

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 25<sup>th</sup> July, 2018

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

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

### PRAYER

### PAPER LAID

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 25<sup>th</sup> July, 2018-

#### REPORT OF THE SIXTH ORDINARY SESSION OF THE FOURTH PAN-AFRICAN PARLIAMENT

Report of the Sixth Ordinary Session of the Fourth Pan-African Parliament.

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

### NOTICE OF MOTION

#### NOTING OF REPORT OF THE SIXTH ORDINARY SESSION OF THE FOURTH PAN-AFRICAN PARLIAMENT

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, this House notes the Report of the Sixth Ordinary Session of the Fourth Pan-African Parliament held in Midrand, South Africa, from 7<sup>th</sup> to 18<sup>th</sup> May, 2018, laid on the Table of the House on Wednesday, 25<sup>th</sup> July, 2018.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us move on to the next Order.  
Proceed, Senate Majority Leader.

## STATEMENT

MANDATE OF THE SENATE, ITS COMMITTEES AND  
PROCESSING OF LEGISLATION IN PARLIAMENT

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I have a Statement to make with regard to the Mandate of the Senate and its Committees.

I wish to make the following Statement on an issue of general topical concern namely, the matter of the mandate of the Senate, as provided for in the Constitution.

In the recent past, a number of issues have been raised concerning the mandate of the Senate generally and of Senate Committees, including-

(1) That the Senate and its Committees, while conducting inquiries, have overstepped their mandate and have been handling matters that fall within the mandate of the National Assembly; and,

(2) That there has been unnecessary duplication of efforts, where both Houses of Parliament handle inquiries on the same matter leading to waste of public resources.

Mr. Speaker, Sir, Article 93 of the Constitution provides for the establishment of Parliament consisting of the National Assembly and the Senate. The role of the National Assembly is set out in Articles 94 and 95; while that of the Senate is set out in Articles 94 and 96 of the Constitution. It is important to observe that the role of Parliament, under Article 94 is shared between the National Assembly and the Senate.

Mr. Speaker, the Houses of Parliament work through the Plenary as well as through their Committees. Article 124(1) and (2) of the Constitution provides for the establishment of Committees as follows-

“(1) Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

(2) Parliament may establish joint committees consisting of members of both Houses and may jointly regulate the procedure of those committees.”

Mr. Speaker, Sir, the Senate and its Committees---

*(Sen. M. Kajwang’ spoke of the record)*

Mr. Speaker, Sir, I request protection from Sen. M. Kajwang.’ I look forward to his comments on this weighty and important matter concerning the Senate of the Republic of Kenya.

Mr. Speaker, Sir, the Senate and its Committees generally perform the following functions:—

- (1) Conduct of inquiries;
- (2) Oversight over the National and county governments in accordance with their respective mandates;
- (3) Consideration of legislation; and,
- (4) Consideration of statements and petitions.

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The role of a legislature is generally summarized as being legislation, oversight and representation.

Mr. Speaker, Sir, the legislative role of the Senate is set out in Part 4 of Chapter Eight of the Constitution. Article 109 of that part of the Constitution limits the legislative role of the Senate to “Bills concerning counties.”

Article 110(1) of the Constitution provides as follows with respect to Bills concerning county governments-

“In this Constitution, “a Bill concerning county government” means—

(a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;

(b) a Bill relating to the election of members of a county assembly or a county executive; and

(c) a Bill referred to in Chapter Twelve affecting the finances of county governments.”

The Fourth Schedule to the Constitution referred to in Article 110(1)(a) sets out the powers and functions of the national Government and those of the county governments.

Mr. Speaker, Sir, the legislative mandate of the Senate is, therefore, limited to Bills that affect the functions and powers of county governments as set out in Part 2 of the Fourth Schedule or to Bills provided for under Article 110(1)(b) and (c) of the Constitution. It is, however, important to note that while the legislative mandate of the Senate is limited to this extent by the Constitution, the oversight and representative mandates of the Senate are not limited. The Senate is, therefore, fully empowered under the Constitution to deliberate on any matter under the sun that concerns it, the people it represents and this country.

Consequently, the allegations to the effect that the Senate and its Committees have overstepped their mandate by considering various matters of concern does not find support in the Constitution of Kenya, as the Senate is mandated under Articles 94 and 96 of the Constitution to deliberate on any issue of concern.

Mr. Speaker, Sir, I want to assure this House and reiterate that the oversight and representative mandates of the Senate are not limited. Consequently, the Senate and its Committees are free to deliberate on any matter of concern as robustly as they have continued to do, and in accordance with the law.

Mr. Speaker, Sir, before I refer to something else, it must be known to the people of this Republic that the main reason why many people are at the moment making a lot of noise about the robustness of the Senate and the issues that the Senate has been inquiring into – starting with the problems that affect the tea farmers, to the issues relating to the Solai Dam tragedy, to the issues that relate to the Ruaraka land – the only conclusion that we can make is that those who wanted to cover up issues that affect Kenyans are now feeling the heat and the impact of the Senate in its responsibility.

Mr. Speaker, Sir, it must also not be lost to Kenyans the reason we have the Senate and a bicameral legislature all over the world is for purpose of checks and balances. The Constitution of Kenya 2010 provided for different centres of checks and balances; the Legislature checks the Executive while the Judiciary checks both arms of

Government through the decisions they make. Most importantly, in the bicameral legislature, each House of Parliament has an opportunity to check each other so that if there is something that could have been covered up in the Senate, it is unearthed in the National Assembly. Similarly, if there is something that could have been covered up in the National Assembly, the Senate is also there to unearth those issues. It is becoming apparent that in the Ruaraka land saga, our Senate Committee is already investigating certain issues and looking at certain documents and pieces of evidence that the National Assembly Committee was unable to look at. Maybe that could have made some people uncomfortable because it exposes, on one hand, the possibility that anything could have been covered up in this great Republic of Kenya.

Therefore, Mr. Speaker, Sir, I want to reiterate and emphasise that as the Majority Leader in this House and the person responsible for introducing Government Business in this House, I am extremely proud of our committees and their deliberations. I am also proud of the business we are running in this House, the profile that the Senate is getting from that business and the commitment of the Senators to deliver on the mandate that was given by the people of Kenya. I will stand, at any instance that will be required, to defend the legislative, oversight and representative mandate of the Senate.

