

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 13<sup>th</sup> June, 2018

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

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

#### PRAYER

#### PETITION

#### FINANCIAL SUPPORT TO WILDLIFE CONSERVANCIES

**Sen. Halake:** Mr. Speaker, Sir, I rise to table a Petition on behalf of community conservancies. The Petition to the Senate is Pursuant to Article 119 of the Constitution and Part xxv of the Senate Standing Orders concerning financial/budgetary support to wildlife conservancies for sustainable conservation and community development.

We, the undersigned citizens of the Republic of Kenya and representatives of the wildlife conservancies across the country draw the attention of the Senate to the following:-

THAT there are over 160 community and private conservancies spread across 28 counties within which most of the country's biodiversity hotspots of Northern Kenya, Maasai Mara, Amboseli, Tsavo, Mount Kenya area, Athi-Kapiti plains, Rift Valley Lakes, Western Kenya and the Coastal Belt are located.

THAT the above biodiversity hotspots are Kenya's key wildlife areas in form of savannas, grasslands, forests and wetlands, whose contribution to the national economy mainly through wildlife tourism, life supporting ecosystem services and development of local livelihoods and infrastructure has been significant.

THAT the biodiversity areas are under constant threat of depletion and extinction owing to pressure to serve the needs of increasing human population and subsequent needs, including settlements, food, industrial and infrastructural development and, more so, from effects of climate change.

THAT the loss of biodiversity poses dire risks to the nation manifested in food insecurity, loss of tourism earnings for the country, marginalization of local communities and poverty due to lost livelihoods and resource conflicts among local communities who compete for the scarce natural resources.

THAT wildlife conservancies are local initiatives that are spread across 28 counties that have developed in the past four decades through support by the Kenya Wildlife Service (KWS) and other partners out of the need to enable communities and landowners to address rapid biodiversity loss, multitude of threats to wildlife, ecosystems and rural livelihoods and are reversing the negative trends through restoration and protection of critical ecosystems and species.

THAT while National Parks and reserves account for eight per cent of conservation land, wildlife conservancies in addition account for 11 per cent of Kenya's landmass, covering an area of 6.5 million hectares, protecting over 65 per cent of the wildlife and support the country achieve Target No.11 of the Convention on Biodiversity, to which Kenya is a signatory, which requires State parties to increase their areas of protection of biodiversity to 17 per cent.

THAT following recognition that wildlife conservancies complement State protected areas by creating connectivity of habitats through migratory routes, conservancies were formally recognized by the Wildlife Conservation and Management Act of 2013.

THAT conservancies contribute to the country's development blueprint, Vision 2030 and its flagship projects, which recognizes the importance of sustainable resource use and development, especially of land, biodiversity, ecosystems and subsequently identifies use of wildlife conservancies to secure wildlife migratory routes and corridors and reclaiming them as a basis for revenue generation in the tourism sector.

THAT while State protected areas of national parks and national reserves are an essential part of conservation, a multi-pronged approach to complement them through conservancies is needed to ensure the long term conservation of biodiversity and habitats for future growth and economic development of our country.

THAT despite conservancies cushioning the above mentioned adverse conditions undermining conservation of biodiversity, sustainable land management and adaptability to climate change, they face great impediments of financial sustainability, institutional stability and functional continuity.

THAT wildlife conservancies rely on about 80 per cent of their financing from temporary and un-predictable donor funding; and 11 per cent from commercial activities such as wildlife-based tourism, livestock sales and payment for ecosystem services to support the management costs of wildlife, which require significant investment in institution building, infrastructure, operations, and program support.

THAT recognizing that heavy reliance on unpredictable and short-term donor funds makes community conservancies vulnerable and unsustainable, it is a strategic imperative, therefore, for the Government to act quickly to address the gap through implementation of targeted financial support to registered wildlife conservancies.

THAT the Constitution obligates both National and county governments to promote the conservation of habitats and species as well as ensuring sustainable utilization of the environmental and natural resources alongside the right to all citizens for a clean environment.

THAT pursuant to the Wildlife Management and Conservation Act 2013, wildlife conservation and management is devolved to owners and managers of land where

wildlife occurs and further recognized as a form of land use on community, public and private lands.

THAT further, the Wildlife Management and Conservation Act requires the government to undertake measures to facilitate community-based natural resources management practices in wildlife conservation and management.

THAT the Community Land Act, 2016, provides for recognition, protection and facilitation of community land rights, including sound administration and management of community land, including environmental and natural resources management.

THAT it is, therefore, imperative that the national Government and the county governments take deliberate measures, policy and financial, and set up the necessary legal regime to ensure that conservancies, landowners and communities involved in wildlife conservation and management are supported by both the National and county governments.

THAT the conservancies are organized through a national umbrella body at the national level known as Kenya Wildlife Conservancies Association, which is fully aware and supportive of the undersigned petition of its membership of 160 conservancies.

THAT, we have made the best efforts to have these matters addressed by the relevant authorities, all of which have not borne fruit and have failed to give a satisfactory response.

THAT none of the issues raised in this Petition are pending in any court of law, constitutional or any other legal body.

WHEREFORE your humble petitioners pray that the Senate works with the national Government to:-

(1) Enumerate a fiscal policy, legislation and strategy for financial support for wildlife conservancies so as to promote the protection and conservation of the over 65 per cent of wildlife resources that are outside state protected areas;

(2) Set up an incentives Scheme to encourage community participation in wildlife conservation and for securing identified critical wildlife migratory routes, corridors and dispersal areas for sustainable wildlife conservation and management;

(3) Set up a national wildlife conservation fund to secure national and international resources to support conservation of wildlife in Kenya; and,

(4) Approve the creation of a budget line within the county governments to enable counties promote the conservation of habitats and species as well as ensuring sustainable utilization of the environment and natural resources within respective counties.

Your petitioners will ever pray.

I 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.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. The petition by Sen. Halake is very important, but it might escape the attention of people who do not love wildlife – like me – and the conservancies around the country. For those who love wildlife, if you want to see the white rhinos, properly conserved, you will find them in

Ngerende Conservancy in the Maasai Mara. If you want to see a beautiful cheetah, you will find it in a conservancy in Mara, Laikipia and others.

Mr. Speaker, Sir, the people who have protected wildlife other than the Government include the lady who passed on recently, called Daphne Sheldrick, who had set up a conservancy of elephants in Kiboko, Kibwezi. She also managed the elephants in Maasai Mara and in Amboseli. The conservancies in Kenya possibly bring in more resources, in terms of revenue, than some of the parks because of the way they take care of their accommodation – they do it better. In fact, I have enjoyed better wildlife tourism in conservancies more than in the parks.

Mr. Speaker, Sir, there is a discrepancy. While the Act signed into law in 2013 requires that part of the resource, which is five per cent of the revenue collected by national Government, should be shared in the counties where those parks are, there are no regulations even for that purpose. Therefore, I am not surprised that conservancies are not receiving any funding from the National Government. However, when the KWS requires assistance in cases where there are human-wildlife conflicts in Isiolo, Makueni or Narok, they then call the conservancies to help them.

Therefore, this petition is important and I am not quite certain whether this will not need a legislative amendment. Fortunately, I am told that Sen. Kibiru is the Chairperson of the Committee on Tourism, Trade and Industrialization. Being a fan of tourism and golf, I am sure that he understands what I am talking about.

Mr. Speaker, Sir, the fact that 160 conservancies in Kenya do not receive any assistance from Government is a tragedy. If you have not visited a conservancy in Tanzania up the hill – I cannot remember its name off head – but it is the best conservancy in that country. It is better protected because the national Government in Tanzania shares 60 per cent of the resources with the communities. That is why parks there do not have fences; this is because of the resources shared by their national Government. The communities protect the wildlife because they realize that if there is poaching, they will lose the resources that they are getting.

This is a matter that calls for policy, legislative amendment and a little understanding around the country. I thank Sen. Halake for thinking very far for this is the best way to protect our wildlife and tourism, particularly in conservancies. I must declare my interest because we used to run a conservancy, which I hope to run in the future, where we kept beautiful lions, cheetahs and buffaloes; it is a conservancy to protect animals.

My father kept wild animals that were left by their mothers in the park to die. That was the essence of that conservancy. Therefore, if the Government is to put more effort, the idea of having 14,000 pride of lions in Tanzania and 2,500 in Kenya would be addressed effectively this way.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir, for this opportunity. I congratulate my sister for coming up with this Petition. However, let me speak from the point of view of the representative of the members of the public since we are here to represent them. The Petition is good and timely, but there are certain things that need to be tied, especially in the prayer where we need to include the communities in the management of conservancies.

I come from a county that neighbours many conservancies. However, the challenge is that the communities neighbouring those conservancies do not even know the importance of those conservancies. That requires a bit of capacity building so that members of the public can appreciate the wild animals and the conservancies. One of the conservancies that is neighbouring Isiolo County is really helping communities by building schools, drilling boreholes and initiating many other projects. However, can the conservancies go out a bit and ensure that members of public appreciate what they are doing and that they are involved in the management of those conservancies? Those who are looking at this Petition should do that.

Mr. Speaker, Sir, there is a lot of suspicion on the funding aspects of those conservancies. Members of the public feel that the managers of those conservancies are the ones who benefit more than the individuals neighbouring the conservancies. Something needs to be done so that members of the public have confidence in those conservancies.

It is true that we should protect these animals but why is it that the animals are more important than human beings? In Isiolo County, for example, we have more than 1,000 people whose rights have been violated by those wild animals. To date, they have not been compensated. Some of them even have lost their fathers and husbands but it looks as if we are nurturing the animals more than human beings.

Can the conservancies also look into the issue of violation by the wild animals that they are taking care of such that when it happens, they should compensate those individuals? Let that also come out in this Petition. It should look at how the communities can benefit from violation and the conservancies whenever it happens.

On the issue of counties coming up with contribution towards the conservancies, I think that we need legislation and the reason we should contribute towards that conservancy. That has to come out properly. Unless that is put on the table, I think that the counties will not be ready to contribute towards the conservancy.

There is also the issue of capacity building of the communities within those areas that I talked of earlier. This is very good but we need to sit together as a conservancy, the leadership and the communities neighbouring those conservancies, to understand what the conservancies are doing. Some of the individuals within those conservancies are violating the rights of citizens. We need to understand what is within those perimeter walls.

**The Speaker** (Hon. Lusaka): Hon. Senators, I see a lot of interest, I will limit the time to three minutes.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I rise to support this Petition. We should take this conservancy issue to a higher level. I feel that we are putting a lot of premium on conserving wildlife while a similar high premium is not put on the lives of those communities that live with the wildlife, the environment and property. We notice that a few months ago, there was a threat by the people who live with these animals. They said they would kill the animals until they stop attacking their property.

Some of us wake up to animals around our homes every single day. The animals that we are being asked to put in conservancies take water, graze and even lick salt with our domestic animals. We live daily with these animals but there is no compensation

when they attack the domestic animals. If it is there, it is so little and comes in too late in the day. We need to find a way of making the community feel that they are part and parcel of conserving these animals and the environment. It should be an all-inclusive program and not one to take care of the wild animals against the individuals who live daily with them.

The wildlife corridors that they refer to are our parcels of land. We live in the same corridors that these animals are supposed to pass as they cross. When they cross from Serengeti to the Mara, they do so through our own farms. It is time that we get to know what to do with these conservancies. We have had cases of random killings. Maybe, we should look at the kind of compensation that we get because when a car hits somebody and he or she dies, that person is compensated properly through the systems but when an animal attacks and kills a human being, we do not look at life in the same value that we look at life when we are compensating for life in other quarters.

There is also the issue of grazing rights. If we could be allowed to live in harmony with these animals, then we would not have interference with our grazing rights. We keep saying that we want to conserve them but we restrict the same people who live with these animals from having access to the grazing areas yet when these animals are in the conservancies, they are not fully controlled.

*(Sen. Pareno's microphone went off)*

**Sen. Linturi:** Thank you Mr. Speaker, Sir, for giving me the opportunity to speak on this Petition. I thank Sen. Halake for bringing this Petition at this moment in time. I have a very different idea on how the conservancies should be managed and funded. The most critical thing that I must appreciate is that this Petition gives us an opportunity to interact and to interrogate the manner in which the management of these conservancies relates with the people that live within those surroundings.

It is important to say from the onset that as much as we agree that these conservancies are important and they require to be given such support, it is also important to note that most of these conservancies are private enterprises. They are businesses for individuals. As a Committee that will be looking into this matter, we will see what these conservancies do to the people who are supposed to benefit from their existence as part of their Corporate Social Responsibility (CSR). We will want to know what they exactly do in those areas.

