGS OF THE BOARD**

1. (1) The Board shall meet as often as necessary for the transaction of business but shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.

(2) The Chairperson shall preside at every meeting of the Board at which the chairperson is present but in the absence of the chairperson, the members of the Board present shall appoint a member from among their number to preside at that meeting.

(3) The Chairperson or, in the absence of the chairperson a member of the Board appointed by the Board to act in the place of the chairperson, may at any time call a special meeting upon a written request by a majority of the members.

2. Unless five members otherwise agree, at least seven days' written notice of every meeting of the Board shall be given to every member of the Board.

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members of the Board present and in the case of an equality of votes, the chairperson or member presiding shall have a casting vote.

4. Any member of the Board present at a meeting of the Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the Committee, as the case may be, passes a resolution, which in the opinion of that member is contrary to his advice or to law.

5. (1) A member of the Board who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board and shall not be present during any deliberations on the matter.

(2) A disclosure of interest made by a member of the Board under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall in respect of that matter—

(a) remove himself or herself during any deliberations on the matter;

(b) not participate in any decision taken by the Board on the matter; and

(c) refrain from attempting to influence or coerce any other member to decide in his favour.

6. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairperson or the member presiding at the meeting.

7. (1) Subject to subsection (2), five members of the Board shall constitute a quorum for the conduct of business at any meeting of the Board.

(2) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under section 26, the other members present may, if they deem it expedient so to do-

(a) postpone the consideration of that matter until there is a quorum; or

(b) proceed to consider and decide the matter as if there was quorum.

I request Sen. Pareno to second.

**Sen. Pareno:** Madam Temporary Chairperson, I second.

- (1) Sen. Judith Pareno, MP;
- (2) Sen. Mutinda Kabaka, MP;
- (3) Sen. Okong'o Omogeni, MP; and,
- (4) Sen. Mohamed Faki, MP.

Mr. Temporary Speaker, Sir, these are very important committees of this House. First of all, the Senate County Public Accounts and Investments Committee performs a very important duty on behalf of this House in terms of oversight of counties and county governments. We want to note with appreciation the work they did in the last one year in terms of looking at accounts. There was a lot of backlog by the time they were being appointed to this Committee and the Senate expressed the desire to assist the Committee to expeditiously dispense their work.

There have been a lot of concerns, particularly on how our money is being used in the counties. To quote the Senate Minority Leader when he spoke here the day before yesterday, there were concerns that we have been reduced to morticians. He also said this in the Senate Business Committee where I was with him. He said that what we do is just postmortem, yet we can avert the problems that are happening in our counties if we apply ourselves innovatively to other mechanisms of dealing with oversight, in fact, from the budgeting stage.

I, therefore, agree with those who said that we need to look at the work of the Controller of Budget as part of our oversight responsibility. We need to look at what exactly is being budgeted in our counties and whether our counties are following those budgets. When they do supplementary budgets, what does that money go to? We must develop interest with what is happening in our counties and not just the populist kind of criticism of what is happening in our counties. We must be meticulous in what we do; we must work with professionals who can assist us to interrogate the budgets of our counties.

The Controller of Budget should be a friend of the Senate and we should work closely with their representatives in the counties.

Mr. Temporary Speaker, Sir, now that we have the report of the Controller of Budget that I tabled in the House earlier, we must look at it with a keen eye. We need to find out to what extent they are supported financially, to what extent the Office of Controller of Budget is decentralized and available in our counties and how we can interrogate those budgets.

Secondly, we also need to ensure that all budgets of counties. I remember that Sen. Wamatangi, in a conversation I had with him, was saying that we need to propose an amendment to the law to ensure that when the budgets are passed in our counties, they are tabled in this House not just with the Controller of Budget. This should be a requirement of law under the Public Finance Management Act. We should make an amendment to the Public Finance Management Act so that those budgets are deposited officially within the Senate. In fact, it will now be the work of the Committee on Finance and Budget---

As the County Public Accounts and Investments Committee is looking at the accounts, the Committee on Finance and Budget should be looking at all the budgets of all counties. This should be done with the assistance of the Senator of each county who will be able to point out the issues that are being raised by citizens in the counties. If we act innovatively, we will deal with the questions that many Kenyans are having about misappropriation of public funds in our counties.

Mr. Temporary Speaker, Sir, I have heard many people, including my own Governor, complaining about the little amount of money that they receive in the counties. My Governor even went to the extent of saying that perhaps he wants Elgeyo-Marakwet County to be managed from Nairobi. Of course, that is preposterous, considering that we should be the ones who are defending devolution. Elgeyo-Marakwet County is better today because of the resources that were put in that county. If those funds were managed well, it would have been far much better.