Mr. Speaker, Sir, allow me to also address another matter of utmost importance which is related to the legislative process of Parliament. The legislative process commences with the drafting and publication of a Bill by a Member of a Committee in either House of Parliament. Once the Bill is published and before it is considered by either House, Article 110(3) of the Constitution requires the Speakers of the two Houses to jointly determine, through the concurrent process, whether it is a Bill concerning counties. Once the concurrence process is concluded, the Bill is then introduced by way of First Reading in the originating House. In the case of the National Assembly, if the Bill does not concern counties – and this will have been established by both Speakers in the concurrence process – once the National Assembly passes it, the Bill shall then be referred for presidential assent under Article 115 of the Constitution. It does not come back to you and to this House. However, the Bill is one that concerns counties. This determination will have been made by Speakers during the concurrence process and before the Bill is introduced in the National Assembly. The Bill, once passed by the National Assembly, shall be referred to the Senate for consideration.

Mr. Speaker, Sir, all Bills considered by the Senate are referred to the National Assembly for consideration. Despite these provisions of the Constitution, the legislative process between the two Houses of Parliament have suffered serious problems that have literally paralyzed the legislative process in the past, especially when it comes to Senate legislation. Hon. Senators have been saying they passed certain legislation in this House, but they do not know where they are. Why are they not being deliberated in the National Assembly for the purpose of presidential assent?

Mr. Speaker, Sir, I want to enumerate some of the challenges that we have faced in the past and we still face in so far as the legislative process is concerned. The first challenge is the concurrence process under Article 110(3) of the Constitution. As observed above, Article 110(3) of the Constitution requires that before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly

resolve any question as to whether it is a Bill concerning counties and whether it is a special Bill or an ordinary Bill.

This provision basically requires a concurrence process before a Bill is read a First Time in either House. It is a condition precedent to the introduction of the Bill in the National Assembly or the Senate. I am saying this with utmost respect, because we have had situations where a Bill is introduced in the National Assembly and midway we are told the question as to whether it concerns counties or not, has not arisen.

This is very sad because for a law to become a law made by the Parliament of Kenya, Article 94 is very clear. It must be passed by Parliament. That passage by Parliament means that even if a Bill will not be deliberated in this House, it includes the involvement of the Speaker of the Senate in concurring whether that Bill concerns counties and, therefore, should come to this House or it is a Bill not concerning counties and can be allowed to go through the National Assembly and directly for presidential assent.

Mr. Speaker, Sir, despite the clarity of these positions, we are in an unfortunate situation where the National Assembly has for all Bills originating in the National Assembly, totally ignored Article 110(3). There has been no attempt on the part of National Assembly in the Twelfth Parliament and hardly in the Eleventh Parliament to comply with Article 110(3). National Assembly Bills are, therefore, published, introduced in the Assembly and posted all the way through the enactment without recourse to Article 110(3).

This is done in flagrant disregard of the Constitution which we all swore fidelity to. It is to be noted that for its part, the Senate has fully complied with Article 110(3) of the Constitution with regard to all Bills in this Parliament and in the Eleventh Parliament.

Mr. Speaker, Sir, the Supreme Court in its advisory opinion Reference No.2 of 2013 pronounced itself on when and how the concurrence process under Article 110(3) of the Constitution is to be undertaken.

The court stated as follows-

“It is quite clear that the business of considering and passing of any Bill is not to be embarked upon and concluded before the two Chambers, acting through their Speakers, address and find an answer for a certain particular question. What is the nature of the Bill in question? The two Speakers in answering that question must settle three sub-questions - before a Bill that has been published, goes through the motions of the debate, passage and final assent by the President.

The sub-questions are as follows-

- (a) is this a Bill concerning counties? If it is, is it a special or an ordinary Bill?
- (b) is this a Bill not concerning county government?
- (c) is this a money Bill?”

Mr. Speaker, Sir, the court further noted that-

“Neither Speaker may, to the exclusion of the other, “determine the nature of a Bill” for that would inevitably result into usurpations of

jurisdiction, to the prejudice of the constitutional principle of the harmonious interplay of State Institutions.

It is evident that the Senate, though entrusted with a less expansive legislative role than the National Assembly, stands as the Constitution's safeguard for the principle of devolved government. This purpose will be negated if the Senate were not to participate in the enactment of legislation pertaining to the devolved units, the counties as per Article 96(1)(2) and (3).

It is clear to us, from a broad purposive view of the Constitution, that the intent of the drafters, as regard the exercise of legislative powers, was that any disagreement as to the nature of the Bill should be harmoniously settled through mediation. An obligation is thus placed on the two Speakers, where they cannot agree between themselves, to engage the mediation mechanism. They would each be required to each appoint an equal number of Members, who would deliberate upon the question, and file the report within a specified period of time. It is also possible for the two Chambers to establish a standing mediation committee to deliberate upon and resolve any disputes regarding the path of legislation to be adopted for different subject matter."

Mr. Speaker, Sir, despite the provisions of the Constitution and the pronouncements of the Supreme Court and despite numerous interventions of the Senate and its leadership, the National Assembly has remained non-compliant as far as the concurrence process is concerned. The National Assembly has argued that the concurrence process does not arise unless and until, "a question" has been raised as to the nature of a Bill. It has not been made clear to us who is supposed to raise this question: Is it a Member of the National Assembly, a Senator, a concerned citizen? Where is the question to be raised? Can it, for example, be raised at the Third Reading or just before the Presidential assent? Is it to be raised in Parliament or at some other place? More importantly, of what benefit would it be for the National Assembly to proceed with a Bill and to spend valuable time and resources, not knowing if or when the question may be raised? It is difficult to sustain this argument when Article 110 of the Constitution is clear that the concurrent process and, therefore, the question always arises before a Bill is read a First Time in either House.

Mr. Speaker, Sir, sadly in respect of Bills originating in the National Assembly, the legislative process has encountered legal challenges on account of non-compliance with the concurrence process under Article 110(3). Noting that most of the Bills in the National Assembly are Bills originating from the Executive and which the Executive and the country as a whole are eagerly awaiting in order to ensure that the delivery of the agenda of the Republic of Kenya, there is absolutely no reason why the legislative process should not be followed to the letter to avoid legal challenges and the resultant unnecessary embarrassment.