There is no doubt that conservancies attract a lot of donor funding. As we look into this matter to see whether we can generate money from the national Government to supplement the revenue they raise out of their existence, we must be in a position to understand how these private businesses can be more accountable in disclosing the amount of revenue they collect and what percentage is shared with the national Government and county governments. We have to know how much revenue they contribute to the Exchequer.

It will be important, as a way of encourage them as a Committee, to propose a framework that will allow them to get financial support without having to tax the national Government and county governments in terms of direct funding. I would want a situation

where the concerned Committee will come up with incentives like tax rebates. Otherwise---

**The Speaker** (Hon Lusaka): Your time is up.

Sen. Olekina Ladema.

**Sen. Olekina:** Thank you Mr. Speaker, Sir, for giving me this opportunity to add my voice to this important Petition that I support. Coming from Narok, I know that the defunct Narok County Council used to contribute 19 per cent of the revenue collected from the Maasai Mara Game Reserve to the communities surrounding the game park. Over time, those communities came together and formed their own private conservancies. We now have other community conservancies and I agree with Sen. Halake that they need to be given a lot of support.

One of the roles of the conservancies is to support education. I come from Maasai region and went to school courtesy of the money that was generated from those conservancies. The 19 per cent that was being given to the communities around the park is what helped me go to school. However, there are various things that we have to take into consideration. There are private conservancies in this country that do not benefit the local communities. There is a game park that, overall, helps the entire country given that our game parks are one of the highest foreign exchange earners of this country.

On the issue of community conservancies, a lot of things are changing. The way people, for example the Maasai, lived before has changed. They used to keep tens of thousands of livestock. Now, because of the rapid environmental changes that have taken place, the numbers have reduced. People who live next to the game parks, as a way of making money, join the private conservancies. I concur with my colleagues who said that in most cases, the citizens do not benefit.

I want to encourage the Committee that will look into this issue of how county governments and the national Government can support these private conservancies to come up with suggestions that can encourage people who own land around the conservancies to live together and set aside the huge chunks of land. When this is done, it will help the entire ecosystem and reduce the human-wildlife conflict. This can also be taken in as economic development. With regard to Maasai Mara, for instance, I get calls every day from the locals asking me to buy their land because they cannot use it. This is a matter that I would like to see taken seriously, so that the locals can benefit.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon Lusaka): Let us have, Sen. Haji Farhiya.

**Sen. Farhiya:** Thank you Mr. Speaker, Sir, for the opportunity to support this Petition. Let us assume that we want to conserve the environment, our animals and our heritage. All these will need funds. With the pilferage that is ongoing, we should not lose focus in fighting corruption, so that we have enough money that will ensure that our animals are conserved, people are protected. Enough funds should also be set aside for the communities living around the conservancies to benefit.

Thank you.

**The Speaker** (Hon Lusaka): Sen. Nderitu John Kinyua.

**Sen. Kinyua:** Thank you, Mr. Speaker, Sir. I want to thank Sen. Halake for bringing this Petition. From the outset, Laikipia is the home of conservancies. We have

Laikipia Nature Conservancy, Ol Pajeta, Loisaba, Ol Lentille, Ol Jogi, Mugie, Sweet Waters and Lewa conservancies in Laikipia County. In as far as we have all these conservancies, the local community does not benefit from them. Instead, the wild animals are in those conservancies during the day and at night, they destroy their farms and attack their livestock.

If we put in place clear laws to ensure that our domestic animals and crops are paid for whenever they are attacked and destroyed by the wild animals, this will make the communities living around the conservancies to see the benefit of the conservancies. For now, the wild animals are only known to destroy crops and attack people. In the last two weeks in Laikipia North, the wild animals killed more than five people and domestic animals.

So, this is a good Petition. We should give it a clear thought and push for more money to be given to the locals, so that they can fence their land to protect the domestic animals from attacks by the wild animals.

These conservancies practice CSR, but this is meager to our people. Their tourists fly straight to those farms and, as a result, we do not generate any revenues from them. We suffer so much in the hands of these people. As much as I would want to support them, I am a bit reluctant because I equally suffer because of them.

Thank you.

**The Speaker** (Hon Lusaka): Sen. Poghisio.

**Sen. Poghisio:** Thank you, Mr. Speaker, Sir. I beg to support this Petition and request the Committee that will deal with this Petition to find the best ways of funding these conservancies. Right now, it is the well-wishers and donors who fund conservancies. This makes it difficult for the locals to participate.

So, I would like to see that the conservancies are used to improve the lives of the people living around them. They should be centers through which the local people can begin to understand the value of wildlife and the environment, so that they can conserve them. It is also a way of devolving and making sure that monies trickle down to the people.

The only caution I want to give, as the Committee will be looking at this matter, is that sometimes the appointment of the management of these conservancies needs to be looked at. It should not be politicised, but based on merit, so that the people who are appointed are the actual conservationists. If we get the right people to run our conservancies, it will be a good way of bringing communities together and raising awareness, especially in areas where we have wildlife.

I support and request the Committee to expedite this. West Pokot County is part of the area where there are conservancies and we are beginning to care about wildlife and catching up with the rest of the counties which have conservancies.

**Sen. Kibiru:** Thank you, Mr. Speaker, Sir. I rise to confirm that if this Petition is brought to our Committee, we will deal with it. However, let me also inform the House that we are on it already. Through a Statement by Sen. Mwaruma, last month, we visited Taita-Taveta County. The issues were about human-wildlife conflict. We learnt is that there is a lot that needs to be done when it comes to wildlife and human beings. All those



issues that have been raised have come up in the meetings that we held with people of Taita-Taveta County.

The Petition is more on community conservancy and not private ones. We even met a group in Taita-Taveta County that wants to have a conservancy and they gave us a petition that we are looking at. I do not want to preempt the report that we are writing in regard to that visit and the issues that the communities are recommending. We were asked by the Kenya Wildlife Service (KWS) that we also visit Samburu County because they are living better with animals than any other county. We are going to Samburu County next month to see what is happening between wildlife and human beings. So, we are on it and a report will be coming probably before a month's time.

**Sen. Halake:** On a point of order, Mr. Speaker, Sir. I would like to make a bit of distinction between the Petition before us on the issue of human-wildlife conflict and the issue of private and community conservancies. We are asking for support for community owned, created and run conservancies and not the private conservancies that my colleague from Laikipia County has mentioned, like Sweet Waters and such. Kindly note the distinction.

**The Speaker** (Hon. Lusaka): Okay. That was a clarification.

Sen. Waqo, proceed.

**Sen. (Rev.) Waqo:** Thank you, Mr. Speaker, Sir. I appreciate the Petitioner, Sen. Halake. Thank you for coming up with this.

I come from a county that has three conservancy areas. From my childhood, I have known the conflict between the residents there, animals and the rangers. I support this fully because this Petition will solve the issues that have been there. In supporting, I ask that we and the Committee give it the proper attention that it deserves. Let us fight so that proper funding can be given and we take care of all the stakeholders. At the end of the day, Kenya will be better because we are their representatives.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.226(1) the Petition stands committed to the standing Committee on Land, Environment and Natural Resources. 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 by way of a report to the petitioner and laid on the Table of the Senate.

Hon. Senators, I have a communication to make on visiting students

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. MARY'S SOSIO  
GIRLS' SECONDARY SCHOOL, BUNGOMA COUNTY

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, of students and teachers from St. Mary's Sosio Girls' Secondary School in Bungoma County.

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

I thank you.

*(Applause)*

## PETITION

### REPORT ON PEITION: ALLEGED IMPROPRIETY IN PROCUREMENT OF MEDICAL COVER FOR MURANG'A COUNTY STAFF

**Sen. (Dr.) Milgo:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 13<sup>th</sup> June, 2018:

Report of the standing Committee on Labour and Social Welfare on the Petition by residents of Murang'a County regarding alleged impropriety in procurement of medical cover for staff working in the County Government.

*(Sen. (Dr.) Milgo laid the document on the Table)*

Mr. Speaker, Sir, just allow me to say that we received this Petition as a Committee. We dispensed with it first by inviting the complainant to come before the Committee and during our sitting, the Petitioner was the only one who availed himself. In the course of interviewing the Petitioner, the Committee came to the following conclusion:-

The title of the Petition read: "Petition by Murang'a County Residents on Alleged Impropriety in Procurement of Medical Insurance Cover for Staff Working in County Governments".

There was nothing in the Petition to indicate that there was impropriety in Murang'a County. Rather, the Petitioner in general had a plea that the Senate finds time to investigate all the 47 counties based on the procurement in the past 10 months. The Committee concluded that, maybe, in future if the Committee will have time, we will invite the National Treasury, Public Procurement Regulatory Authority and the Public Procurement Administrative Review Board to shed light on how they are enforcing compliance with the public procurement and asset disposal laws and regulations by the counties.

Thank you.

**The Speaker** (Hon. Lusaka): Next Order.

**PAPERS LAID****REPORT ON PROVISION OF MENTAL HEALTHCARE  
SERVICES IN KENYA**

**Sen. Dullo:** Mr. Speaker, Sir, beg to lay the following Paper on the Table of the Senate today, Wednesday 13<sup>th</sup> June, 2018:

Report of the office of the Auditor General on the provision of mental healthcare services in Kenya December, 2017.

*(Sen. Dullo laid the document on the Table)*

**REPORT ON THE OFFICE OF THE COUNTY ATTORNEY BILL**

**Sen. Linturi:** Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate Today, Wednesday 13<sup>th</sup> June, 2018:

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Office of the County Attorney Bill (Senate Bill No.3 of 2018)

*(Sen. Linturi laid the document on the Table)*

**The Speaker** (Hon. Lusaka): We move on to the next Order.

**NOTICES OF MOTION****SITTINGS OF THE SENATE OUTSIDE PARLIAMENT  
BUILDINGS, NAIROBI**

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:

THAT, AWARE that the Senate is established by Article 93 of the Constitution and its main role as set out in Article 96 of the Constitution is to represent, serve and protect the interests of the counties and their governments;

FURTHER AWARE that Senate plays a critical role in the linkage of the devolved government and the national Government;

NOTING that since its inception the Senate has held its sittings in Nairobi with its Committees occasionally visiting the devolved governments on fact finding mission;

COGNIZANT of the need to enhance the interaction between the Senate and county governments as a means of bringing the Senate closer to the counties and the general public;

APPRECIATING the recommendation of the Senate Business Committee (SBC) that a sitting of the Senate be held away from its traditional premises in Parliament Buildings in Nairobi in order to-

- (1) provide an opportunity to Members and staff of the county assemblies to learn and borrow best practices from the Senate;
- (2) promote the role and work of the Senate;
- (3) highlight existing opportunities for people to get involved in the work of the Senate; and finally,
- (4) develop and strengthen partnership at the county level and enhance public awareness regarding the business of the Senate.

NOW THEREFORE, pursuant to Article 126 (1) of the Constitution and Standing Order No. 31(1) of the Senate Standing Orders, the Senate resolve that its plenary and Committee sittings be held in Uasin Gishu County from 24<sup>th</sup> to 28<sup>th</sup> September, 2018.

I thank you.

**The Speaker** (Hon. Lusaka): Hon. Senators, for the convenience of the House, I defer Order No. 7 on Statements to come after Order No.8 and 9.

## BILL

### *Second Reading*

#### THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (SENATE BILLS NO.6 OF 2018)

*(Sen. Sakaja on 5.6.2018)*

*(Resumption of Debate interrupted on 12.6.2018)*

**The Speaker** (Hon. Lusaka): Hon. Senators, we shall now proceed to vote. I direct that the Division Bell be rung for five minutes.

*(The Division Bell was rung)*

I now direct that the Doors be locked and the Bar be drawn

*(The Doors were locked and the Bar drawn)*

## DIVISION

## ELECTRONIC VOTING

*(Question, that the County Governments Retirement Scheme Bill  
(Senate Bills No.6 of 2018) be now read a Second Time put,  
and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. M. Kajwang', Homa Bay County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Loitiptip, Lamu County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Nyamunga, Kisumu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County ;Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Poghiso, West Pokot County ; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; and Sen. (Rev.)Waqo, Marsabit County.

**NOES:** Nil

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the Division are as follows:

**AYES:** 25

**NOES:** Nil

**ABSTENTIONS:** Nil

*(Question carried by 25 votes to 0)*

*(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)*

**The Speaker** (Hon. Lusaka): Hon. Senators, I now direct that the doors be opened and Bar undrawn.

*(The doors were opened and Bar undrawn)*

Next Order.