I reckon that Elgeyo-Marakwet County is among the last counties receiving money, but it is not the last one. I have gone to Lamu County, and I have seen that devolution has made a difference there. I went to Tana River County with the Committee on Devolution, and it has changed. If you go to Hola Town itself, the infrastructure has changed, including development and decision making. You cannot compare Tana River County now and six years ago when we did not have devolution.

Mr. Temporary Speaker, Sir, with the least amount of money that Isiolo County gets, there is still great improvement and change there. What if these counties were taking care of the resources?

The Bible says-

“To whom much is given, much is expected.”

It also says in the parable of talents that he who had the least of the talents and did not put it to use because he felt that it was too little, even that little that he had was robbed from him and given to the one who had more and multiplied it. Therefore, our counties must first demonstrate that whatever little they get – in conformation with the formula that we have, which takes regard to the land that we have and the population of a county – they must demonstrate that they innovatively think of how to use that money to

change the lives of the people of Kenya. This is so that when we say we want to be added more, we are celebrating that little that they have done.

Mr. Temporary Speaker, Sir, our counties should not be centres of lamentation. That is why the County Public Accounts and Investments Committee (CPAIC), particularly has a responsibility to look at the issues that are being raised by Kenyans. We have agreed that soon, in less than one month, we should have sat as a Senate to think through accountability and how to actually become proactive on matters of accountability so that these counties can be assisted to move forward.

Therefore, other than the County Public Accounts and Investments Committee--- First of all, even before I go there, I just want to say, for the comfort of the people of Elgeyo-Marakwet County, that Elgeyo-Marakwet is not going to be wound up or managed from Nairobi. It is going to continue thriving and use the resources which, in the last six years it has received more than Kshs18 billion. This amount of money would never have landed in Elgeyo-Marakwet County had we continued with a centralized system of Government.

Even as we work and negotiate in this House, because the decision as to how much will go to which county once the division of revenue has been done, is through a formula that we negotiate in this House. We will all be equitable in the manner in which we are going to allocate money. We are not going to rob Nairobi because of a higher population and say that we will put more money in Isiolo County because of their smaller population. We will use what the Constitution talks about; equitable allocation. We will interrogate the formulas that come to this House so well to ensure that everybody gets a fair share of what they get.

Once that is done, Elgeyo-Marakwet County must continue performing its role as a county. In the next 100 years, it must be said that the leaders who were there were more focused on developing the area. I want to assure the people of Elgeyo-Marakwet County that even if someone wished to close the county, they would be unable to do so because the Constitution protects our counties. Even in the future when we want to amend the Constitution, it would be so difficult to do away with our counties because the people of Kenya have already fallen in love with their counties.

Even when they have fallen apart with their leaders, they still love their counties. It must be distinguished that poverty of ideas and poverty of leadership does not translate into punishing of counties. What Elgeyo-Marakwet County and many counties in this country lack is not the poverty of money; it is the poverty of ideas and leadership. As a nation, we must become innovative.

Mr. Temporary Speaker, Sir, even on the question of nurses, when people talk and say that the wage bill is high, the solution is not in making noise. The solution is in interrogating the quality of staff that we have in our counties and do the necessary thing. Those who are not serving should be able to leave. How is it possible that we are complaining of increased wage bill in our counties, yet county executives continue to hire people to their offices; continue to have as many vehicles as they wish and have advisers who have absolutely no value addition to the counties?

For instance, I saw in another county that a former Member of Parliament (MP) has been appointed in one of the counties in the western region to become an adviser of the Governor on emerging issues. Emerging issues are just nebulous concepts that you

cannot even tell what is an emerging issue. You do not know whether it is about going to space, the use of internet or what it is all about.

Mr. Temporary Speaker, Sir, we should prudently channel our money to the human resource. I have no problem if we will pay a higher wage bill in our counties so that universal health can be achieved. There is no way you can achieve universal health without a wage bill. You can talk about other sectors that you want to develop, but in the health sector, in my own opinion, is having the necessary---

In my opinion, development in the health sector has the necessary doctors, nurses and health workers that are going to provide services. In fact, community health workers who are going to avert situations where you must take people to hospital and pay a lot of money while receiving treatment because you have good public officers or community health workers that are going to assist people in the counties live a healthy life.

So, if that is going to be the highest wage bill in our counties, I have no problem, but that wage bill should not be people who are not going to add value to a service that is going to be given in the counties or people who are going to be hired to deal with political expediency.