Two, is about Bills concerning counties originating in the National Assembly. Article 110 of the Constitution allows the Speakers of the two Houses, in the concurrence process, to determine whether the Bill concerns counties. This is important because in

accordance with Article 109(4) and Article 110(4) of the Constitution and in order to ensure that the Senate performs its constitutional role of safeguarding devolution, a Bill that concerns counties is to be considered by both Houses of Parliament.

We have, however, been in the unfortunate situation where, on account of a breakdown of the concurrence process under Article 110(3), the National Assembly has originated and passed Bills without reference to the Senate despite those being Bills, without doubt, concern counties. There are examples of such Bills and in the last Parliament there were many.

On the numerous examples, we have various legislations that could easily be challenged on that basis. That includes the Statutory Instruments Act of 2013, the Salaries Remuneration Act of 2011, the Pharmacy and Poisons Board (Amendment) Act of 2014, the Environmental Management and Co-ordination (Amendment) Act of 1999 and many other legislations that are against that. There is also the Computer and Cyber Crimes Bill which has been challenged in court and many other examples that hon. Senators in this House can cite.

Mr. Speaker, Sir, if the intention of the National Assembly was to enact legislation of the subject matter, nothing would have been easier than for the National Assembly to proceed to the Senate and ask for the concurrence process and forward the law to come to the Senate because the Constitution requires so.

In the Twelfth Parliament, the National Assembly proceeded to re-publish the National Assembly Bill and to once again process it without regard of the Senate. I want to give an example of the Bill that relates to the Parliamentary Service Commission.

Mr. Speaker, Sir, as to whether Bills concern counties or not, in its advisory opinion in Reference to No.2 of 2003, the Supreme Court gave clear guidance on the test that is to be applied by the Speaker in making determination as follows-

“On the matter of whether a Bill concerns counties, the Supreme Court recited its decision in an earlier matter before the court. This is in the matter of the Interim Independent Electoral Commission of 2011 and said-

“There is, in reality, a close connectivity between the functioning of the national Government and county governments. We consider that the expression “any matter touching on county government” should be so interpreted as to incorporate any national level process bearing a significant impact on the conduct of the county government. However, interpretation in this category is to be made cautiously and on a case to case basis.”

The court continued in its observation of the matter of the Independent Electoral Boundaries Commission-

“The extent of the legislative role of the Senate can only be fully appreciated if the meaning of the phrase “concerning counties” is examined. Article 110 of the Constitution defines Bills concerning counties as being Bills which contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule; Bills which relate to the election of Members of the County Assembly or County Executive and Bills referred to in Chapter 12 affecting finances of

the county governments. This is a very broad definition which creates room for the Senate to participate in the passing of Bills in the exclusive functional areas of the national Government, for as long as it can be shown that such Bills have provisions affecting the functional areas of the county governments. For instance, it may be argued that although security and policing are national functions, how security and policing services are provided affect how county governments discharge their agricultural functions. As such, a Bill on security and policing would be a Bill concerning counties. With a good Speaker, the Senate should be able to find something that affects the functions of the counties in almost every Bill that comes to Parliament, making it a Bill that must be considered and passed by both Houses.”

Mr. Speaker, Sir, we believe you are a good Speaker and the reason why you are being denied the opportunity to make a decision as to whether a Bill concerns the county or not, is because you are a good Speaker and you will always find that in most of the Bills, they concern counties.

The third issue I want to address on that issue is on Bills concerning counties originating from the Senate. In further exacerbation of the challenges that have been raised relating to the question of whether Bills concern or do not concern counties, in numerous instances where the Senate has published Bills and the Speaker of the Senate as required under Article 110(3) of the Constitution, sought concurrence on the nature of the Bill from the National Assembly, the National Assembly has opined that the Bill do not concern counties. This is despite the fact that in our view, the Bills that we have published in the Senate are Bills that directly concern and address the issues affecting counties. In some cases, the Bills have been proposed to the Senate by the counties themselves. Applying the guidance of the test given to the Supreme Court, it is evident that these are Bills that concern counties and in which their reality ought not to be any contention on introduction to the Senate.

Mr. Speaker, Sir, the last issue which has been used to block many Bills that come from this House and go to the National Assembly is the question of “money Bills”.

A fourth and a serious challenge that we have encountered in the legislative process in this Parliament has to do with the matter of “money Bills.” Even where the National Assembly has concurred that a Bill originating in the Senate is a Bill that concerns counties, it has gone ahead to determine that a Bill is a money Bill and thus, cannot be processed in the Senate.

Article 109 (5) of the Constitution provides that a money Bill may be introduced only in the National Assembly. Article 114 of the Constitution makes substantive provisions on money Bills. I urge the hon. Senators to keep their eyes always on Article 114 of the Constitution because it is being misused. It states that-

“(1) A money Bill may not deal with any other matter other than those listed in the definition of “money Bill” in Clause (3).

(2) If, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of “a money Bill,” the Assembly may proceed only in accordance with the



recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.”

However, you must read subsection 3, which is important. It says-

“In this Constitution, “a money Bill” means a Bill other than a Bill specified in Article 218, that contains provisions dealing with-

(a) taxes;”

Mr. Speaker, Sir, if a Bill deals with taxes, even if it has provisions of taxes but deals with other issues that concerns counties, that Bill cannot be called a money Bill. If it deals with taxes, it must be taxes only.

It goes further to state-

“(b) the imposition of charge on a public fund or the variation or repeal of those charges;”

If it is dealing with charges, it must be charges only. If it is dealing with charges in some section inside there, after it has dealt with so many other issues that concerns counties, that is not a money Bill.

“(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayments; or

(e) matters incidental to any of those matters.

(4) In Clause (3), “tax”, “public money,” and “loan” do not include any tax, public money or loan raised by a county.”

Again, if a Bill deals with taxes only, but those taxes are being raised by counties governments, it is not a money Bill, for purposes of the definition, under Article 114 of what a “money Bill” is. This is important because of the argument that has been happening in the National Assembly. We work on many Bills in this House, for example, the Irrigation Bill. Some clauses of the Bill say that there shall be irrigation boards that can levy charges as they perform their functions. That clause is always being misused to argue that this is a money Bill and, therefore, it should not have come from the Senate. Article 114 of the Constitution is so clear that anything that deals with taxes, charges or money can only go as a money Bill and should only deal with that matter.