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

## IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Lelegwe) in the Chair]*

THE DIVISION OF REVENUE (AMENDMENT)  
BILL (SENATE BILLS NO.14 OF 2018)

*(Resumption of Debate interrupted on 12.6.2018)*

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

**The Temporary Chairperson** (Sen. Lelegwe): Hon. Senators, we are resuming business interrupted yesterday on The Division of Revenue (Amendment) Bill (Senate Bills No.14 of 2018.) I will proceed to put the Question since we went through all the Clauses yesterday.

I now direct that the Division Bell be rung for one minute.

*(The Division Bell was rung)*

I now proceed to put the Question, that Clause 2, Title and Clause 1 be part of the Bill. Please, vote now.

*(The Senators proceeded to vote)*

I call upon the Senators who have not voted to do so. The voting time has ended.

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clause 2, the Title and Clause 1 be part of the Bill put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. Kibiru, Kirinyaga County, Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County, Sen. Lelegwe, Samburu County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. Mbitu, Trans Nzoia County; Sen. M. Kajwang', Homa Bay County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; and Sen. (Rev.) Waqo, Marsabit County.

**NOES:** Nil

**The Temporary Chairperson** (Sen. Lelegwe): Hon. Senators, I now give results for the Division as follows:-

**AYES:** 26

**NOES:** 0

**ABSTENTIONS:** 0

The "Ayes" have it.

*(Question carried by 26 votes to 0)*

I call the Mover to reply.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of The Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018) and its approval, thereof, without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Speaker (Sen. Nyamunga) in the Chair]*

**The Temporary Speaker** (Sen. Nyamunga): The Temporary Chairperson of the Committee, please make the progress report.

**Sen. Lelegwe:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018) and its approval, thereof, without amendments.

I call upon, Sen. Kihika to second.

**Sen. Kihika:** Madam Temporary Speaker, I second.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr., proceed.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said Report.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Nyamunga): The Mover, proceed.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I beg to move that The Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018) be now read a third time. I request, Sen. James Orenge to second.

**The Senate Minority Leader** (Sen. Orenge): Madam Temporary Speaker, I beg to second. There is only one issue which would come clearer when my friend, the Senator for Narok County, would address you briefly. You would look at the appendix on page 283, Paragraph 2. The water towers there are mentioned but the Mau is not mentioned. It could be an oversight, but the Mau is one of the important water towers. It would have been wrong for us to delay this Bill merely on account of that omission. However, I would invite the House at some time in the future that when an amendment is called for in relation to Mau, the House will see the need to include Mau.

This is an issue which at one time was a major political issue. It was even an election issue – the water tower. Since we have been talking the language of conservation and preserving the water towers, reality has now come back to us in the need to protect

water towers. The earth is a very small place. We are having a problem in the Mau. The arctic is having a problem. In our small village called Kenya, the protection of these water towers is critical. This is an important point that we should look at unless there is an explanation as to why that particular water tower was left out. I also do not see Aberdare. You know what happened in Aberdare recently.

Thank you, Madam Temporary Speaker.

*(Question proposed)*

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for giving me this opportunity to comment on this particular issue of the water towers. During the debate on the Division of Revenue (Amendment) Bill (Senate Bills No. 14 of 2018), I raised my reservations.

Even though I voted for the Bill, I did it with a very heavy heart because the Mau Forest was left out. I do not know why we become selective in protecting certain parts of the country and leaving other parts.

We have a very serious problem in this country. Any time it rains, because of the destruction of the Mau Forest, Narok Town floods. The forest has been encroached. We have an opportunity to make amendments to the Division of Revenue Bill, but we have failed, as this House because we have been reduced by the National Treasury to rubberstamping. This is something which I hope we can amend. Although it is a little bit too late now, in future, it is something that this House should consider.

We have really missed an opportunity to make changes and see what is happening. This is something that I take with a very heavy heart. I hope that next time when the National Treasury comes up with this Bill---

This is why I keep on saying that Parliament really ought to stamp its authority. We are being reduced to a rubberstamp. We do not even control our own budget.

When are we ever going to be able to protect our water catchment areas? Mau forest has been left out. I have no problem with protecting Cherengani Hills or Mt. Elgon. However, Mau Forest is one of---

I know these are conditional grants that are in these amendments, but, seriously, when we think about these conditional grants, we ought to have prioritised the Mau Forest. There are over five rivers that drain their waters into Lake Victoria which is the source of River Nile. The way the forest has been encroached is shocking. A couple of months ago, we flew over the forest and noticed that it has been destroyed. I actually congratulate the 14 counties which have formed the Lake Victoria Economic Basin for having taken Mau Forest as their number one issue to be able to protect it.

I hope that in future when the Division of Revenue Bill is brought before the Senate, we do not just simply vote for it. I had a very heavy heart voting for this. I knew we had a problem with numbers and I did not want to be blamed as a person who has refused to vote for the Bill for money not to go to counties. However, we should take notice. I am highly contemplating bringing in amendments so that the Mau Forest can be considered.



Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we shall now proceed to vote and I direct that the Division Bell be rung for about three minutes.

*(The Division Bell was rung)*

Hon. Senators, I now direct that the Doors be locked and the Bars be drawn.

*(The Doors were closed and the Bars drawn)*

Hon. Senators, confirm that you are logged in.

*(Loud consultations)*

Hon. Senators, you are now ready to vote. You have 60 seconds. The Senators who are not able to vote electronically can now come for assistance to vote manually.

*(Several Senators approached the Clerk-at-the-Table)*

### THIRD READING

THE DIVISION OF REVENUE (AMENDMENT) BILL  
(SENATE BILLS NO.14 OF 2018)

### DIVISION

### ELECTRONIC VOTING

*(Question, that The Division of Revenue  
Bill (Senate Bills No.14 of 2018) be now read a Third Time,  
put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. M. Kajwang', Homa Bay County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Loiptip, Lamu County; Sen. (Eng.) Maina, Nyeri County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Omogeni, Nyamira County; Sen. Poghio, West Pokot County; Sen. Seneta, Kajiado County; Sen. Wako, Busia County; Sen. (Rev.) Waqo, Marsabit County; and, Sen. Wetangula, Bungoma County.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

**NOES:** Nil

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, the results of the Division are as follows:-

Ayes: 29

Noes: 0

Abstentions: 0

The “Ayes” have it.

*(Question carried by 29 votes to 0)*

*(The Bill was accordingly read the Third Time and passed)*

I now direct that the doors be opened and the Bar undrawn.

*(The doors were opened and Bar undrawn)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, as earlier directed we will now go back to Order No. 7.

## STATEMENTS

### ARREST OF FISHERMEN AND AP OFFICERS IN LAKE VICTORIA

**Sen. Orengo:** Madam Temporary Speaker, I rise under Standing Order No. 46 (2) (a) to make a Statement on a matter of concern. This is in relation to the arrest of fishermen and three Kenyan Administration Police (AP) officers in Lake Victoria, purportedly on a matter connected with fishing in the lake.

On Monday, 11<sup>th</sup> June, 2018, three AP officers from Usenge in Bondo Constituency, Siaya County were arrested while on duty in Lake Victoria. Soldiers from Uganda pounced upon them, disarmed and arrested these police officers together with a number of fishermen, whose fishing boats were confiscated. The three AP officers and fishermen were taken to Bugiri Mainland Prison in Uganda.

Madam Temporary Speaker, squabbles over fishing rights and fishing in Lake Victoria is not a new matter. In fact, late last year a group of local fishermen were arrested. At that time there was intervention by the Ministry of Foreign Affairs and they were released. However, the unique feature of this latest incident is that policemen or rather soldiers from a friendly country - I understand they could be military officers - came into the Kenyan territory, disarmed police officers patrolling the lake and took away fishermen. They were detained for quite some time until they were released yesterday following protests, particularly amongst the people in Siaya County.

Kenya has got a very small fraction of the lake. Kenya should demonstrate that they value this jewel; the small part of the Lake which is within the borders of Kenya. Uganda has a large part of the lake; Kenya's portion of the lake is not even a quarter of

what is within the territory of Uganda. Tanzania has got a larger territory. In fact, the largest part of the lake is in the territory of Tanzania. These problems do not appear to be taking place between us and our Tanzanian brothers. However, there are constant problems involving fishermen from the surrounding counties of Busia, Siaya, Kisumu, Homa Bay and Migori.

Madam Temporary Speaker, the serious thing about it is that it has got a reflection of how we are guarding our borders and defending our sovereignty and territorial integrity as a nation. I am glad that Sen. Wetangula is here. About five years ago we went to Migingo and from Muhuru Bay which is within Kenya Territory in Migori by boat it took us less than 45 minutes. In Uganda a motor boat leaving the nearest place to Migingo takes eight hours.

The Ugandan Ministers we met at Migingo had to drive from Uganda through Busia, Siaya, Homa Bay and Migori in order to reach Migingo Island, yet when we got to Migingo Island the Ugandan police were in charge and the boats patrolling the island were from Uganda. There was no evidence of Kenya's presence around the island, except for a few police officers on the island who were overpowered by Ugandan policemen.

This conflict is coming to Siaya County where we have fewer islands, including Mageta, which is very important historically. That is where some *Mau Mau* patriots were imprisoned by the colonial government. It is a very important island with a big population. It is a matter of grave concern when it occurs that Uganda policemen can come into Kenya and arrest Kenyan police officers.

The Head of State of Uganda, President Museveni, whom we respect, has been saying he sent military people because policemen are corrupt but he wants people who can deal with disputes about resources in the Lake and that is why he used military officers rather than police officers. I hope that our Committee on Security, Defence and Foreign Relations will take up this matter but more importantly the Kenya Government.

The other day when we had a maritime dispute with Somalia who we are helping, Somalia took us to the International Court of Justice (ICJ) and in the proceedings before the ICJ, round one was won by Somalia. Why can Kenya similarly not take a case to the ICJ on the issue of Migingo? While we await that, they should also make sure that fishermen in the lake are protected and they are not harassed by our neighbouring government.

I hope that the relevant committee and the Government of Kenya will take note of what is happening in Siaya County. I thank you.

*[The Temporary Speaker (Sen. Nyamunga) left the Chair]*

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

**Sen. Outa:** Mr. Deputy Speaker, Sir, I thank the Senator for Siaya for bringing this Statement. For many years, we as leaders who come from the region have been perceived as people who do not pursue the interests of our people, especially the fishermen on Migingo Island because the Government of Kenya has failed to have a

diplomatic relationship with Uganda to have the issue of the border resolved and know who owns the water and who owns Migingo Island.

I want to encourage His Excellency President Uhuru Kenyatta that it is time we settled this matter once and for all. That will save our image as leaders because we are seen as weaklings who cannot do anything to protect our people.

Like Sen. Orengo has said, they travelled from Uganda for eight hours to come and interfere with our people who fend for their families.

This Statement should go to the relevant Ministry and this House should consider visiting Migingo Island so that this matter is put to rest. I thank you.

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

Hon. Senators, the level of interest is very high. This Statement by Sen. Orengo is under Standing Order No.46(2)(a). It is not like the usual statements that you are aware how they are sought and dispensed.

I have more than 10 requests which we are not able to accommodate. So, I will give a few Senators a maximum of two minutes each for the reasons I have already given.

Before that, I have a communication to make.

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MUNYU HIGH SCHOOL,  
NAKURU COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Munyu High School in Nakuru County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, I wish them a fruitful visit.

I thank you.

*(Applause)*

Senator for Nakuru, would you like to say something? I will allow you two minutes maximum.

**Sen. Kihika:** Mr. Deputy Speaker, Sir, I take this opportunity to welcome the students and teachers from Munyu High School, Nakuru County. I am glad they made it to be here today. I believe they will sit for the Kenya Certificate of Secondary Education (KCSE) at the end of the year and I am hopeful that they will do very well. I encourage them to study hard so that they appear on top.

I hope this day will give them a good experience at the Senate, so that they also have something to look forward to or aspire to be if they wanted to be.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Concerning the Statement by Sen. Orengo, given the sensitivity of the matter, I will allow not more than two minutes each for the following Senators beginning with Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir, for giving me two minutes to comment on this matter of sovereignty. It is sad that our Kenya police officers are being arrested by Ugandan military. If the Kenyan Government cannot protect our own police, it is time you asked me to bring 20 Maasai warriors to go and defend our territories.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Olekina! The roles of the defence of the nation are well defined in the Constitution.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, my opinion is that if our country cannot defend its own citizens because the military of Uganda, which is a neighbouring country that we love laid ambush on people who are supposed to be protecting us, then what are we supposed to do? It is very sad.

The newspapers reported that they were ambushed by the military. If the Government and the national security organs really care about Kenyans in Siaya County, then they should send the military so that the military faces another military.