Mr. Temporary Speaker, Sir, I have directly told our governors and not through proxy, that they must be courageous enough to hire competent people to run the county. I do not know - especially governors serving second terms - what is it they fear that they cannot sack County Executive Committee Members (CEC) who are incompetent; who cannot think, who cannot work? We also have chief officers who are just loitering.

I can tell you that many Senators we have canvassed with here will tell you that in their counties, people sit in offices as political reward. However, if you think about their addition to the economy of their counties, it is zero. In the counties we are rewarding incompetent people with jobs.

We keep telling the President to sack national Government officers who are not performing. In the same manner, our governors must gather the courage to think about the future of their legacies and not just rewarding incompetent people with jobs. They can reward them in other ways but in terms of service delivery to our counties, we must tell our governors to be courageous, particularly second term governors.

I see many senators who are here, their governors are serving second terms. We must push them because they can be lacklustre. We must push them to ensure that services are still being given to our people and that the county governments are not going to be reward centres where people are being rewarded without service being offered.

I hope these are some of the things we will audit seriously when we go for the Devolution Conference next month because the conference has become deceptive as we progress to new ideas, but those ideas must be seen to be implemented. The same way the Senate Committee of Delegated Legislation does a good job to look at delegated legislation from the national Government and sometimes proposals from the Council of Governors.

All these people; men and women, both in the two committee are competent enough and they have done a good job. However, I want to request our colleagues - because this is a sessional committee and I can see we have retained these people for two years consecutively - they must be courageous enough to perform their work this year. They must complete that which they think and have a dream of in that committee and be

ready to give way for other people to serve in those committees, so that they do not become part of fixtures to the committee.

Mr. Temporary Speaker, Sir, some of these committees are so competitive and I do not know why people want to be there. I think they are really passionate about serving. That is the only motive I can imagine. But there are many Senators who come to us; they go to the Senate Minority Leader and come to me and they want to serve in this committee. I want to urge my colleagues who are here - I have seen two of them who will serve in this committee - that you must be ready to give way for other persons to give it a try without feeling like---

I do not know where newspapers get these stories that if you change people in sessional committees, then it is a punishment because sessional committees are meant to be changed every year, but for continuity and for the good work that these committees have been doing, they can do this for this year but next year, if the Members insist that we want other people to give a try, learn and contribute to this committee, they must be ready to give way to other Members of the committee.

It must not be interpreted to mean that anybody is being punished when you do not serve in any sessional committee. The opportunity will always come for you to do what you need to do.

I beg to move and as the Senate Minority Leader to second.

**The Temporary Speaker** (Sen. Lelegwe): The Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Thank you. Mr. Temporary Speaker, Sir. I intend to be brief since this is one of the Procedural Motions that must take place at the beginning of every Session.

As the Senate Majority Leader has pointed out, sessional committees are appointed at the beginning of every session. They are not standing committees appointed every 5 years. There is need for institutional memory and instability.

It may be necessary in the sessional committees to appoint those who have served in those committees so that there is some synergy and stability in the work that goes on in that committee. Indeed, these sessional committees, and particularly the County Public Accounts and Investments Committee (CPAIC), do their work on the basis of performance of counties and the use of funds which have been devolved. Therefore, if you keep on changing the committees without institutional memory or some stability, their work may not be rendered effectively.

Having said that, I want to say that CPAIC is so critical; it is one of the committees that I can say, directly draws from Article 96 of the Constitution in terms of oversight. Oversight is a very important role. In the past, when people thought about Parliament, they thought about legislation, and it being the instrument through which revenue is raised, taxation measures are approved and audit undertaken. However, oversight must be a continuous and permanent feature of governance, especially governance that takes place in the modern age.

Sometimes there is something which happens in a flash and if you do not get abreast with it in good time, it may affect a nation for years. I would like to encourage CPAIC Members to ensure that they are on their toes all the time and do not wait for reports from the Auditor-General (AG), but develop mechanisms to have a way of overlooking counties and particularly the Executive and the county assemblies so that



members of the public feel that these institution formed under the structure of Government that was proclaimed by this Constitution, works for the people.

Mr. Temporary Speaker Sir, if you look at the principles and objectives of the devolved government, it is to provide services. Although we may be talking about the right to participation and democratic governance as being important pillars in devolution, the most important aspect of devolution is to provide services.

The way some counties are run and the way some governors behave, it is as if counties must necessarily be a replication or a reflection of the national government. I think that should not be the case. The formulation of county governments must be service oriented. The other day I saw one of the governors - I thought this could only happen with respect to Baringo County - with an Aide-de-camp.

*(Laughter)*

These are exhibitional trappings of power that are not in sync with devolution. A governor should be a person that should ordinarily appear in homes, be in fellowship with communities; churches, without showing the trappings of power in huge convoys. I think one the key failures we have experienced in the first 6 years or so of devolution, is that governors want those institutions to be reflected in the manner in which the presidency operates.