Mr. Speaker, Sir, the challenge lies with the different interpretation between the two Houses as to the Bills that constitute “money Bills.” In our understanding, in accordance with Article 114 (1), a money Bill is one that does not and cannot deal with any other matter other than the matters set out in Article 114 (3). Examples of such Bills would include a Finance Bill, a Tax Bill and a Value Added Tax Bill. But even then, only where such Bills remain true to Article 114 (1) in that they do not deal with any other matter other than money matters, as I have already said.

It cannot, therefore, be that a Bill that concerns counties and provides in *extenso* for matters that concern and affect counties would be said to be a money Bill by virtue only of the fact that, in addition to these provisions, it makes some incidental financial provisions. This has been the argument of the National Assembly. Whereas the Assembly has concurred that various Bills concerns counties, it has argued that even then, the Bills cannot originate or be processed through the Senate as, in their view, they are money Bills.

Mr. Speaker, Sir, this argument is one that seeks to fetter and impede the legislative mandate of the Senate, without any constitutional basis. The National Assembly interpretation of money Bills has in effect resulted in the frustration and eventual “death” of Bills originating in the Senate, when they have been referred to the National Assembly, as was the case in the last Parliament. Many Bills at the end of the term, had not been processed through the National Assembly because they had been packed somewhere in the name of “money Bills.”

The National Assembly has turned the constitutional provision on “money Bill” on its head. To the National Assembly, a money Bill is a Bill which has any provisions of money regardless of its principal purpose. From the numerous Bills affected by these erroneous interpretation, both in this and the last Parliament, some of the recent cases of those on which we have sort concurrence, but received a response on one hand concurring that the Bills concern counties, but on the other hand averring that the Bills are money Bills and cannot, therefore, be considered in the Senate are-

- (a) The Public Participation Bill (Senate Bills No.4 of 2018);
- (b) The County Wards Development Equalization Bill (Senate Bills No.5 of 2018);
- (c) The County Governments Retirement Scheme Bill (Senate Bills No.6 of 2018); and,
- (d) The County Attorney Bill (Senate Bills No.3 of 2018).

Even the County Governments (Amendment) Bills that I introduced here, that are related to the office of Governors and the Deputy Speakers are again being packed in the National Assembly in the name of “money Bills.”

In addition, even when the Senate has concluded with the consideration of the Bills originating in the Senate and referred them to the National Assembly for its consideration, we have encountered a process that is unknown to the Constitution and law, where the Bills of the Senate have been held in abeyance, citing the “money Bill” argument, thus leading to uncertainty in the legislative process. Some of these bills have, eventually, never been read a First Time in the National Assembly and, therefore, ended their life in the National Assembly in a manner unknown to the legislative process. This has been of great frustration to the Senate, the Senators and the Committees that sponsored the Bills, and the counties that have anxiously waited for the passage of these bills.

Mr. Speaker, Sir, as I conclude, at present, we have referred three Bills to the National Assembly which include The Urban Areas and Cities (Amendment) Bill (Senate Bills No.11 of 2017); The County Government (Amendment) Bill (Senate Bills No.11 of 2017) and, The Warehouse Receipt System Bill (Senate Bills No.10 of 2017). To date, they are yet to be introduced in the National Assembly, having been held at this stage long after the concurrence process under Article 110(3) was concluded in a process of assessment of whether they are money Bills, which is unknown to the law. We fear that these, like many other Bills before them, may meet their “death” at this stage.

In my humble view, the role of the Speaker of the National Assembly, under Article 114 (2) of the Constitution as to whether a motion makes a provision for a matter listed in their definition of a money Bill, is restricted to motions and Bills of the National

Assembly, which, in any case, is the only House that deals with money Bills. That role cannot be extended to cover a Bill, which has already undergone a concurrence process and has been determined to be a Bill concerning counties. Put simply, a Bill cannot be at the same time have been determined to concern counties, for purposes of Article 110 (3) of the Constitution and be subsequently adjudicated as a money Bill.

The determination of whether a Bill shall be processed through one House or both Houses is made jointly by the two Speakers at an antecedent stage of concurrence under Article 110(3). It cannot re-emerge at any subsequent, less for unilateral determination by one of the Speakers, who was privy to the concurrence process.

Mr. Speaker, Sir, even where Bills passed by the Senate and referred to the National Assembly have eventually been introduced to the National Assembly for consideration, the Bills have taken inordinately long periods of time in the National Assembly. In the Eleventh Parliament, for example, at the end of term of the Parliament, 32 Bills of the Senate lapsed while at the National Assembly. If this trend persists in this Parliament, it is clear that the processing of the Senate Bills in the National Assembly will continue to be jeopardized at all stages of the processing of those Bills in the National Assembly.

Mr. Speaker, Sir, I humbly bring this message to the attention of Kenyans and the Senate, because all of us have a role to ensure that the Constitution is protected. I want to discharge this responsibility, having tried by all means – like my predecessors did – to lobby for a position in the National Assembly where our Bills will be respected. Even when I have talked respectfully to my counterpart in the National Assembly, he has always come back to me to say that it is the purview of the Speaker of the National Assembly to determine whether those Bills can be tabled. To the contrary, we have been very obedient to the procedure of the Constitution and we have tabled all the Bills coming from the National Assembly in this House. We have also proceeded with them to conclusion, because we are an “Upper House” and a House of maturity. We believe the Constitution must be respected, obeyed and followed to the latter.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to have a second bite at this very important Statement. I hope that this House will ventilate on this matter adequately so that the annals of history and the HANSARD can be there for all and sundry to read and understand.

Yesterday, Mr. Speaker, Sir, I happened to listen to the proceedings of the National Assembly. In what appeared like a stage-managed debate, there was a terrible tirade against the Senate. The tirade was totally unnecessary and even not in keeping with the orderly proceedings of a House of Parliament. This is because names were called of this House and a lot of things were said that were not in keeping with the expectations of a bicameral system of Parliament.

Mr. Speaker, Sir, the National Assembly, as the “lower” House and the Senate, as the “upper” House, coexist and work in tandem on matters of legislation. They have to cooperate and collaborate in a manner described and defined in law, as has been clearly elucidated by the Senate Majority Leader.