We are talking about Migingo, which I think is a 2,000 square kilometres island and one of the densely populated islands in this country---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator. Did you say 2,000 square kilometres?

**Sen. Olekina:** It is a small area which is densely populated. It is not even an acre. I am sorry about that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is easier for you.

**Sen. Olekina:** However, I am baffled, shocked and at a loss for words. We do not care about our Kenyan citizens. Let us not lie. We only care about corruption and protecting certain interests. The people in Siaya County are also human beings and they have to make a living.

The newspapers reported that they were about seven. I remember last year there were 17 Kenyans who were arrested and detained in Uganda for quite a long time. Why are we---

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

Sen. Wetangula.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, may I request for five minutes?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wetangula, today I am afraid not.

*(Sen. Cheruiyot consulted loudly)*

Order Sen. Cheruiyot!

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I have vital information that I want to put on record. This is not the first, the second or even the tenth time that Ugandans have arrested fishermen in Lake Victoria. This time round, they went beyond fishermen and arrested the police who were armed. Every time they arrest fishermen, they destroy their fishing gear and disable them from earning a living thereafter.

Mr. Deputy Speaker, Sir, when I was the Minister for Foreign Affairs, I co-chaired a committee with the Minister for Foreign Affairs of Uganda on the instructions of the Presidents of Kenya and Uganda. In furtherance of that committee, an order and directions were given to carry out a proper international survey to establish the co-ordinates of our boundaries from the boundary of South Sudan all the way to Tanzania. Monies were expended on this, and a report is somewhere gathering dust. That Report clearly indicated that Migingo Island and all the islands around it are Kenyan territory.

It is therefore, the duty of the Government to protect the territorial integrity of any inch of their country. I want to urge that this matter goes beyond the statement that Sen. Orengo has made. We urge you, as the Chair, to use your discretion and authority under Standing Order No.1 to direct the relevant committee to carry out a thorough investigation on what happened regarding the implementation of this report and why Ugandans are terrorizing Kenyans day in, day out.

Mr. Deputy Speaker, Sir, when the President announced that Africans are free to come to Kenya visa-free, I said here that reciprocity is part of diplomacy. Why are we leaving our territory to lie naked and bare in the face of adversity from our neighbours?

I visited Migingo with Sen. Orengo, the late Sen. Gerald Kajwang' and the late hon. Joshua Ojode. The activities going on around Migingo Island require that this Government should have a police station, not even a police post. We are told that tonnes of fish are captured there every single day. The contribution of that half an acre island in the lake to the economy of this country is something that the Government should not take for granted. This is a matter that should now be put to rest.

Within the context of the East African Community, there is territorial dispute mechanism. We also want the Committee, if you refer them to look at this matter, and the Cabinet Secretary for East African Community; hon. Peter Munya, to engage his counterparts and see that this matter is brought to an end because we cannot have our people being arrested, captured, beaten up and detained.

The highlight today is because the arrested persons were policemen. There are also fishermen that are quietly arrested, tortured and beaten up without anybody knowing. I want to laud the statement and urge you that we do not just let it rest here; but that this House becomes proactive in the matter and we get a proper and thorough investigation into this.

**Sen. M. Kajwang':** As a Senator representing the lake region, Homa Bay County accounts for the greatest share of Kenya's share of Lake Victoria. This is a story that we have been exposed to day in, day out. Today, it was Mageta and Hama islands. Every other day, you hear stories coming from Remba Island of how Kenyan fishermen are being harassed by Ugandan soldiers. Who should protect Kenyans from external aggression? It is clear in Article 42 of the Constitution that it is the military, but you will be surprised that there is no military in the area surrounding Lake Victoria. Probably with some token representation in Kisumu, there is no military presence and yet this is a border. This is a matter that we need to look at.

Even as we think of military intervention and protection, we must be conscious of historical issues that have been there between Kenyans and Ugandans. The Abasuba; the community that I come from, is a mix of Ugandans and Kenyans who have lived together

in harmony. We must condemn these moves but internally, as Parliament, we must ask ourselves whether we need to revive the Implementation Committee.

This House passed the Fisheries Management and Development Act. It was supposed to establish the Kenya Fisheries Service which was meant to operate in a similar manner as the Kenya Wildlife Service. It was supposed to patrol and survey the lake. Uganda and Tanzania send soldiers to patrol the lake. Kenya has got no patrol capabilities on Lake Victoria. We send policemen but maybe, they do not even have boats. The police in Homa Bay do not have patrol boats. We must ask ourselves whether we need the Implementation Committee to push for the implementation of the Fisheries Management and Development Act which was supposed to provide some relief to the fisherfolk of Lake Victoria.

Mr. Deputy Speaker, Sir, I support.

**Sen.(Eng.) Maina:** Mr. Deputy Speaker, Sir, I rise to support the sentiments expressed by Sen. Orenge and the other speakers on this matter.

When we talk of sovereignty, we talk of a country being able to secure and protect its territory and citizens. It is pitiful that the people of Mgingo Island are living under the fear of Ugandans. I think the Committee investigating this matter should come out clearly and state whether we have the kind of force we expect. If the policemen were arrested, then where is the security and safety of wananchi in Mgingo Island?

There is no question that Mgingo Island is an important part of Kenya. Any part of Kenya is an important part of Kenya and any Kenyan living anywhere needs protection. Sen. Wetangula has just told us how they spent money doing an international survey. Of what use was it? I thought it was supposed to be a mediation matter; that once the survey is finished, then the Ugandans should respect that decision. This is an indication of many things to come. This means that people from any country can walk into Kenya and do what they wish to do. We have Somalia on the other side; they walk in, do what they wish to do and they go back.

Thank you, Mr. Deputy Speaker Sir.

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, I stand to support this Statement from Sen. Orenge. It comes under Standing Order No.46(a) which is a Personal Statement on something which is very touching. It touches on the livelihood of the people who rely on fish. That is the only place they can get their livelihood but they are not able to. It is an issue that has been there probably for almost over 10 years and has not been adequately addressed. It seems to be an issue that the two countries cannot just put to rest, one way or the other. If it was only a political issue it would not have the implications that it has now because it touches on the livelihood of the people.

When it gets to the level of Kenyan police being arrested by Ugandan police, this shows that this conflict has escalated to a point of urgency. Once you put people in a situation whereby they have to struggle for a livelihood, you cannot really control it. If they had other options, they probably would go for them, but in this instance, they cannot. This territorial issue is an issue that is touching on people's livelihood and it needs to be addressed very fast. It needs the security teams to come into place. We need to think of a Committee within the Senate which can address this issue.

Sen. Orenge could lead that team so that people can come together and see how quickly to expedite and, finally, get to the bottom of these contentious issues.

**Sen. Wako:** Thank you, Mr. Deputy Speaker. I support strongly the Statement requested for by Sen. Orenge. I support what Sen. Wetangula has said by way of information because I was also privy to it. Let us not take this as a territorial issue because Migingo Island and all these islands are in Kenya. We should not be seen as admitting that there is a territorial dispute. These are our islands.

From what Sen. Wetangula has said, I am aware that when the two teams begun doing their work, they discovered all these islands are within Kenya. From that point onwards, there was no cooperation from Uganda. So, we proceed on the basis that this is a Kenyan issue. I would like to appeal to the Government of Kenya to assert the rights of Kenyans over these islands. If we do not assert ourselves effectively, then over a prolonged period of time, the situation may change under the international law.

It is true under the East African Community we have Lake Victoria Commission which protects the lake. Its headquarters is in Kisumu County. We also have the Lake Victoria Fisheries Commission which is headquartered in Njinja, Uganda. I would like these two commissions to be more proactive in dealing with this matter.

I want also to appeal to the two Heads of States of Kenya and Uganda respectively not to allow these types of disputes to spoil the good relationship that exists between the two countries. Recently when President Museveni was in Busia together with our President, our Governor raised this issue and President Museveni promised to look into it so that it does not happen again. However, it happened again. Let the two Presidents come together and see how they can resolve the issue, once and for all.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Speaker, Sir. I too have been privy to this saga of Migingo Island and Mageta Island where the fishermen have been fishing for a long time. We must understand and appreciate what Sen. M. Kajwang' talked about. Besides the ethnicity and political divide between the two countries, there are also the economic interests. For example, Migingo Island is rich in various types of fish. It is important that we must establish our border integrity and our superiority, not in any level of being superior to any country, but our integrity.

Everybody knows that Migingo Island and the surrounding islands solely belong to Kenya. That is not in dispute. This is because when the cartographic designers did their work and put beacons, the boundaries were clearly defined. Some people may have distorted one or two beacons, but the boundary is well defined.

It is a high time that the Kenya Government, led by President Uhuru Kenyatta, established its presence in the way of military in Migingo Island. The Government should help the fishermen to realize their potential in fishing what rightfully belongs to Kenya. Fish resources are not just about *Mbuta* or the resources of Nile Perch that is being fought for on this small little island---

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I support the statement by hon. Orenge. I want also to condemn this unfortunate and sad situation our country finds itself in, year in, year out. One wonders what becomes of a country where its neighbour raids her territory, arrests police officers and the country continue to do nothing about it. This is akin to a man who watches a stranger walk in his house, beat up his children,



walks away and he does nothing about it. Our treading so carefully with our neighbours has become matters that we do now want to consider. We keep on saying that because of trade relations we continue to enjoy with our neighbours, then we would not want to upset them.

Time has come for us to remember that it is not out of benevolence that our neighbours continue to buy goods from us, but it is because they are cheap and available. This carefree attitude that we continue to exhibit and bowing behind for them to spank us each and every time they are on the wrong just to keep some sort of good relations, it is a very wrong attitude that we need to do away with.

In your ruling and when you later give guidance, I plead with you that you give strong directions so that this House can rise to the occasion. Give proper directions so that the citizens of Homa Bay County can remember that at least when all organs of the Government failed, it is the Senate of the Republic of Kenya that rose to the occasion and saved them from this very embarrassing situation that keeps on happening.

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. I stand to support this very important statement by Sen. Orengo. This is quite a paradox; how can Kenyan policemen be arrested? What about the citizens of Kenya? This is a shame to the Kenyan forces and we need to up our game. I remember during the “resist” period, the Kenyan policemen were able to intimidate anybody who was against the Government. How come this time round they were arrested by the Ugandan Army?

I would like us to bring this matter to a close by following up on the British High Commission recommendations. In their archives, they have all the maps that define the territory between Uganda and Kenya. If we go to into the archives of the British High Commission, we shall be able to establish as to whether Migingo Island and other islands like Lolwe, Wayusi and Sugula are in Kenya or not. We need to bring this matter to a close.

Mr. Deputy Speaker, Sir, as I sit down, the people of Nyanza region, on 26<sup>th</sup> August, 2017, were able to block armed policemen from ferrying ballot papers to Migori, Siaya and Kisumu counties. How come they are being harassed day in and day out, and they are not doing anything? I want to call the people of Nyanza to resuscitate their warm blood of resisting and ensure---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You are completely out of order! Summarise your presentation?

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I was trying to ask the citizens of--

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Proceed forward.

**Sen. Malalah:** Mr. Deputy Speaker, in my conclusion, I would like to urge the citizens of Nyanza to guard our territories if the policemen are unable.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! The Constitution is clear on the sovereignty of the country and the mandate on the protection of that sovereignty. It is not on the people of Nyanza or the people of any part of this country, that mandate is elsewhere.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, well guided.

I would like us, as advised by the British High Commission, to go into their archives and determine as to whether Migingo Island is in Kenya or in Uganda.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Where are these others requests coming from? We had concluded this matter for we have been at it for a while. I will give one minute each to Sen. Mutula Kilonzo Jnr., Sen. Pareno and Sen. Shiyonga and that will be all. They will speak in that order, beginning with Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you Mr. Deputy Speaker, Sir. One minute is more than enough. I support the request that as a Senate, we should start considering Article 5 of the Constitution where it says that:-

“Kenya consists of a territory and territorial waters comprising Kenya on the effective date, and any additional territory and territorial water as defined by an Act of Parliament”.

Therefore, Migingo Island should now be defined as a territory in Kenya in an Act of Parliament under Article 5. I am not certain whether we have an Act of Parliament under Article 51, and that is the solution.

I told you that a minute is enough.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator. You did not have to tell me for you did not have an option. You had one minute and it had to be enough.

**Sen. Pareno:** Thank you Mr. Deputy Speaker, Sir. I rise to contribute to this Statement and I must say that I am really disturbed. I want to ask our partner State, Uganda, what happened to the East Africa Community (EAC) integration processes; the coalition of the willing and the common market protocol where we are supposed to have free movement of goods; and people are even entitled to settle in any East African state.