If you read the Constitution, the Presidency is a representation of many other things which the county governors do not qualify to do. Therefore, I hope this committees should be able to look at the way governors and county governments operate. Are they people-friendly or are they are just another institution through which an imperial structure which we did away with under this Constitution has been retained at the county?

I urge the County Public Accounts and Investment Committee (CPAIC) where Sen. M. Kajwang is the Chair and Sen. Olekina is a Member that, counties, just like the national Government, must operate within the Public Finance Management Act. The Act stipulates how county funds should be managed and county assemblies have a role. However, most of the time, there are constant violations of the Act. These things only come to light when there is a big problem not just in the loss of funds, but in the way finances of the counties are managed.

We should have a way of tracking how decisions are made in the area of procurement which falls, to some extent, within the domain of the management of county finances. Therefore, I hope that we do not just look at the reports from the Auditor-General who is an instrumentality of Parliament; the National Assembly and the Senate. He acts as an agent of these two institutions to enable us to undertake or play the role that is enumerated by the Constitution. Therefore, we should go beyond the report of the Auditor-General and look at the operations of counties.

It is my hope that, this time round, CPAIC will look for innovative ways to ensure that reports come to us within reasonable time as contemplated by the Constitution. In any case, not beyond 12 months after every financial year that is being audited. I know it is a toll order but I have been in discussion with Members of the Committee including the previous Chairman, who hopefully, will continue as Chairman. They are now in a position to come up with a better way of looking at those accounts on a timely basis so that we do not discuss reports of these accounts when it is already too late.

Mr. Temporary Speaker, Sir, secondly, the Committee on Delegated Legislation is a very important Committee. There are many laws that are made in this country through instruments by way of delegation. Delegation of the powers of Parliament to enact laws is envisaged under the Constitution, that Parliament can allow other institutions to make laws or regulations. However, if we are not careful, we may give many institutions the opportunity to make regulations that will affect the people or the way we run Government. Therefore, it is important that the Committee on Delegated Legislation is active so that we receive regular reports from them to ensure that even when some of these instruments have not been tabled before Parliament, they go out there and make sure that they are presented before the Senate.

Therefore, I support and second this Motion and hope that the Committee will start its work.

Mr. Temporary Speaker, Sir, I was told by Sen. M. Kajwang that we should be in a position to enable this Committee to meet even during the long recess in December because the Public Accounts Committee (PAC) in the National Assembly was working over the Christmas period yet our Committee could not be able to hold sittings. This should be looked into so that they have optimal time to consider these matters.

with those remarks, I beg to support.

*(Question proposed)*

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to the Motion that approves Senators to serve in the sessional Committees, that is CPAIC and Committee on Delegated Legislation.

The CPAIC is a very important Committee which helps to promote and strengthen devolution which has changed our counties for the better. However, that change comes with responsibility. Therefore, county governments need to know that they are accountable to the people that are represented by Senators who are here. Therefore, when they are called upon by this Committee, they are not called to be grilled as we are normally told; they are given a hearing so that they can explain how the funds that the Senate sends to them are utilised.

Transparency and accountability are tenets of good governance and we cannot run away from them because we are a country of laws and that follows proper governance. Therefore, these tenets must be upheld.

County Executive Committee (CEC) Members also have a responsibility to do their work. They should know that it is not just the governor who will be questioned by the CPAIC, they too have a responsibility. As the governor is called to this Committee, they hold the biggest responsibility because they were given that role by the governor.

I would also like us to assist Members of County Assembly (MCAs) who perform the primary oversight role of county governments so that by the time the work comes to the Senate through CPAIC, it has already been handled or looked at by county assemblies because they play the primary oversight role.

The membership of the Committee on Delegated Legislation is apt and up to the job. I would like them to look at the regulations of laws that govern, especially the electoral process and political parties. We have various regulations that are needed to help us run political parties in the right way. Those regulations need to be worked on. I

would urge the membership to this Committee to go out there and look for regulations that govern the political and electoral process in this country.

I, therefore, support the membership to these committees. They are people who are up to the job and I wish them the best in the coming year.

Mr. Temporary Speaker, Sir, I support.

**The Temporary Speaker** (Sen. Lelegwe): Sen. Seneta, proceed.

**Sen. Seneta:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to support this particular Motion. I want to congratulate all the Members of this Committee. I urge them to move with speed and look into the issues of finances in terms of allocation, expenditure and revenue collections in our counties.