Mr. Speaker, Sir, attempts were yesterday made to say that this House is erratic and that it is usurping power it does not have; and that it has embarked on a legislative trajectory that is totally unacceptable to the National Assembly. To begin with, what this House does in legislation is not supposed to be acceptable to the National Assembly; it is supposed to be fortified in law and in the Constitution. That is what guides this House. The drafters of this Constitution – and some of us were part of that team – were very clear when we included in Article 110(3) that no Bill can go to any House without the two Speakers concurring. Secondly, no Speaker has exclusive jurisdiction to determine the direction, description and fate of a Bill other than the two Speakers seating together and determining whether the Bill concerns counties or not. Whether it a money Bill or any other Bill, the two Speakers are obligated by the Constitution in Article 110(3), to sit together. In fact, during the last Parliament, this House said that, procedurally, a certificate of concurrence must be a designed which must be executed by both Speakers so that when such a Bill eventually goes to the President for assent, he is informed that Article 110(3) was complied with before the Bill was moved in any House.

Mr. Speaker, Sir, if this House does not defend itself, it is unlikely that there will be anybody to defend it. Justice C.B Madan once said; “Jurisdiction is not given; it is grabbed.” Therefore, if we do not grab and defend our jurisdiction, it will be clawed away by people who do not believe in bicameralism. There are some colleagues in the National Assembly who, I think, sometimes run out of breath, ideas or both. This is because every time they are dry of what to say, they find the Senate as the punching bag and they continue punching until their fingers pain, then they stop. We have to stop this.

Mr. Speaker, Sir, we went to court during the tenure of Speaker Ethuro, and this whole House, without exception, walked to the Supreme Court. The Supreme Court said that it was inconceivable to imagine any Bill that does not concern counties. If you are talking about land, it is alienated and stolen in counties. Even if you talk about sugar, the sugar with mercury is being found in the counties.

*(Laughter)*

If you talk about water, it is in the counties. If you talk about crime, it is being committed in the counties. Everything is in the counties. The taxes are being levied in the counties. There is nothing you can exclude counties in defining the legislation and application of the law in this land.

Therefore, Mr. Speaker, Sir, as we speak here today, I know that we have a department in this Parliament where Bills go and an advisory is given on whether they are money Bills or not. In fact, the shocking thing yesterday is that after insulting and abusing the Senate with a lot of disdain and venom, the Speaker turned around to say: regarding the Bill that was being talked about, that they had actually been advised that it was not a money Bill. Why did he, therefore, allow the tirade in the first place, other than just to escalate unnecessary tuff wars? This is what we have said before. During the last Parliament again, we had a Committee that was chaired by Sen. Murkomen here. To end this confusion, the Committee designed an amendment to the Constitution to make this an

“upper” House; the House of reference and a House where all Bills – like in comparable jurisdictions – must end.

Mr. Speaker, Sir, I want this House, through you, to take a firm position. If, indeed, the National Assembly wants to treat this House in a manner that it should not, then this House has absolutely no alternative but to defend itself. If we do not do that, then nobody else will. There are colleagues here who were in the National Assembly during the last Parliament, like my distinguished colleague, Sen. Seneta here. They know what they were saying about this House. However, I am sure now that they are here, with the benefit of hindsight and the benefit of sitting in this House, they see the difference between a House which is properly constituted and assembled and a House assembled but behaving like a mob.

*(Laughter)*

If order is not properly followed, then we are going to have serious difficulties.

Mr. Speaker, Sir, we ended the last Parliament with more than 32 Bills that had been passed here, then passed on to the National Assembly and kept away to gather dust on the shelves. Sen. (Dr.) Boni Khalwale, the former Senator for Kakamega, brought a Bill to this House; then a Member of the National Assembly picked the same Bill, plagiarized it word for word and took it to the National Assembly. They passed it, took it to the President and it was assented to without any reference to this House. Similarly, Sen. (Dr.) Zani brought a Bill on minerals. They picked it up, plagiarized it word for word and passed it in the National Assembly.

Mr. Speaker, Sir, you now have an onerous duty to protect, defend, maintain and sustain the dignity of this House; otherwise, there will be no Senate. In fact, I heard one of the Members – whom I have had tremendous respect for and who appears to be grossly misreading the Constitution – even saying that the National Assembly should abolish the Senate.

*(Laughter)*

More shocking, Shakespeare once said that if you had kept your mouth shut, one would have thought you were clever. When a representative of the people stands in the National Assembly and says: “This House should abolish the Senate” it tells us a lot about the content and quality of some of our colleagues. This is a serious matter. If hon. Senators do not speak for themselves, nobody will. Idi Amin was once asked by a British journalist: “Mr. President, why do you like blowing your own trumpet? He said: “It is mine. Who do you expect to blow it?” This Senate must defend itself.

Let me finish because I know this is a matter of tremendous interests and other hon. Members also want to speak.

Mwalimu Nyerere once said-

“Mbweha alikuwa anakunywa maji upande mmoja wa mto ambapo maji yalikuwa yanatoka na Kondoo akikunywa maji upande mwingine ambako maji yalikuwa yanaenda. Mbweha akamuuliza Kondoo;

‘Kijana, kwa nini unanichafulia maji?’ Kondoo akamjibu: “Mbweha maji yanatoka kwako yakija kwangu, nina yachafua namna gaini? Mbweha akamwambia: “Kama hauyachafui maji, basi mbona ulinitusi? Kondoo akamuuliza: ‘Nilikutusi lini bwana? Akamjibu: ‘Mwaka uliopita. Kondoo akasema: ‘Sikuwa nimezaliwa? Mbweha akasema: “Kama si wewe ni baba yako aliyenitusi na ni lazima nikuaadhibu.’ Mbweha amkamshika Kondoo na kumla.”

These guys have a reason or a *mens rea*, as we call it in law, and are looking for an excuse to hurt this House. We should not give them that opportunity. We can only do so, by collectively, individually and constantly, anywhere and everywhere being in the fast and first line of defence of the dignity, existence and the future of this House.

Without the Senate, devolution will be thrown under the bus. People of this country voted for this Constitution, not because of money Bills, but because of devolution. This is the House that is mandated to defend devolution, the counties and their governments. We shall not fail in our duty in doing so regardless. We will face anybody, everybody, anywhere and everywhere to defend ourselves.

Thank you, Mr. Speaker, Sir.