I listened to a speech by His Excellency Kaguta Museveni, the President of Uganda, where he said that there is no difference between a Ugandan and a Kenyan and he assured us of the EAC integration process and free movement. My question is; what is happening within the EAC integration?

We have had cases where at one point, Kenyan cows were being sold and auctioned in Tanzania and the next minute, the security personnel were being arrested. I am disturbed about the integration of these partner States.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Shiyonga, I had already given you one minute.

**Sen. Shiyonga:** Thank you Mr. Deputy Speaker, Sir. I stand to support this Statement. It is a high time that the Ugandan Government respected the Kenyan Government. If they arrest our people, we should arrest their people and when they capture, we should also capture. If they release---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. You must make your debate within the law.

**Sen. Shiyonga:** Thank you Mr. Deputy Speaker, Sir. I am saying that because I am annoyed. It is a high time that the Ugandan Government gave respect to Kenyan citizens. I think that I am within the law because the senior counsel has just said so. We are neighbours and friends with the Ugandan Government but when it comes to the water in Migingo, they then become our greatest enemy. It is a high time that they respected this friendship.

*(Sen. Shiyonga's microphone went off)*

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Mutula Kilonzo Jnr.

*(Laughter)*

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

*(Sen. Cheruiyot spoke off record)*

Order Sen. Cheruiyot. Sen. Shiyonga has not asked for additional time. She has not.

*(Loud consultations)*

Order Senators.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order Sen. Wako?

**Sen. Wako:** Mr. Deputy Speaker, Sir, is it in order for the Hon. Senator to point a finger at the Deputy Speaker? Is that in order?

**Sen. Shiyonga:** Thank you Mr. Deputy Speaker, Sir. I have not pointed my finger, I just used gestures.

*(Laughter)*

I just did this.

*(Sen. Shiyonga gestured)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator. Who were you directing the gestures to?

**Sen. Shiyonga:** Mr. Deputy Speaker, Sir, they were just like this.

*(Sen. Shiyonga gestured)*

*(Laughter)*

Can I continue Mr. Deputy Speaker, Sir?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is even worse because it is a combination of many things. Proceed, I will give you one more minute but avoid such gestures in future.

**Sen. Shiyonga:** Thank you Mr. Deputy Speaker, Sir. Uganda is our neighbour and it is a country that we respect a lot. In that regard, Uganda needs to respect our citizens

and territories. It is a high time that the dispute raised by Ugandans against Kenyan citizens ceased with immediate effect.

When we go to Uganda, we should to be received with the integrity and respect that we deserve. If our people are arrested, then it is a high time that they allowed investigations in the highest court to resolve this dispute amicably because the Migingo dispute is long overdue.

*(Sen. Wamatangi consulted the Clerks-at-the-Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wamatangi, resume your seat.

I gave a bit of time for Senators to contribute and make observations though strictly speaking, that is not anticipated in the Standing Orders. As you are aware, the Statement by the Senate Minority Leader, who is also the Senator for Siaya County, has been made under Standing Order No. 46(2)(a) which says:-

“A Senator may make a statement on a county issue or an issue of general topical concern”

If you read the following paragraphs, that Standing Order does not provide mechanisms nor does it have any requirements for observations or even further action other than saying that the Senator shall have a maximum of ten minutes. Of course, the Senator took approximately that amount of time and the other Senators have taken 20 minutes, if not more.

Nevertheless, the matter raised by Sen. Orenge is a serious matter of great national concern and it touches on the security of our country and the territorial integrity of our nation. In particular, some of the Senators who have spoken provided useful information including the Senator for Bungoma, who has been a Minister for Foreign Affairs for Kenya before and the Senator for Busia, who has been the Attorney General and has been privy to this process.

Having said that, I want to draw your attention to Standing Order No. 1, which you quote many times. Standing Order 1(2) says:

“The decisions made in paragraph (1) shall be based on the Constitution of Kenya”---

It goes on and on, but I want to stop at the point of ‘the Constitution of Kenya.’ In other words, this Standing Order is sometimes used to invoke precedents and customs, which come at the tail end. But at the very beginning of that Standing Order, the Speaker is empowered to make decisions, which are not specifically covered in the Standing Orders, if the matters in question have a constitutional import or relevance.

I have in particular looked at two Articles of the Constitution. One is Article 94(2) on the role of Parliament. I have looked at this article, especially considering that in most cases when looking at the role of the Senate, the common thing is to run to Article 96, which is on the specific role of the Senate. But Article 94 captures the roles of the two Houses of Parliament.

Article 94(2) says:

“Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.”

That is a serious and heavy responsibility given to this House. When the sovereignty of our nation and people is threatened, this House and its mandate is invoked, whether or not there is a specific provision of the Standing Order; which is lacking in Standing Order 46(2)(a), as I have said.

The second one is Article 96 which is in regard to the specific roles and mandate of the Senate. Article 96(1) says:-

“The Senate represents the counties and serves to protect the interests of the counties and their governments.”

The area of Migingo is touching on a matter that relates to Siaya County and all the other counties that share the waters of Lake Victoria at the border with our neighbouring country, Uganda.

Hon. Senators, having said that, and in spite of the paucity of Standing Order 46(2)(a), I direct that the relevant Committee of this House, namely, the Standing Committee on National Security and Foreign Relations be seized of the matters raised by this Statement and report to the House within two weeks.

*(Applause)*

Sen. Abshiro Halake, please approach the Chair.

*(Sen. Halake consulted with the Chair)*

Very well. That is the end of Statements.  
Next Order!

### COMMITTEE OF THE WHOLE

THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL  
(SENATE BILLS NO.1 OF 2018)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I will defer this Order.

*(Committee of the Whole deferred)*

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. Pareno) in the Chair]*

THE NATIONAL FLAG, EMBLEMS AND NAMES  
(AMENDMENT) BILL (SENATE BILLS NO.8 OF 2017)

**The Temporary Chairperson** (Sen. Pareno): Order, Senators. We are now in the Committee of the Whole to consider The National Flag, Emblems and Names (Amendment) Bill (Senate Bills No.8 Of 2017). We will move clause by clause.

*Clauses 2 and 3*

*(Question, that Clauses 2 and 3 be part of the Bill proposed)*

The Division will be at the end.

*Clause 4*

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I beg to move:-

THAT Clause 4 of the Bill be amended in the proposed new section 4B (1) by inserting the words “or any other day designated by the Cabinet Secretary in the gazette” immediately after the words “during a public holiday.”

The original text that I had proposed was for Kenyans to fly flags during public holidays only. This amendment expands that to any other day that the Cabinet Secretary may designate to fly flags by Kenyans in their residences, private homes and offices.

Thank you.

*(Question of the amendment proposed)*

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

*Clauses 5 and 6*

*(Question that, Clauses 5 and 6 be part of the Bill, proposed)*

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

*New Clause 3A*

Sen. Wako to move the amendment.

**Sen. Wako:** Madam Temporary Chairperson, I move-

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

Amendment of Section 4 of Cap. 99

3A. Section 4A of the principal Act is amended in subsection 2 by inserting the words “Deputy Speaker of the Senate, Deputy Speaker of the National Assembly, Deputy Chief Justice” immediately after the words “the Speaker of the Senate”.

You may recall when I was making my submissions to this Bill, I said that on the national emblems, this Act appeared to be weighted in favour of the Executive. That is, the President, Deputy President and Cabinet Secretaries (CSs) to have a flag. A number of Senators also said that even Chairpersons of Committees who now act as CSs and the leadership of the House should also have flags.

However, that would then be carrying the thing too far. It was sought that the deputies of heads of organs just like the Executive with the Deputy President, Parliament is also an organ of the State. So, the Deputy Speaker of the Senate and the National Assembly should also have a flag. In the Judiciary, the Deputy Chief Justice should also have a flag.

So, that is the purpose of the amendment and, I, so move.

*(Question of the New Clause 3A proposed)*  
*(New Clause 3A read the First Time)*

*(Question, that the New Clause 3a be read a Second Time proposed)*

*(Question, that the New Clause 3a be part of the Bill proposed)*

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

*New Clause 4A*

**The Temporary Chairperson** (Sen. Pareno): Yes, Sen. Mutula Kilonzo Jr.

**Sen. Mutula Kilonzo Jr.:** Madam Temporary Chairperson, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 4-

Amendment of Section 5 of Cap. 99

4A. Section 5 of the principal Act is amended in subsection (1) by deleting the words “local authority” appearing immediately after the words “the area of a” and substituting therefor the words “county government”.

Madam Temporary Chairperson, this is only a text in order to ensure that Cap.99 of this Bill conforms to the new order of devolution. “Local authority” is the former Cap.265 which was repealed.

*(Question of the New Clause 4A proposed)*  
*(New Clause 4A read the First Time)*

*(Question, that the New Clause 4A be read a*  
*Second Time proposed)*

*(Question, that the New Clause 4A be part of the*  
*Bill proposed)*

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

*New Clause 4B*

I call the Mover, Sen. Mutula Kilonzo Jnr., to move the amendment.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 4—

Repeal of  
Section 6 of  
Cap.99

4B. The principal Act is amended by repealing Section 6.

The principal Act reads as follows-

“No prosecution for only offence permissible under this act shall be instituted except with the previous sanction in writing of the Attorney-General.”

Madam Temporary Chairperson and the rest of my colleagues, please, note that this is no longer the case in view of the new Constitution. The person who is in charge of the prosecution is the Director of Public Prosecutions (DPP) under Article 157. This clause is superfluous.

*(Question of the New Clause 4B proposed)*

*(New Clause 4B read the First Time)*

*(Question, that the New Clause 4B be read a*  
*Second Time proposed)*

*(Question, that the New Clause 4B be part of the*  
*Bill proposed)*



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

*The Title and Clause 1*

*(Question, that the Title and Clause 1 be part of the Bill, proposed)*

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

Hon. Senators, as you can observe, we do not have the numbers to proceed to Division. I, therefore, ask the Mover to move for reporting for progress.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, pursuant to Standing Order No.142, I beg to move-

THAT, the Committee of the Whole reports progress on the consideration of the National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.8 of 2017) and seeks leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! The Temporary Chairperson, proceed.

### **PROGRESS REPORTED**

THE NATIONAL FLAG, EMBLEMS AND NAMES  
(AMENDMENT) BILL (SENATE BILL NO.8 OF 2017)

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I beg to report progress; that the Committee of the Whole has considered the National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.8 of 2017) and seeks leave to sit again tomorrow.

I beg to report.

*(Sen. Pareno hesitated while reporting)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is happening, Temporary Chairperson?

*(Laughter)*

Mover, I hope you can do better than the Temporary Chairperson.

**Sen. Mutula Kilonzo Jnr.:** Certainly, Mr. Deputy Speaker, Sir. I beg to move that the House agrees with the Committee on the said Report.

I request Sen. Malalah to second.

**Sen. Malalah:** Mr. Deputy Speaker, Sir, I second.

*(Question proposed)*

*(Question put and agreed to)*

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

## BILL

### *Second Reading*

THE OFFICE OF THE COUNTY PRINTER BILL  
(SENATE BILLS NO.7 OF 2018)

*(Sen. Were on 12.6.2018)*

*(Resumption of Debate interrupted on 12.6.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, when debate on this Bill was interrupted, Sen. (Dr.) Kabaka had a remainder of 16 minutes. However, he is not here, but I can see a request by Sen. Wako.

**Sen. Wako:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to speak on this important debate. People may not realize how important this Bill is. The history of it starts from the last term. It was drafted by the current Governor of Nandi County. It was approved. He drafted it because as provided for by the Constitution, the Government Printer is under the national Government. The Government Printer only handles and gives priority to publications of the national Government.

Although Bills have to be published by the Government Printer as provided for by the Constitution, there are also many publications which county governments ought to publish. For example, it is difficult to know who has been appointed as a member of the county executive. Currently, we learn from social media what the governor has done as far as official county matters are concerned. Having a County Printer will enable the county governor to publish the members of the county executive.

One of the most important cardinals of our Constitution is public participation in decisions which affect the people. Currently, there is nothing the county governments or even the ward representatives can do other than have a site on social media to give people notices of meetings. The County Printer will be able to give the appropriate notices to people on venues of various meetings. Those who follow such debates will be able to read the county publication.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Mr. Deputy Speaker, Sir, at one time, we used to have one national radio station which people listened to throughout the country. There was no other radio. Later on, a few other radio stations were licensed. We now have radio stations in the villages, wards and counties which inform the people. This is the same way we should devolve the printing of county matters in an official document which is vital in informing the people.