Mr. Temporary Speaker, Sir, recently, we had an auditor's report that came out during our recess that was discouraging to look at. This is because so many counties have spent a lot of money on travelling allowances, entertainment and salaries. We need to look at how we can reduce this expenditure and allocate more resources to development.

The Committee needs to advise county governments on employment. Every day, we see adverts for employment in county governments. Do we really need this much workforce and do we have an allocation for it? Do we even have skilled workforce in our counties? Are we employing people who have no much work to do in the counties?" When we employ people who are idle and have no skills, we are promoting corruption. We should not employ people who will only be interested in tenders and stealing because they have no much work to do.

I would urge my able Chairman, who is seated with us here, together with other Committee Members to relook at the recent General-Auditor's report. We have faith in this membership. These are people we have worked with and they have a lot of concern for counties. I wish them all the best as they start their work.

Mr. Temporary Speaker, Sir, I support.

**Sen. Nyamunga:** Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity also to congratulate the Members who are now being appointed for the second time to manage the two committees; that is, the CPAIC and Committee on Delegated Legislation.

Mr. Temporary Speaker, Sir, it is clear that the role of auditors all over the world, I being one of them, is to verify and certify the accounts. The certified accounts are meant to be given to the management, or may be in this case, county governments to help them make further decisions. The problem that we have had so far in our country is the lateness in the delivery of these reports. Last year, we were dealing with the Financial Year 2013/2014 accounts. We were addressing ourselves to history.

The reports are supposed to give the management or the county governments an opportunity to make better decisions in the management of the resources. So far, we are getting of age in terms of devolution. Right now, we are in the sixth year of devolution. We, as a nation, we are educated. We understand what devolution is all about. We know what should be done and how best we can deliver services to our people. If we take so long to give these reports, it means that we will hide a lot.

The example that I can give is the report that we had on land in Ruaraka. It was a serious thing. We saw the way people behaved in this House. If at this age and stage in life, a Committee can be subjected to or accused of corruption, then I do not know where we are heading as a country. Even in the case where everybody knows that something

went wrong, we shot the report down without a wink, knowing very well that we are part and parcel of this corruption.

I want to believe that these Members who have been nominated to the same Committees are above reproach. There comes a time in life where self does not become first. We have to put ourselves behind for us to perform and to be counted in the delivery of services. Therefore, this is a very big responsibility that we are giving the two Committees and more so, the CPAIC. We need people who are above reproach and will go beyond the timing. To me, time is very important.

Mr. Temporary Speaker, Sir, last time it was suggested that the numbers be increased, so that they can divide work in order for us to move faster. That has not been done here because the number remains the same. I do not know the speed at which we will move at, but it is important that we give reports on time. We also need to be above reproach, because the counties have been entrusted with a lot of money. It should, therefore, add value to our people.

People should not live with the same problems. Talk of health or agriculture; they still have the same problems. We do not know if there is seriousness in the way our resources are being utilized. We have given a lot of money which we should also give seriousness when it comes to the accountability of the same.

Above all, Kenyans should feel better than when the units were not devolved and everything was centralized. There were a lot of complaints. Now everybody has been given a government at the county level. Let the people feel the difference. It will be very unfortunate if we sit here, do the same things in the same way and expect to get better results. It cannot be. We need to have a changed attitude. We must have our people at heart.

We must deliver services and exercise prudent use of resources. These resources come from the same people and fall in the hands of few people. The gap that we have between the rich and the poor is expanding; it is not narrowing. We need to narrow the gap between the rich and the poor by doing the right thing and using money properly. If you are given the responsibility to be accountable, please, be and let the people feel that their representatives they elected or voted for are doing a good job.

I support the colleagues who have been nominated. However, let it be very clear that it is work, first of all. Secondly, it is about transparency and letting our people feel the difference. If something is wrong, let us say so and correct it. That is why we should have auditing.

Mr. Temporary Speaker, Sir, auditing should not there for the sake of it. It is meant to help us make better decisions and verify where the problems are so that we correct them and move on.

Mr. Temporary Speaker, Sir, I thank you for the opportunity.

I support.

**The Temporary Speaker** (Sen. Lelegwe): Let us have. Sen. M Kajwang.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I find myself in a difficult position because my name is listed as one of the Senators who have been proposed to sit in the CPAIC. However, having risen to talk to Motion, I have no other choice, but to support it because anything short of that would have meant that I wish my name to be expunged from that list.

I have had the privileged of serving in this Committee in the last Session and the greater privilege of chairing it.

Mr. Temporary Speaker, Sir, I am privileged that the team that I served with in the previous Session, is still the same that we are going to serve with next Session if this House approves the Motion. It cannot get any better. It is a team that has been dedicated and put in a lot of hours. In the last Session, we reported to this House that the Committee had a total of 94 sittings.