**Sen. Wamatangi:** Mr. Speaker, Sir, I thank you---

*(Sen. Murkomen spoke off the record)*

Kindly protect me from the Senate Majority Leader. He wants to put words in my mouth.

Sometime back, when retired President Daniel Arap Moi was visiting Limuru Town in my county, there was a lot of agitation for him to name a Vice President. He had deliberately chosen to keep tight and quiet. However, when the agitation became too much for him, he spoke in Kiswahili language and this is what he told them. “*Ikiwa nitampatia kazi kama naibu wa Rais hiyo itaongeza ugali kwa meza, basi nitampatia.*” What one would be asking himself is whether if the money Bills or the other Bills were not coming to the Senate, *itaweza kuongeza ugali kwa meza ya nani kule chini?*

Three weeks ago, I was one of the Senators who stood here to reintroduce a very important Bill that had been debated and passed by this House. It was supposed to help this country when we were going for elections for it was on the Assumption of Power by Governors in their offices. We passed it and it went to the National Assembly. However, it has never seen the light of the day. The then Cabinet Secretary for the Ministry of Devolution and Planning needed to do was plagiarize it to borrow words from Sen. Wetangula and lift part of it to help this country to go to the elections. It was before the National Assembly, we went for elections and came back and I had to reintroduce it. I am one of those Members who participated in passing those 32 Bills in this House.

I had another Bill on Small and Micro Enterprises which is supposed to help traders in this country by making the trading environment better for them. However, it “died” in the National Assembly. I also had a Bill on Road Furniture, which faced the same fate.

My view is that the fight that is on is not about these Bills. If that offends anyone, so be it. This is a different fight. I want to remind my colleagues that when we came to this House, there was a lot of optimism after we sat with together with Members of the National Assembly. Indeed, we trusted them to pass the kitty that would enable Senators to be able to go around their counties. However, when that Motion went to the National Assembly, it was treated to semantics and lies. When it was later given to a Committee, excuses were given and finally, the fate was spelled out that Senators would have no kitty. It was not passed after they gave so many excuses. The intention was to make sure that this House remains in limbo and that the Senators are not able to move anywhere within their counties.

My colleagues our crime is having good brains and thinking more superiorly. We are being punished for being more thoughtful and mindful. We are also being punished for conducting ourselves in a dignified way. We are legislators who pass a Bill following the Constitution to the letter. Therefore, we met the threshold of people who should be called legislators in this country. That is the crime.

As Sen. Wetangula asked, what has this fight been about? In the last Parliament, the tussle between the former Speaker of the Senate and the Speaker of the National Assembly found its way to State House for they wanted to find a truce. They wanted to find a way to call off this push and pull in our discussions. However, that never yielded any results. Today, you are sitting on that hot seat.

I want to tell the Members of the National Assembly that the biggest mistake they will be making is to think that by denying the Senators the kitty they will stop us from doing our work the way we did the last time. The mistake they will be making is to think that we will not legislate, debate eloquently and properly and articulate the issues of this country if they fail to pass our Bills.

I want to give my colleagues an opportunity, for I believe that all of us would want to have a voice on this. In the last Session, as Sen. Murkomen and Sen. Wetangula said, we got to a point where we all had to stand in solidarity. At that time, fear became a strange word to all of us. We resolved not to be cautious about anything because we had to defend ourselves. We are politicians. We found our way to this House via an election by the people. The mandate that has brought us here is given to us by the people of this country who elected us, not anyone else. If that is intended to intimidate us, if push comes to shove, then we shall push and we shall stand with what this House stands for.

We accord you the dignity of being the Speaker of this House. The same dignity is accorded to the Speaker of the National Assembly. Therefore, it is expected of him, like we expect of you, that you will preside over the proceedings of this House, not only in a fair manner, but also in an admissible rule that will ensure decorum and also give dignity to your Members. You cannot allow your Members to run rogue and riot. We need to tell the Members of the National Assembly very loudly that any Bill that is passed in the National Assembly is also supposed to find its way into this House. That is the law. We said this last time because they took many Bills for assent without being referred to this House. It is not about what the law says; it is illegal. Therefore, if their Bills will come to this House, we will have to think twice. Do we need to also sit here to

discuss and pass their Bills, if they cannot pass Bills from this House? If it will require us to go once more to even the Supreme Court, we shall do so.

Mr. Speaker, Sir, there will be no holds barred. If we have to teach them one more time what the description of Parliament in the Constitution is, it is very clear that it is both Houses; the Senate and National Assembly.

I support the Statement by the Senate Majority Leader that was seconded by Sen. Wetangula and all Senators here that this House must stand to defend itself and ensure that we do the work that we have been given by the people of this country.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us have Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to try and enlighten Kenyans mostly on what this Parliament is all about. I support the Statement by the Senate Majority Leader on the importance of understanding what we are doing in this country.

Very often, I tend to think that many people who are in the National Assembly, do not understand what kind of Government we have in this country. It is high time that the Speaker of that House introduces a course in Political Science 101 to be able to differentiate between a presidential, parliamentary and a sort of a blended system of the two forms of government.

Mr. Speaker, Sir, someone once said that if one becomes ignorant and thinks that they have the solution for everything, then they should go out there and look for an island to live. This is because when one lives in a place where there are many people, they must listen and learn. Kenyans out there ought to understand why this Senate is important. When I first came here, the first words that came out of my mouth were that this is the House that unites the entire country. We are 47 men and women who are elected by may be four or five times the number of people who elect a Member of the National Assembly. We have 18 women who were nominated. We have a man and a woman representing the youth, and a man and a woman representing people living with disabilities, so as to represent their interests.

Mr. Speaker, Sir, when we talk about devolution, we talk about services going closer to the people. We want Kenyans out there to know what the National Assembly is all about. If you look at the women who are seated here, I dare say that we do a good job in thinking and trying to chart a way forward for this country. Listen to the level of debates and the content of the men and women who are seated here. We do not sit down to discuss where we should be going and how we should be protected from members of staff of this Parliament. We talk about how we will advance devolution in this country.

When a Bill that touches on issues of counties is brought before this House, every man and woman, who represents the interest of their people here, stands up and contributes. I am one of those people who believe that this Constitution, although hurried, is a very good one, and if we follow it to the letter, it can help us.