The procedures of the County Printer Bill had been debated and passed by the former Senate. The Bill had been passed on to the National Assembly. It is the same thing with the Office of the County Attorney Bill. It had been debated, passed and transmitted to the National Assembly. However, we are now going through the motion again of doing this simply because the National Assembly did not have time to debate it.

It is high time the rules were changed. Although we know that everything dies with the dissolution of Parliament, maybe, we can decide that where a matter has been finalized by one House and gone to the other, it is for that other House to start the process rather than re-debating, redoing public participation, giving necessary notices and so on. It takes time. For example, instead of us debating this Bill now, it ought to have been debated in the National Assembly and enacted. It is not for us to redo the whole thing.

Having said that, Mr. Deputy Speaker, Sir, I support this important Bill and urge my fellow Members to support it.

**Sen. Seneta:** Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to add my voice to this important Bill. From the onset, this is a timely Bill because we need to support devolution in all aspects. It proposes to create an office to publish and print all official documents of the county governments. Therefore, with the spirit of devolution, we need to give all counties a mandate to publish their own documents from their counties rather than coming all the way to the Government Printer in Nairobi to print their official documents.

This Bill also seeks to create an office that will advise county governments on how to print official documents. Therefore, counties will be able to print their own official documents. This Bill allows counties to have their own official rubber stamps rather than buying them from the streets of Nairobi, in River Road and so on. This will, therefore, mandate counties to have their rubber stamps and printers and is a very important Bill. In the spirit of devolution, we also need to help counties to access this printer within a short time rather than wasting a lot of time when we want to gazette names of boards and committees. These publications are needed every other time because our counties have a lot of work and also need to move fast in service delivery.

Therefore, this Bill needs the support of this House and should be passed immediately. This will allow our counties to do their work fast without wasting a lot of time following a long queue at the Government Printer. It will also reduce a lot of expenses in counties and wasting of time piling their documents in Nairobi as they go there to seek for the services.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Seneta. Let us have Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Mr. Deputy Speaker, Sir, I stand to support this Bill and congratulate Sen. Were for bringing it. The basis of this Bill is hinged on the County

Governments Act of 2012 which makes reference to publication for documentation from the county in a *County Gazette*. That was either an assumption that got forgotten along the line or a statement for which proper legislation has not been put into place to ensure that the County Printer is put in place. I think this is what this Bill seeks to do. It is important and well contextualised.

We must also note that county legislation does not take effect unless published in the *Gazette*. This becomes a quagmire in terms of legislation, especially in the counties. This is because, for most of the legislation, they have had to rely on the Government Printer nationally. You can imagine the logistics of doing this for 47 counties and the level of work that it means in terms of bringing it all to one place.

This Bill envisages a situation where the 47 counties have a County Printer who can do that work. It goes on to tell us how this will be done - the person to be appointed and their qualifications. The person should have a degree in the relevant matters of printing and publishing and have knowledge and experience of at least five years. Apart from that experience, some sort of extra training will also need to be done. This is because printing work, especially for government printers at that level is very sensitive.

Going through the Bill, I felt that an element of oversight needs to be there. For example, I have not seen the penalty for a County Printer who just goes and prints his own things. Believe me, it can happen. There should be an element of control. There is no provision for a penalty. I, therefore, think there is an element of oversight needed. There needs to be some sort of twining of this County Printer, maybe to the county assembly or to the county executive but I am not exactly sure to who.

Mr. Deputy Speaker, Sir, as we think about moving an amendment and how to tighten this, it is important not to leave this person just on their own. They should have at least five years' experience; maybe even seven would be better. They should also have an element of training that will put them directly with the Government Printer so that they are able to go through it in detail.

The County Printer will have a lot of responsibilities. He or she will be the head of the Office of the County Printer and will be responsible for administration, organisation and control of staff in the office. He or she will be in charge of management of funds, property and affairs, implementation of policies and programmes of the office and development of operational plans for achieving the objectives of the office. He will, therefore, have a lot of work to do within that office. This office will also need responsible people who can work within that realm.

Yesterday, while Senators were contributing to this, there was need for competitive recruitment that should be done by the County Public Service Board (CPSB). We have been talking about workforce within the counties and the number of people employed. Yesterday, it was mentioned, and I want to reiterate, if there is somebody who can do the five jobs, let them do it so that we do not go and bloat the employment sector within the counties since they have too many workers, doing work that can be done by one person.

If well-coordinated, the work of five people can be done by one person. This should, therefore, not be looked at as an opportunity to bring in more work force just for the sake of it, but to bring a workforce that will do the work appropriately.

There are certain aspects of the Bill that are very important. For example, in Clause 6, it deals with coordination and liaising with the office of the Government Printer which is very important. It is to avoid any sort of duplication or contradiction between county and national publications. There will be need for coordination and liaison between the office of the Government Printer and the County Printer to ensure that there is no duplication in printing and publication of the documents.

Clause 7 states that the County *Gazette* will not be for advertisement and commercial activities, such as selling of commodities and services.

The Bill also introduces the element of an electronic version. That is important and quite commendable, considering that we are moving into an electronic age. People who have travelled outside the country can still follow whatever is happening. The only thing needed is due diligence to ensure that exactly what is in the printed version is the same in the electronic. Otherwise, we could find various complications coming as a result of any discrepancies.

The work that this County Printer will do will be very critical. I have said that the CPSB would have to do very serious vetting of the individual who will be put in charge of all these things, including advising the county executive and the assembly on matters pertaining to printing and publication of their documents. That requires very good liaison and communication skills between this person and the county leadership. He or she should be able to enter partnerships and collaborations with the public sector and that means quite a lot of responsibility.

This is a straightforward Bill and one of those we are cascading that had not envisaged what devolution was going to be all about. It attempts, again to devolve services, responsibilities and work stations that were put at a national level while forgetting to put them at the county level.

When we come to the Committee Stage, we will probably suggest some of the amendments to strengthen the Bill. We will ensure that there is no level of contradiction; that whatever is happening at the national level is safely devolved into the county level; from the Government Printer to the County Printer.

Thank you. I support.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to contribute to this Bill. I thank the Mover for coming up with this Bill. Devolution was meant to bring services closer to the people. I believe that this is one such Bill that will devolve the services of the Printer to the people in the counties.

You can imagine the 47 counties all wanting their different publications from different areas to be done maybe in a day or a week. It would be speedy and efficient for us to have the county printers than all of us sending all our publications and everything that needs to be printed to the Government Printer in Nairobi. It will also be easier to supervise and take control of these processes when they are closer. Sending documents for publication all the way from Busia, Kajiado and Kisii counties to the Government Printer causes delays and lacks proper supervision. It takes a lot of time to submit, transmit, follow up and finally have a publication done. Therefore, a lot of problems will be solved by doing them at the county. I presume that it will even be less costly.

Mr. Deputy Speaker, Sir, the County Governments Act, 2012 says that a Bill shall be published by including the Bill as a supplement in the County *Gazette* and the Kenya *Gazette*. It stresses and anticipates a County *Gazette*. Therefore, we cannot call what we print in Nairobi –Nairobi being a county on its own anyway - to be a County *Gazette*. I would prefer that it is a County *Gazette* of that particular county. This particular provision was anticipating that we would have some County *Gazette* and County Printer that does the printing for the county.

The Act also says that upon assent, there should be publication within seven days. I am not sure that all the counties have met this deadline of seven days. If all of them are sending all their publications to the Government Printer, are we sure that we can beat this particular provision and have every other Bill that is assented to published within seven days?

Mr. Deputy Speaker, Sir, you and I have been practicing law for a long time. Several times we would send succession cases for gazette; just to gazette that so and so is the administrator of the estate or has moved to administer the estate. It takes months for that to happen. I have had that experience with the Government Printer. I am in doubt that we can have the Government Printer do everything for all the 47 counties. We have many other things to be published and printed; it is not just bills from the counties. We have succession cases and every other thing that is coming up for printing. This is a good Bill that will relieve the Government Printer of the heavy work they have. It will then improve on efficiency in terms of delivery to the people.

It also ensures tracking, control and close supervision. I remember at one time in this country people debating about a small clause that was sneaked in. I do not remember what it was, but something was sneaked into a publication and it was a big issue and debate. You can imagine having to send a document to Nairobi and then take some days to come and follow up. You cannot even be sure of the quality of the publication. Given the corruption that we have in this country, you will need to be closer and supervise what you do. This will ensure tracking, proper control, supervision and management of the quality of the product that we end up having.

Mr. Deputy Speaker, Sir, look at the authorized people to send in publications, as per this Bill. The governor and office of the Speaker of the county could have something to be published. County Executive Committee Members in their mandates have something to be published. The Chairperson or Secretary of an independent board, a commission, committee or bodies established in law by the county may also have something to be published. You can imagine all these people channeling what they want to be published and printed. If you have all these people sending and you want to control and have a quality document at the end of the day very fast, it cannot happen if it is not close to you. This County Printer will receive all these applications and print.

It also brings centralization of printing. I would not imagine a situation where the County printer is there and the Speaker has his own unit of directives being sent and the governor sends his. If this Bill is passed there will be a centralized way of doing printing as a county. It is not like everybody sending their own. Right now, everybody is sending their prints and there is no centralized way of sending them. I am happy that this Bill seeks to centralize some of these operations. It will be better for purposes of service.

In the case where the Speaker, the executive and everybody else sends their documents, this Bill seeks to have a centralized way of managing the cost and the budgets attached to printing in a county. There will be some consolidated way of doing publications as a county and this will help us.

Mr. Deputy Speaker, Sir, I have just seen on “411” a directive by the President ordering that all public bodies should publish their details of tenders and awards. That is what I have just seen as news feed.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Pareno! What is “411”?

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I have just received a text from---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Pareno! What is “411”?

**Sen. Pareno:** Mr. Deputy Speaker, Sir, it is a news alert. I am guided.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, the news alert shows that there is a directive by His Excellency the President that all public bodies and entities should publish not only the tenders, but also the awards they are going to make. Look at the kind of bodies and entities that we are having in this country. There is only one entity that is doing publishing and printing. We need this service devolved, so that those that can be handled at national level can be handled there and the rest handled at the counties. It will help us realize faster service to the people.

With regard to equitable distribution of information to the people, back in the villages, people do not know what is called the *Kenya Gazette*. They do not even know that these publications exist. In fact, when you tell them that there is a *Kenya Gazette*, they do not know about it. It is mostly known to lawyers who go to the Government Printer to get it or to those who work in the county executive. Having the County Printer will distribute this information quickly and in an equitable way to the people.

In fact, having one centralized Printer has denied people information. They cannot access a lot of directives that have been done. Even yesterday, had it not been for social media, we would not have known that there was a declaration of a public holiday on Friday. We just saw it on social media. If you and I do not know, and we are here with those that publish-- “You” does not mean “Mr. Deputy Speaker.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! You are the only one who did not know. You cannot speak on behalf of everybody.

*(Laughter)*

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I stand corrected. If I did not know as of yesterday, until I saw an alert in the social media that there is a public holiday, how would our villagers know? They are not able to access some of this public information that is gazetted or published which is meant for them. In fact, we are told, “Ignorance of the law is not defense.” So, even if you do not know some of these laws that are passed and you are ignorant about them, you will still have committed an offence. Our people will be better served with a County Printer where we will be able to disseminate this information. We will then be equitably saying that we can access our people and they will have a quick access to the relevant information that we pass.

Mr. Deputy Speaker, Sir, I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. (Rev.) Waqo.

**Sen. (Rev.) Waqo:** Thank you, Mr. Deputy Speaker, Sir. I stand to support this very important Bill and also appreciate the sponsor of the Bill for bringing it to the Senate.

I support this Bill because, as we all know, our 47 counties need to be effective and efficient. Some of the conditions that are there will not help them to move very fast in whatever they are doing. However, this particular Bill proposes efficiency in their work and that is why I support it.

In this Bill, you can clearly see that, in Clause 6 under Part II; Establishment of the Office of the County Printer, it has taken care of some very important areas. It will ensure that there will be no duplication in printing and publication of the documents because of the coordination or liaising well with the Government Printer.

When it comes to employment of the officers under Clause 9(2), you can clearly see the way people should be appointed, the body that will recruit them and so on. All these are clearly indicated which takes care of any confusion that may take place and also the requirements of Chapter Six of the Constitution which is very good. Unfortunately, in the past, many Kenyans misused this because some of the people who applied for different jobs and even qualified, did not follow Chapter Six of the Constitution.