However, I will not want to get into what we have achieved or the challenges that we faced. This is because in September, 2018 when the House met in Eldoret in Uasin Gishu County, I presented to the Senate Business Committee (SBC) the achievements and challenges that Committee had registered. On 4<sup>th</sup> of December, 2018 in this House, I presented a report on the achievements and challenges of the Committee.

Mr. Temporary Speaker, Sir, you recall that on 4<sup>th</sup> of December, 2018, the Speaker ruled that the report that I has submitted ought to be have been tabled in the House. I assure the Chair that it shall be tabled in the House as directed by the Speaker.

Further, the Speaker ruled that the Committee should hold further discussions with the Senate Business Committee (SBC) to see better ways of streamlining and fast tracking the scrutiny and reporting to the Senate. I assure the Chair that it will happen.

Finally, I am excited that we seem to be putting in place a proper framework for monitoring and evaluation. Audits by their nature are post-mortems. The duty and mandate of the CPAIC as captured in the Standing Orders is postmortem in nature. If we integrate a monitoring and evaluation framework and do it properly, we will be able to respond and deal with the issues that are current and alive.

I congratulate and support the Senators who had been nominated to sit in the Committee on Delegated Legislation.

Mr. Temporary Speaker, Sir, I urge the Members of this Committee to guide this House appropriately, so that no single statutory instrument that touches on county governments escapes the scrutiny of the Senate. This is because in the last Session and in the past Parliaments, we have seen a situation where it is believed that all statutory instruments should be treated by the National Assembly. We need to assert ourselves because it is inconceivable to think of any statutory instrument or legislation that will not impact on counties or people living there.

I support.

**Sen. Omogeni:** Mr. Temporary Speaker, Sir, I also rise in support of the Motion which is before the House on the membership of the Senate CPAIC.

This Committee does a very important role in terms of overseeing the expenditure of the money that we send to our counties.

I congratulate the leadership for having chosen to retain the Members who were serving in the Committee last Session at least for purposes of institutional memory and continuity. I challenge the Members who are serving in the Committee to be innovative and pragmatic.

Corruption is a white collar crime. There will always be effort and attempts to ensure that people who steal and embezzle public money that is meant for development, that they hide their tracks. However, we must be innovative. I am not a Member of the CPAIC, but those who are privileged to serve in it must be custodians of the public money that we send to our counties.

Mr. Temporary Speaker, Sir, the people who enacted the Kenya Constitution in 2010, what they had in mind is transformation of the lives of the people who live in the counties. Some of the most key functions were devolved, including health. However, we find cases where even medicine that is meant to be supplied to hospitals is sold to private business people. It was saddening to see what I saw in Machakos the other day. The Governor of Machakos, Dr. Alfred Mutua was acting helpless when he was raiding a chemist that is right opposite the county headquarters. This is something that is replicated virtually in all counties.

Unless we send a very strong message to people who are in the county governments that it is painful and it will not be beneficial to embezzle money that is meant to provide services to *wananchi*, there will be a state of hopelessness. Most of us who go to counties, people look at the Senators as the only people they can trust to protect public resources. It will be very unfortunate and almost a disaster, if we lose that faith and confidence that we enjoy from the people we serve.

I want to urge Members of this Committee to live up to the expectations of our people. We want to see blood, where money is being lost. Where we are having ghost projects we might bring these things to the attention of the people we serve. I hope we will be empowered or well-resourced as Senators to undertake our role of oversight. I hope that we will shift our gear from just sitting in Nairobi and going through the reports by the Auditor-General to extend these sessions to our counties.

Most of the queries that are raised by the Auditor-General are things we can verify by making physical visit to our counties. I sat in the session that grilled my Governor from Nyamira. I remember we made an undertaking to the people of Nyamira that come this new session that we will be able to physically visit Nyamira County and make an assessment on the projects where the Auditor-General has raised queries. These queries relate to the services of people from that particular county. If we just sit in Nairobi and file our reports, we will never have impact.

I hope that the Members who are very able, who have been nominated and privileged to serve in this Committee will put our governors and the people who serve in our counties to account. We, as Senators, will continue to be alert in terms of overlooking our governors. We will be keen to see how they spend resources that are sent to the counties.

Mr. Temporary Speaker, Sir, with those remarks I support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Samson Ongeru

**Sen. (Prof.) Ongeru:** Thank you, Mr. Temporary Speaker, Sir. Let me also add my voice. I am a Member of that Committee. From the experiences that we have had in serving the last CPAIC, it is quite a thankless job as it were in many respects because you spend many hours being able to interrogate issues that may have happened some five, six, seven years ago and small of a postmortem exercise rather than the ant-mortem exercise itself.