Kenyans out there ought to understand that Members of the Senate are also Members of Parliament. In most cases, when the Press refers to “MPs,” most people think that it is the Members of the National Assembly. It is important for even the Press to educate members of the public that Article 93 of the Constitution establishes the



Parliament of Kenya, which has two Houses. The first House is the National Assembly and the second one is the Senate. Article 94 gives us the power to make legislation, while Article 95 defines the role of the National Assembly. Article 96 clearly defines the role of this House. When we talk about Parliament, it is both Houses.

Those Members of the National Assembly who are in the “lower” House--- I dare say that because when a Member, who was elected by his constituency, can stand and say that Parliament should abolish the Senate, he forgets that Members of the Senate are Members of Parliament. Ignorance is no defence. Nothing can help these people who are very ignorant.

If we were to amend the Constitution today, there are a few things that we must do. First, we must give the Senate original jurisdictions on legislation. This will be able to solve the problem, where we sit here, spend sleepless nights, think about ideas and develop legislation that we know will help this country, but once they go to the National Assembly, they are killed there. Shame on them! We are in this country to ensure posterity and develop legislation that will go beyond the time that God will be kind to give us in this world.

We were elected as leaders to represent the interests of the nation and not to line our pockets. The amount of divisiveness in the National Assembly, on a daily basis, shocks me. I wonder why they bring up issues. We do not care about money, but about this country developing.

Mr. Speaker, Sir, unless we stand firm and take on our role as Members of the Senate and defend our counties, no one will defend them. What the Members of the National Assembly want us to be giving is a big kitty. Instead of them focusing on development, they lie to the people that: “I am giving you a scholarship. I am building a dormitory and a hospital here for you.” That is not their money; this is taxpayers’ money. Wake up Kenya and listen to these men and women of integrity, who are seated here.

Look at the level of commitment by the Members of this House, when it comes to Committee work and compare it with that of the men and women in the “Lower House.” The other day, we were here until 9.00 p.m. working on the inquiry into the Solai Dam tragedy because we care about the people of Nakuru County. We want them to get justice. That is the kind of liberty that I, Sen. Ledama Olekina, wants to pursue; I do not want to line my pocket. I believe that every man and woman is here for a purpose to defend the liberty. The people believe that they brought us here, so that we can fight for them.

Mr. Speaker, Sir, the men and women in Solai will not be able to get justice if we allow ourselves to be complicit. All these wars are coming in because maybe they thought that they could push--- Maybe they get frustrated that the Senate is also investigating the same matter.

We want Kenyans out there to know that the House - which represents them - that brought a Maasai, a Kikuyu, a Kalenjin and a Somali, is only the Senate. It is able to bring them equally for them to look at matters that affect today, tomorrow and the future of this country.

Mr. Speaker, Sir, I support the Statement. When I look around, I see men and women of integrity and that is what Kenyans ought to see.

I thank you, Mr. Speaker, Sir.

*(Interruption of debate on Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM BUNGOMA D.E.B.  
PRIMARY SCHOOL, BUNGOMA COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the public gallery this afternoon, of visiting students and teachers from Bungoma D.E.B. Primary 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 wish them a fruitful visit.

Thank you.

Proceed, Sen. Khaniri George.

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

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Haji?

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I tried to point out this issue yesterday, but I was ruled out of order. Students come here to learn something from us and you normally welcome them. Unfortunately, yesterday and today, some students were welcomed when they had already left the Chamber. Therefore, I propose that, in future, for them to feel that we are people of substance who care for them, they should be welcomed immediately they come.

**The Speaker** (Hon. Lusaka): That point has been noted. The secretariat should take note of that.

Proceed, Sen. Khaniri.

*(Resumption of debate on Statement)*

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. From the outset, I rise to fully support and associate myself with the Statement made by the Majority Leader. This is one of those rare occasions where I fully agree with my friend, Sen. Murkomen. In moving the Statement, the Senator went very deep into the legality and constitutionality of this matter, and he was very eloquent. I do not want to venture into that.

Mr. Speaker, Sir, the Constitution we passed in 2010 establishes the Houses of Parliament and it is explicit that it consists of two chambers; the National assembly, which is the “lower” chamber and the Senate, which is the “upper” chamber. The least I expect is mutual respect for each other when the two Houses are relating. If any issue arises, then proper channels as provided for in law should be followed to resolve those issues rather than the tirade that we all witnessed yesterday in the National Assembly. What I see in the other chamber is some excited first-termers who are mesmerised by the fact that they are Members of Parliament.

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Mr. Speaker, Sir, the biggest gain that Kenyans got from the Constitution of 2010 is, of course, devolution. That goes without saying. One of the pillars of devolution is this Senate, as provided for in the same Constitution; that the Senate will serve and protect the interests of the counties and their governments. Therefore, I dare say here that any threat on the Senate is a direct threat and an assault on devolution and it must be rejected vehemently.

Mr. Speaker, Sir, what happened yesterday in the National Assembly is regrettable, absurd, unfortunate and uncalled for. If there is any House that adheres to the Constitution and the rule of law, we all know that it is this House. This is a House that is full of wisdom, with Members who have a vast experience, considering that some of us have sat in that other Chamber for many years. To name just a few, we have Sen. (Prof.) Ongeru, Sen. Haji and my elder brother, Sen. Wetangula. We have Senior Counsel Sen. Omogeni and I cannot forget my former Minister, Sen. Poghiso. Therefore, you cannot take this House for granted because it is full of wisdom, experience and knowledge. We must stand up and demand for what is rightfully ours and defend this House as envisioned in the Constitution, because without this House, there is no devolution.

Mr. Speaker, Sir, I agree with Sen. Wamatangi, who said that the crime that we have committed, as the second Senate, is that we are full of wisdom and are vibrant. They did not expect what is coming out of this House. We are not going to relent and, in fact, if anything, we are going to step up on what we have been doing for this country.

Mr. Speaker, Sir, I now see the sense of those who have been agitating for another constitutional reform. This is because eight years down the road, we now know where the Constitution pinches and we can now make amendments. We must take this matter back to the people of Kenya to decide whether they want the Senate or not. If they do, we must make the Senate a proper “upper” House. This should be taken to the people of Kenya. That is why I say that constitutional amendments and reform, among other things, are due. This is the time to do it. We should put the Senate where it belongs in the Constitution.