I believe that with the current fight against corruption, we will be able to put all these in order so that we can place the right people in the right positions. This will also help and guide the Executive on the ground. It will also ensure that the counties do not employ their relatives, but employ qualified people who can do the work efficiently.

Mr. Deputy Speaker, Sir, I support this Bill and congratulate its sponsor. Thank you.

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

Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to comment on this very important Bill. In fact, this is the kind of legislation that we ought to be developing because, from the outset, they promote devolution.

It is shameful that since we devolved or established the 47 counties, many of these counties keep coming to Nairobi to publish their Bills. I dare say that many of these counties are actually implementing laws that have not been published. This is contrary to what the County Government Act and the Constitution, particularly, Article 199, require us to do. Article 199 of the Constitution which talks about publication of county legislation says-

“County legislation does not take effect unless published in the *Gazette*.”

This means that all these legislations that have been implemented are illegal.

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

*[The Temporary Speaker (Sen. Pareno) in the Chair]*



Madam Temporary Speaker, it is time that we focused on developing legislation that will fully enhance devolution. Dr. Kofi Annan once said that knowledge is power, information is liberation and education is the premise of progress in every society and family. Those words are echoed by Article 35 of our Constitution which gives every Kenyan the right to access information. It says-

“Every citizen has the right of access to-

- (a) information held by the State; and
- (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.”

Madam Temporary Speaker, we are all aware that many things happen in this country where, in most cases, there are transactions that take place. You may sell your land. After selling your land, you decide to do away with the title deed. The person who has bought that parcel of land goes ahead with all the transactions but you secretly know that, that person does not have the knowledge of how to pursue the entire process of getting a title deed. You then go and report that you have lost your title deed and you publish it in the *Kenya Gazette*. Within a period of time, you can apply for another one. That is deceptive.

With this Bill, all that will be a thing of the past. That information will be readily available. The county governments will not only get an opportunity to publish their own Bills, but it will also help enhance or build capacity for those Members of the County Assemblies (MCAs).

Recently, we were entertained by one of our Senators who said that most MCAs lack capacity. By the fact that they have to publish this locally, it will encourage them to work and push their agenda. It will also encourage county governments to invest in building capacity of their MCAs so that they can take pride in publishing Bills in their own county printers.

I see this as an added value because we know that in all our schools, there is a child out there who says, “When I grow up, I want to be a printer.” If that child wants to be a Government Printer, it will be very difficult because there is only one position. However, we are now creating more positions; 47 of them. This will create more jobs in the Office of the County Printer. There will be more people getting jobs in each and every county.

People will also play a role in the development of their counties because it will give the county governments the opportunity to even publish their County Integrated Development Plans (CIDPs). It will also help people know the counties from which they get these appointments. When those appointments are published in the *Kenya Gazette*, not everyone gets an opportunity to see who filled a particular position.

Madam Temporary Speaker, this Bill will enhance more of other policy statements. It will give an opportunity for a governor when he or she has something very important to share with his or her citizens. Instead of coming to Nairobi and queuing at the Government Printer, they can just take advantage of their own county printers and print them there.

When it comes to information sharing, we are deprived in this country. People do not even understand the difference between a newspaper and the *Kenya Gazette*. I

remember, during the elections, many people would argue and say: “My name was listed in the nomination paper in the *Gazette*.” However, his name was not in the *Gazette*, but in the newspaper. So, people would have issues and start fighting by saying: “Which ‘gazette’ is it on?” Even the Independent Electoral and Boundaries Commission (IEBC) can take advantage of this County Printer. Although it is a national function they deal with, but now they can even publish the ward elections in the County *Gazette* so that people can see the number of candidates contesting for a particular seat.

Madam Temporary Speaker, the benefits are immense and will help in flow of information. The golden rule of information is to share the necessary or relevant information. If I want to change my name today, for example, I will follow some laid down procedures. For example, I will approach a lawyer who will get for me a deed poll which must be published by the Kenya *Gazette*. This information may be shared to the citizens in counties. By following that procedure, I can easily have my name changed and published in the County *Gazette*.

Madam Temporary Speaker, I am one of those people who believe in devolution. If we want to take services closer to the people then we have to do so without much delay.

It is a shame that this Bill was introduced in the previous Parliament and it lapsed without it being enacted. I want to encourage the Mover to lobby Members of the National Assembly so that this Bill is passed immediately. Once it is enacted, it will protect the interests of the county governments. It will also help us save resources, empower our people and enlighten them in terms of information. Let them know if a particular policy has been adopted by their local governments and whether that information is readily available to them. They can get it by either walking to the county printers or it will also be locally available.

The other thing I love about this Bill is the electronic aspect of the County Printer. This is because we have depleted our forest cover in this country. I urge the Mover to propose certain amendments to this Bill that will help us determine what kind of information will be printed in hard copy and what to be reserved in electronic format. In the United States of America (USA), for example, in the Department of the Secretary of State when registering a company you do not have to fill documents manually, but you do so electronically and a certificate will be issued to you. As I said, I would suggest to the sponsor of the Bill to put in an amendment that will stipulate what can be printed in hardcopy and what can be available in soft copy. By doing so, it will help us save a lot of money.

In addition, this Bill helps reduce wastage. Clause (6) says-

“In performing the functions under Section 5, the Office of the County Printer shall coordinate and liaise with the Office of the Government Printer and shall ensure that there is no duplication in printing and publication of documents.”

There is no reason as why the Government Printer should print what can be printed at the county level by the County Printer in this era of devolution.

Madam Temporary Speaker, this is an opportunity to create more jobs in counties and we avoid the rural-urban migration although nowadays we do not have many rural areas. We will be bringing a Bill to this House to create more urban areas and centres.

Accessing services locally, our people will not find it attractive to stay in Nairobi and other urban areas.

I believe the county governments will take advantage of this Bill and support its implementation. It will help them print all their Bills and other documents. We do not want city *askaris* showing us small pieces of paper restricting or prohibiting our citizens from doing certain things. This information can be readily available to all of us. For example, if Sen. Seneta wants to verify information about laws enacted in county assemblies, she can do so, on her laptop, iPhone, or phone. This will help us because information is power.

Although information sharing is restricted by legal barriers, this Senate has an opportunity to break them by ensuring that this Bill does not lapse, but be enacted into an Act of Parliament. It is sad that we spent most of our time fighting here while Bills were lapsing.

Finally, if you have information about the whole planet, there is nothing you cannot achieve. I want the people of Narok County to access information from their County Printer so that they play a critical role in their development. This Bill not only creates jobs, but it helps us in strengthening devolution.

Thank you, Madam Temporary Speaker.

**Sen. Shiyonga:** Madam Temporary Speaker, thank you for giving me the opportunity to contribute to this Bill. I want to applaud the Mover of this Bill. It is a very exciting Bill and the owner needs to be applauded.

This Bill will help Kenyans to access services. It will enable individuals who are ignorant to access such services. It will also enable standardisation of documentation in all counties. When documents are produced at the county level, they will serve their clients without much delay.

Madam Temporary Speaker, many of my colleagues have talked about how this Bill will help create employment opportunities to our people. When this Bill is passed, it will enable our youth with skills in this particular field to be employed. Devolution is all about creation of employment. Many of our youth will be employed in 47 counties to work in printing departments. This will help decongest Nairobi and other urban centres. The counties will be owners of their own Printers. That means that they will prioritise what they feel is important to be printed.

I support this particular Bill because it will allow self-regulation of the counties. It will also open avenues for many other documents that our citizens do not know. People in different counties will be sensitised on provisions of this particular Bill even if it means in their mother tongues. Therefore, many people who do not know gazettelement of documents such as land title deeds and employment will get to know.

Every citizen will be sensitised and they will be able to see the documents physically rather than coming to crowd in Nairobi where those with disabilities could have problems. It will also enable persons in different counties know documents that go through the process of gazettelement and printing.

This is one of the Bills that I support. I laud the Mover of this Bill because it is something that has been waited for long. How I feel that the Mover, like my colleague

said before, lobbies for more of our legislators to support it to enable counties improve on their service delivery.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Hon. Senator, I see no other requests. I therefore ask the Mover to reply.

**Sen. Were:** Madam Temporary Speaker, I beg to reply. I would like to thank my colleague Senators who have greatly contributed to this Bill. With their contributions, they have enriched this Bill greatly.

Members have suggested that we put a provision for costing of services to the public like preparation of the deed poll, estate administration, documentation and also title deeds. They also suggested that we should have a provision for vetting of the County Printer by the County Public Service Board (CPSB) and the staff of the Office of the County Printer to be sourced from the national Government Printer, so that we do not have a bloated workforce at the county level and, therefore, limit the number of workers in that Office.

Members are also in agreement with me that this Bill, as Sen. Mutula Kilonzo Jr. said, is anchored on all fours in the law. They agreed that there has been a gap in the law that this Bill will seek to fill successfully.

Members also alluded to the fact that the Government Printer operates like a secret organisation and, therefore, subject to favouritism and all forms of corruption. With this Bill, there will be transparency, accountability, public participation and equitable distribution of information. Information sharing and the budget-making process in the counties will also be smoother. Right now, the delays create clogs in the process of budget-making.

Members also suggested that we look at Cap.2 and how it will fit in and especially the role of the President and the interpretation of the term “Kenya Gazette”.

Members are in agreement that this Bill will enhance public participation and keeping the public informed in the spirit of transparency.

Senators also suggested that we need to have an avenue to oversight or penalize the County Printer and that this should be done by either the county assembly, the County Executive Committee (CEC) member in charge or once we pass this Bill, the County Attorney can also do oversight.

This Bill will also look into all the issues including qualifications of the County Printer. For example, the five years’ experience should be moved to seven years. This Bill will also offer a chance to consolidate and centralize ways in which publications at the county level are managed.

I thank all Members who have enriched this Bill. As it moves to the next stage, we will incorporate all the ideas and enrich it further. The importance of this Bill has been stated very well by all Members in this House.

Madam Temporary Speaker, pursuant to Standing Order No.55(3), I request that putting of the question to this Bill be deferred to another day.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, I order that the putting of the question on this Bill be deferred to tomorrow.

*(Putting of the question on the Bill deferred)*

Let us move on to the next Order.

*Second Reading*

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

**The Temporary Speaker** (Sen. Pareno): Let us have the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

**Sen. Cherargei:** Madam Temporary Speaker, I thank you for this opportunity. From the outset, The Office of the County Attorney Bill is very important---

**The Temporary Speaker** (Sen. Pareno): Order Senator! Kindly move the Bill.

**Sen. Cherargei:** Madam Temporary Speaker, I beg to move the Bill.

**The Temporary Speaker** (Sen. Pareno): Kindly move and read the title.

**Sen. Cherargei:** Madam Temporary Speaker, I beg to move that The Office of the County Attorney Bill (Senate Bills No.3 of 2017) be read a Second Time.

**The Temporary Speaker** (Sen. Pareno): Did I hear you say 2017?

**Sen. Cherargei:** I think there is a typo in my notes and I beg your pardon. It should be The Office of the County Attorney Bill (Senate Bills No.3 of 2018). Sorry for that.

I agree that devolution has come a long way and there are many laws that we need to put in place to ensure we oil the wheels of devolution in this country.

*(Loud consultations)*

**The Temporary Speaker** (Ms. Pareno): Order, Senator! Kindly, proceed.

**Sen. Cherargei:** Madam Temporary Speaker, protect me from distraction of Members. They should keep their consultations at the lowest levels possible so that they do not distract my attention.

I agree that under the objects of Article 174, we need to ensure that some of these functions are devolved properly. This Bill will ensure that it facilitates devolution to the lowest level possible as envisaged under 174 of the Constitution. In the interest of ensuring that we dispense justice, it is important that Kenyans understand that it is not only about courts of law or the Judiciary; justice is an all round. That is why in this Bill we are trying to ensure that we have the offices of the County Attorney, County Solicitor and the County Legal Advisor.

Madam Temporary Speaker, you will remember that most counties are struggling with pending bills amounting to around Kshs90 billion. One of the largest pending bills in the counties is the legal fees that the lawyers charge because we do not have a legal framework. We have to appreciate that most counties have their own format of legislation on how to hire county legal advisors, county attorneys or county solicitors. Therefore, the

enactment of this Bill will ensure that we come up with uniform legislation that will cut across all 47 counties and provide the necessary legal framework going forward.

Madam Temporary Speaker, there has been a lacuna in the legal representation of the county executive. We have agreed that these people will ensure that they give the necessary legal advice to the county executive and county assemblies. When we met at the Third Legislative Conference in Mombasa, we agreed that there are many weaknesses in terms of legislative framework within our counties governments and county assemblies. Therefore, it is high time that we ensure that we strengthen and give our county assemblies capacity.