We are all mandated by the Constitution to oversight the performances and the dealings of county assemblies and the county government. We are to look at what they are doing and how they are functioning in the various aspects, especially the public finance management ethos. If I had a way, I would suggest that we have an *ad hoc* Committee at some stage so as to be up to date with the issues that are outstanding in terms of audit. We can be split into various groups that would go to various counties so as

to update the auditing process and bring it up to speed in order for us to discuss the audit reports that directly affect the incumbency; those who are in power. You can only interrogate the services of those in power.

The idea of monitoring and evaluation Committee and implementation Committee would be a useful addition to speed up some of these things. We could also convert, if the Senate Majority Leader and the Senate Minority Leader are in agreement, the whole Senate into an *ad hoc* Committee of auditing the report, as I said earlier, for us to bring them up to speed. Right now, we are on 2013/2014. God knows when we shall interrogate 2017 accounts. We need to be there for us to deal with current issues. I am a Member of that Committee. I cannot speak for myself, except to accept the honour bestowed upon us to serve in that Committee and to serve diligently as required by the law.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to also contribute to the Motion of approving the Senators, which includes myself, to serve in these two very important Sessional Committees. Like my former Chairperson said earlier on, I had an opportunity to sit in almost 90 sittings where we looked at voluminous documents coming from different county governments.

One thing that, this House and the general public need to understand is that as a Committee, there is very little that we can change because we cannot change what the Auditor-General has already established. The biggest problem that we have is on the issue of implementation. I would want to urge my colleagues in this House to take their time to look at the reports of the Auditor General. I saw the documents that were tabled in this House yesterday. We have about 20 reports.

We will have to sit down and look at them then come up with recommendations at the end of the day that have got to be implemented. However, we do not have an implementation Committee. We need that committee in place for us to work diligently and have the people who are in the county governments who expect us to call their governors here to explain how they spent the money satisfied. There is huge misconception out there where people expect us to call a governor at any time and have them come. I wish we could do that, but the reality is that we have a lot of backlog.

The first Committee did not do much because there was a fight between the Governors and the Senators, which eventually the Supreme Court was able to pronounce itself on. I want to thank the leadership for looking at the work that we did last year. They consequently proposed that they retain us for another year; that is a lot of honour. Everyone in this House and the public should ensure that there is fiducial responsibility. There is a lot that we can do.

That Committee last year – and I hope we will be able to do that this time around – worked on a fiduciary risk report. The report was very clear that in most county governments, the governors were not following the Public Audit Act, the Public Procurement and Disposal Act and even the Public Finance Management (PFM) Act. I, therefore, hope that this time around, as we sit here and say, “I wish that the County Public Accounts and Investments Committee (CPAIC) can do their job faster;” it behoves all of us, as Senators, to look at the Auditor-General’s Report.

There is a lot of confusion between the Auditor-General and the Controller of Budget. I have a Bill in this House, which I hope particularly the Senate Majority Leader

will support me on. It is the County Oversight Bill. This is a Bill that was fought heavily by the governors during the public participation exercise because they do not want to be questioned on how they are using their money. We are talking about involving the Controller of Budget.

I was listening very keenly to the Senate Majority Leader when he was saying that the Controller of Budget ought to be a friend of this House; it is true. However, we ought to reduce this into legislation. We have to involve the communities out there in the budget making process. Currently, our communities are not involved in this process.

You will find that even Members of County Assemblies (MCAs) will start talking about their Ward Development Fund. We can do away with this argument of ward development funds if we involve the community in the budget making process. Consequently, each MCA will be saying: "At the end of the day, I expect that certain projects will be delivered by this county government that I serve in."

Mr. Temporary Speaker, Sir, as we move into this second term – and I hope the House will approve our nomination – we commit to expedite certain reports. I have always suggested to my colleagues that when we look at reports of Financial Years 2013/2014 and 2015/2016, there is really nothing that can change. In fact, I was suggesting that we just adopt those reports as they are, because we are looking at only the executive; we have not even looked at the assembly. Therefore, the amount of work in that Committee really requires people to be committed to sit even during recess so that we can catch up.

As I wind up, Mr. Temporary Speaker, Sir, there are three key legislations that even governors out there ought to know. Number one, the Public Audit Act is very clear. Number two, the PFM Act is very clear. Therefore, if you violate both the Public Audit Act and the PFM Act, when you come to us, the only thing we will do is to remind you of that and, of course, recommend that you face the consequences as stipulated in Article 226 of the Constitution.