Another challenge has been the quality of the legislation that we pass across our county assemblies. Going forward, this will ensure that we improve on the quality of the legislation that we pass in our legislative assemblies. We want to ensure that we do not leave a gap where county governments or county assemblies have an opportunity of hiring or outsourcing some of these legal services.

I know sometimes it is important that some of these legal services are outsourced. Some of those legal services that are outsourced can be handled by the County Attorney, County Solicitor and the County Legal Advisor. Therefore, in the interest of ensuring prudent use of money, we need to create offices that will ensure that before our county offices outsource some of these services, especially legal services, they must demonstrate or have a serious issue as to why they want to outsource legal services. We have even gone ahead to give the powers to the County Public Service Board (CPSB) so that we create a necessary legal unit.

Madam Temporary Speaker, you are one of the longest serving legal practitioners in this country and, therefore, you appreciate that we need a legal unit within county governments and county assemblies. We have tried in this Bill to provide for the necessary framework within the context of the Bill, to ensure we have a more vibrant County Solicitor, County Attorney and County Legal Advisor so that we ensure that we provide for all these within a unit.

We have even suggested in the Bill that we factor in the issue of serving both the county executive and the county assembly. From the functions that we have provided for under Clause 6, it is important to note on record that we have tabled the Committee Report. One of the important issues that we have raised is to have principal legal assistants.

It is good to put on record that we are not localizing the Attorney-General's office. This is an office that is in the mutual engagement of interdependence and distinct governance both at the national level and at the county level. Therefore, it is very important to note that we are not in any way delocalizing the Office of the Attorney-General. We are not telling the Office of the Attorney-General to open 47 small Attorney-General offices in each county.

Going forward, we have given guidelines in this legislation to ensure the Attorney-General is the one guiding the necessary rules and regulations of engagement regarding the roles and duties of the County Solicitor, County Attorney and County Legal Advisor.

County governments are a form of government outside the national Government. So, you will find the governor holding a meeting for the county executive or cabinet and maybe they are discussing or intend to do something that has legal implications. In this instance, this Bill will ensure they give proper legal advice and participate in the process within the county governments so that the county executive or county assemblies pronounce themselves within the legal parameters so that we do not have most counties being taken to court. This will ensure that by the time they are coming out, they are aware of what should be done and ensure that they advise the county.

Sometimes the county can be sued and it is important that we have indicated that they should have legal representation. This country is now struggling with graft, grand corruption, mega scandals that stink to high levels. Therefore, we are trying to tighten the bolts so that in future we do not see the hidden dramas where we see suspects applying lipstick in courtrooms or showing off tattoos on their hands or other parts of the body. It is important we ensure that we tighten such bolts so that we avoid these circuses that we see in this country. I am not saying that all governors have been painted in bad light. They are very good at looking for ways of how to spend their money. So, they will look for some of our colleagues.

Madam Temporary Speaker, I know most of our colleagues are legal practitioners and may be doing business with the counties. I am not saying that they are doing the business in bad faith. It is shocking that even Nairobi City County, and I stand to be guided, has a pending bill of about Kshs800 million to Kshs1.2 billion in form of legal fees. If you go through this matter, you might find that it was a legal service that would have consumed not more than Kshs1 million. However, since there is no format on how you can engage, or what you can do, by the time the governor is seeking this legal advice, the county attorney should have been able to digest and allow.

I think a third part is to ensure legislative and other legal matters.

Madam Temporary Speaker, tomorrow we are hosting the Cabinet Secretary for Interior and Coordination of National Government as the Committee on Justice, Legal Affairs and Human Rights. Even some counties engage in treaties and many other issues. I have seen some counties are signing Memorandum of Understanding (MOUs) and others want to establish Export Processing Zones (EPZ).

In my county, I saw the governor trying to come into mutual agreements where as some of those agreements have legal implications. As we speak, some counties get into MOUs and treaties, among other things without signed legal advice. Therefore, we risk falling into legal landmines that might in future cost counties control of their own engagement.

It is important that these people go through the Bills at that level so that by the time the counties come up with such documents, it is tied up. They should participate in the negotiation process before they sign it so that we do not have our counties signing some of the documents that are not well informed. This will make them avoid risks, going forward.

Madam Temporary Speaker, another point is that, if we need amendments at the county assembly or anywhere else, this will assist because there are some amendments

that are brought by the county executives to the county assemblies. They are important people who will assist in drafting the amendments and ensuring that they revise the laws.

It is good that all of us were in Kakamega during the Fifth Annual Devolution Conference. We saw a circus between 2013 and 2017 during the implementation of devolution. Some of the laws that were passed included: Before you slaughter a chicken, you had to pay Kshs20 and before you bury someone you should get a burial permit and pay some money. Some of the laws were going contrary to the Constitution, the norms and culture of our people. Therefore, as we move forward in ensuring that devolution works for the people, we should ensure that we act within the law.

Finally, we have provided that the County Attorneys liaise with the Attorney-General. This is important for rules and regulations so that we have uniformity and constructive engagement. We are not directing, but saying that they can liaise. The word 'may' is not obligatory nature. If we use 'shall,' it does not mean that we are now going to direct the county governments. These are mutual, inter-dependent and distinct forms of government. So, it refers to liaising more than directing.

In terms of engaging the capacity of the Attorney-General's office, it can assist our attorney offices in our counties. This will ensure they provide necessary legal directions and constructive engagement. It is not in any way directing counties, but it is important that they do capacity building so that they are able to provide many other functions. There are still many things that the county governments can still not fulfill. Therefore, I agree that in discharging their duties, we can still ensure we provide the necessary support going forward.

Madam Temporary Speaker, I also forgot that they also protect public interest issues. It is important that we have county attorneys who can protect public interest. Public interest litigation has come a long way from the time of the late Prof. Wangari Mathai and many others.

In the previous Constitution, the custodian of public interest was the Attorney-General. I agree with this new Bill as someone can have an obligation of protecting public interest. Therefore, it is necessary that the Attorney-General be involved in matters of public interest where the counties are engaging in treaties, MOUs, entering into partnerships and leasing of hospital equipment.

When Sen. Mutula Kilonzo Jnr. tabled the Division of Revenue Bill, most Senators wanted to know what counties are engaging in. By the time counties are engaging in the issue of leasing hospital equipment, they should be well informed. There are cases that attract public interest. These are the people who will ensure that we fast-track our processes.

Today morning, we were engaged in the office of the DPP which is led by Mr. Noordin Haji. It was important to note that in the office of the DPP and many other Government offices, legal minds were leaving *en masse* simply because the terms of service had not been adequately catered for. That is why the private sector is now becoming more attractive. You will realize legal counsels who are still young and still growing need the necessary support. In fact, we have provided to ensure that the terms of service that will be provided by the CPSB is adequate so that we can get the best of the best.



We have to appreciate that there is a challenge in far flung areas where good lawyers and senior counsel across the country would not be interested to work in those countries. We want to make these positions rosy and attractive so that our counties have an equal opportunity in terms of getting the best brains. In consultation with the CPSB, we will ensure that we create the necessary terms of service.

Madam Temporary Speaker, there was an issue with some of the stakeholders, although I want to thank all those who turned up for public participation. There is a feeling that by the Attorney-General being an *ex officio* of the cabinet, then they should enjoy the rank of a county executive. However, we agreed that the CPSB will guide us on this issue.

Another reason we have many corruption scandals in this country is because we allow someone who is a civil servant to go and sell *sukumawiki* out there or supply *sukuma wiki* or cabbages to the same organization. While doing that, they demand sexual favours from some of the suppliers so that they can get an opportunity to supply to that organization. For this reason, we have to ensure this is not allowed because it seems there is no gainful employment outside what we have, so that we avoid conflict of interest.

For instance, if I am the County Attorney and I am aware that there is a particular brief that needs to be outsourced to a private law firm but I have my own law firm, there will be conflict of interest. It is in human nature. It is Thomas Hope who said that it is in the human nature in social foundations of law to always want to have everything. Mahatma Gandhi also said that, there is enough for all of us, but there is enough for one man's greed. Therefore, we have to ensure that there is no conflict of interest and avoid people bringing in their girlfriends.

**Sen. (Dr.) Zani:** On a point of order, Madam Temporary Speaker, Sir. Is it in order for the hon. Senator to keep demeaning the position of women whenever they are given any position? We have heard this and we are fed up with it. We will not sit here and hear people talking about women and appointing girlfriends. Let us talk about boyfriends too if there is such a thing. Let us talk about professionals. Let us talk about the work that women put in the political parties. Let us not be embarrassed because we are in positions and we are going to be referred to us girlfriends. Girl friend of whom? You mean there are so many men who need girlfriends right, left and centre? Is he in order? Can he apologise and retract that statement and respect the women of Kenya?

Let me also take this opportunity to congratulate you. This is the first time I am making my contribution when you are on the Chair. Congratulations. Let him apologise and withdraw.

**The Temporary Speaker** (Sen. Pareno): Sen. Cherargei, you have some homework. You either substantiate these sexual favours you are talking about or you withdraw.

**Sen. Cherargei:** Madam Temporary Speaker, I have tremendous respect for all women leaders in this country. I know that Sen. (Dr.) Zani has been one of the trailblazers in championing many issues of women in this country. Therefore, I was not making reference in bad faith; it is in the public domain.

Madam Temporary Speaker, secondly, on the issue of allegations of sexual favours, there is an affidavit on the ongoing investigations of the National Youth Service (NYS) saga. One of the suspects has sworn an affidavit to allege that---

**The Temporary Speaker** (Sen. Pareno): Order, Senator! You know the rules of this House. If you make such a serious allegation, it must be substantiated or withdrawn. If you are aware of any sexual favours and have evidence, then we will take it. However, if you do not have evidence, you cannot talk about 'public domain.' We are a House of rules and you have to prove by substantiating or withdrawing your remarks.

**Sen. Chergei:** Madam Temporary Speaker, I withdraw and apologize. I respect all the women leaders and I am proud of them. They do not need to worry because the future is very bright.

Can I proceed now?

**The Temporary Speaker** (Sen. Pareno): You can proceed but, please, withdraw your statement.

**Sen. Chergei:** Madam Temporary Speaker, I have withdrawn and apologized; I think you were consulting with the Clerks-at-the-Table. I wish all our women well and I am proud of them.

**The Temporary Speaker** (Sen. Pareno): Thank you.

**Sen. Chergei:** Madam Temporary Speaker, I was still highlighting. We have provided for procedure on appointment and qualification. We have tried to be magnanimous as a Committee. There were suggestions of five or seven years and we realized that it is a common practice that when some of these counsels become senior, they tend not to be attracted to public appointments. Therefore, for all counties to get proper qualifications, we have stated that they should have at least seven years in practice. Therefore, one should be an advocate of the High Court

Madam Temporary Speaker, I know that there was a debate that one can be a legal practitioner or a paralegal because most counties which are far-flung like the North Eastern counties, among others, have a challenge of human resource. Therefore, it was argued that we should just have somebody with a legal background. However, we insisted that it should be an advocate of the High Court, so that they can assist on legal matters. It will be very sad to have a County Attorney who cannot go to court, because it would create a loophole where counties, in their spending, will outsource legal services.

Madam Temporary Speaker, one important point is that the appointment should meet the requirements of Chapter Six of the Constitution as well as the Leadership and Integrity Act. There is public pressure because of the many corruption cases that we are facing. Therefore, we should try as much as possible to have people of integrity in office. This office is very sensitive because it will provide legal direction and ensure that there is legal representation. This office will also assist in legal legislative processes in our county assemblies and executives. It is also the office that will provide necessary advice to the governor. Therefore, we need somebody of high integrity who meets the necessary threshold going forward.

It should be a common and standard practice everywhere to ensure that we adhere to Chapter Six of the Constitution on Leadership and Integrity. That has been the challenge. Last week the Ethics and Anti-Corruption Commission (EACC), led by the

Chief Executive Officer (CEO), Mr. Halakhe Waqo, said that they have a challenge in ensuring that people comply with Chapter Six of the Constitution on Leadership and Integrity. I would like to assure Kenyans that we are trying to tighten some of these laws to ensure that we not only get highly qualified professionals of either gender – I need to be very careful in making my remarks - be it a woman or man, he or she should be of high integrity and with qualifications within the legal practice. Persons with Disabilities (PWDs) and the marginalized should also be considered.

**The Temporary Speaker** (Sen. Pareno): Order! Sen. Cherargei, you will have balance of 35 minutes to move the Bill when it next appears in the Order Paper.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Thursday, 14<sup>th</sup> June, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.