With those few remarks, I beg to support.

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

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Temporary Speaker, Sir. I thank everybody for the wonderful suggestions. I am glad that particularly three Members from CPAIC are here. I believe that they have taken into consideration the many praises that they have received from the Members here and they will deliver again in their second term in this Committee. We will give them our maximum support.

We believe that they are our first point of consultation. If we want any advice on how to go about matters of oversight, this is the Committee that we will work closely with, together with the Committee on Delegated Legislation. As Sen. M. Kajwang' said, their responsibility now is to work hard in order to seize their place in interrogating delegated legislation. This is so that it does not become one way of robbing this House of its constitutional mandate by hiding behind delegated legislation to avoid matters that concern counties to be discussed under one House.

Having said that, Mr. Temporary Speaker, Sir, I want to thank everybody.

I beg to reply.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, we have determined that this Motion does not affect counties. Therefore, voting will be by voice.

I will, therefore, put the question.



*(Question put and agreed to)*

Let us go to the next Order.

### MOTION

#### APPROVAL OF THE SENATE CALENDAR FOR THE 2019 SESSION

**Sen. Kihika:** Mr. Temporary Speaker, Sir, I beg to move the following Motion-  
THAT, pursuant to Standing Order 29(1) this House approves the Senate Calendar (Regular Sessions of the Senate) for the Year 2019 (Third Session, February to December, 2019), laid on the Table of the House on, Wednesday, 13<sup>th</sup> February, 2019.

Mr. Temporary Speaker, Sir, it is important that as a House, we have a calendar so that we know what is expected of us and where we are supposed to be. This should not just be for Senators but also members of the public who are welcome here to observe our sittings and participate by bringing petitions, or whatever it is that they need to do. I think a calendar really helps as far as setting the pace on what is going on at any given time is concerned; whether we are sitting or on recess.

Looking at the Calendar, it has taken into account some of the major events that will be coming up in this Third Session of the Senate, such as the Annual Devolution Conference, which will be held in March this year. The Calendar has taken that into account.

We also have another big event, which is the Annual Legislative Summit that will be held in April. It is obvious that, that has been taken into account, so that it does not happen during sitting days, in order to allow us to participate without interrupting House business.

Mr. Temporary Speaker, Sir, in putting the Calendar together, we have taken into account the major deadlines that we have as the Senate. Those are for legislations such as the County Allocation of Revenue Bill. The sitting days take into account the deadlines, so that we are in the House when that is supposed to happen.

In addition, there is The Division of Revenue Bill, which is very important as it has guidelines and deadlines. Given the way the Calendar has been structured, we shall be able to deal with it. We should be able to deliver within the days that we have our sittings in relation to the deadlines that we have for these important pieces of legislation.

Mr. Temporary Speaker, Sir, we also have the Budget Policy Statement (BPS) and the Medium-Term Debt Strategy that will be brought to the Senate. Looking at the Calendar, it is quite obvious that dates were not just picked and pasted to be the sitting days or recess days. Much thought has been put into it, so that the business of this House will run smoothly during this Third Session of the Senate.

Therefore, this Calendar is wonderful because it is a good roadmap for the Senate and will guide us very well. It will also give enough time for Members to bring their Bills in addition to the Government Bills, Motions, Petitions and all other pieces of legislation, so that we can keep our business going.

Mr. Temporary Speaker Sir, the recess dates will also help Senators to handle one of the very critical mandates, which is to go back to their counties and engage with their electorate. With the recess dates being what they are, it gives us room, so that we are not just stuck in Nairobi.

Mr. Temporary Speaker, Sir, I beg to move and request Sen. Olekina, who is my neighbor, to second.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, I rise to second the Motion on the Calendar of the House. I got an opportunity to look at the Calendar as I sit in the Senate Business Committee and realized that it has taken into consideration the time that we will be away for the Devolution Conference, which is very important and also the Legislative Summit.

Mr. Temporary Speaker, Sir, one of the most important things that I would like to urge fellow Members is that when we are on recess, let us do all those trips, but during the time we are supposed to be here, let us come here so that we can conclude all the business that is in the House.

With those remarks, I support the Motion.

*(Question proposed)*

**Mr. Temporary Speaker** (Sen. Lelegwe): Hon. Senators, there being no request from you, I will proceed to put the question.

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Lelegwe): Next Order!

## **BILL**

### *Second Reading*

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

Hon. Senators, I defer Order No.17 to the next sitting.

*(Bill deferred)*

## **ADJOURNMENT**

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, there being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday, 19<sup>th</sup> February, 2019, at 2.30 p.m.

The Senate rose at 6.27 p.m.