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

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

Mr. Deputy Speaker, Sir, I have said that the Mover went deep into the legalities and constitutionality of the issue at hand, and I do not want to dwell on it. However, I want to remind you that in the last Parliament, so many Bills were passed and assented to by that House without the concurrence of this House. It is now high time somebody should be sponsored by this House to go to court and challenge the constitutionality of those Bills. I am sure that if we do that, the courts will be reasonable enough to declare those particular Bills unconstitutional.

Mr. Deputy Speaker, Sir, I want to encourage you to always ensure that whenever the Miscellaneous Amendment Bills go for deliberations in the “lower” House, we must always insist that they must come to this House for concurrence because they touch on all manner of things that affect counties.

Mr. Deputy Speaker, Sir, I stand to support the Statement. We must all stand up to protect this House because it is a House of reason; it is the House that defends and protects devolution.

Thank you, Mr. Deputy Speaker, Sir.

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

Hon. Senators, the level of interest on this matter is extremely high. However, I appreciate that this is a matter in which, as many of us as possible should be given a chance to comment on. Therefore, in order to allow everybody to talk, I will give a maximum of five minutes per Senator because we have more than ten requests pending. Therefore, I will give you a maximum of five minutes so that we do not lock out anybody.

Proceed, Sen. (Dr.) Ali.

**Sen. (Dr.) Ali:** Thank you, Mr. Deputy Speaker, Sir. I stand to support the statement fully without any reservation, fear or favour from anybody. The fact is, as Sen. Khaniri said, some of us have served as MPs in the “lower” Chamber for years. We, therefore, know what they are capable of and what we can do here. The problem we have is the fear of the unknown; that is what is harassing our friends on the other side. They fear that the Senate is going to overshadow them, which has happened of late; and we will continue doing that. We are told that Bills have been passed from this House to the National Assembly only for them to be plagiarised, hidden or destroyed. Unfortunately, they are always on recess. Why can they not use that time to read the Senate Bills and work on them instead of going home every other week? They were away the whole of last month. They came back for two weeks and they are again going on recess. They have no jobs. That is why they were doing what they did yesterday.

Mr. Deputy Speaker, Sir, what shocks me is that we are told that there are Bills which do not touch on the counties. If I may ask: “What is this thing called “national”?” If you remove one county, for example, Wajir County, from Kenya, does it still become Kenya? No. That is just without one county. Therefore, if you remove 41 counties, there will be no “national.” That is what I talk of when some people want to harass the people from the region where I come from on the basis of population. I always tell them that a country is land. This is because populations go, but the land remains.

Our colleagues in the National Assembly should understand that Kenya is made of counties and every county matters. The difference between the National Assembly and the Senate is that, whether you have a population of 10 million or a land mass of 100,000 square kilometres, it does not matter. Here, it is represented by one person while there, they have so many depending on the population and the numbers they have. This House represents Kenya with all the communities in it. It is a place where we have people of maturity. That is why we do not harass anybody and talk ill of anybody else. An old woman once said; “When you are carrying a baby on your back and the baby bites you all along, what do you do?” You put down the baby and tell him or her; “*Sasa wewe kaa hapa.*” When the child stops crying, then you can continue carrying him or her. These ‘children’ have cried for so long. We should now put them down so that they realise where it pinches most. Where is that? We should hit the so-called Constituencies Development Fund (CDF). During our times, the CDF was very good and important. It

helped a lot. However, because of their misbehaviour, we should go to court and take the CDF to the counties because it is a devolved function.

*(Applause)*

We should not allow people to misbehave every day; day in, day out. They are refusing us to do our work because of some little amount of money for oversight. We have gone all the way to the President of the Republic of Kenya who said; “Can you finish with this?” They said “yes”, but they came back and messed it up. We do not even want it. We will do our work even if we walk on our feet. We will perform our duties whether they make noise or not. We will also make sure that all the monies which are devolved, the CDF, Equalisation Fund and everything else they bring up go to the counties.

The other thing that we should do vehemently, as the Senate, is that the monies which are held at the national Government--- You know the monies of the counties are stagnant. However, the monies that are held by the national Government, when it comes to health, water, agriculture, livestock and fisheries are all devolved, but all the monies are with the national Government. We need another Supreme Court interpretation of how money should go with functions. That is the way to go.

Mr. Deputy Speaker, Sir, we should not allow to be trampled upon by first timers who do not know what power they stand for.

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

Proceed, Sen. Malalah. You have five minutes.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir. I would like to make my humble submission by reminding the Members of the National Assembly that in 2010, the country went to a referendum and voted for our new Constitution which was promulgated in the same year. The same Constitution established the Senate and defined its role. Article 174 of the Constitution gave the Senate the legal mandate to protect devolution.

I want to state here categorically, the way my colleague has stated, that the CDF is a duplication of devolution. Therefore, it is the mandate of this House to fight for the CDF to be removed from the Members of the National Assembly and be redirected to the county governments. This is because we cannot be playing with people who do not even understand their roles.

*(Applause)*

The Constitution clearly states the role of the Senate and the National Assembly. The conventional definition of the word “devolution” simply means “transfer or delegation of power to a lower level, especially from the central government to the lower governments.” It is clear that CDF is not a kitty meant to be executed by the Members of the National Assembly.

Secondly, Mr. Deputy Speaker, Sir, yesterday, I was surprised by the sentiments by the hon. Members of the National assembly who have very good reputation outside there because they wanted to demean the Senate. This resurrected my urge for us

reviewing the Constitution and going to the extremes of even abolishing the constituencies because we are overrepresented.

We have elected 47 Senators representing counties. Therefore, constituencies clustered together are counties. So, if you have elected Sen. Cleophas Malalah to represent Kakamega County, what business do you have to elect 12 other people to come and represent Kakamega County in Parliament? We shall move an amendment to the Constitution to abolish constituencies so that we only have the Senators to represent their counties and forget about constituencies.

*(Applause)*

Mr. Deputy Speaker, Sir, I have come up with a scientific formula that the brain capacity of 10 Members of the National Assembly is equal to the brain capacity of one Senator.

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

**Sen. Malalah:** It is a scientific formula which I can prove.

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

You can proceed.

**Sen. Malalah:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to proceed without withdrawing my statement. So, it is a fact and it remains a scientific fact.

*(Laughter)*

In the National Assembly, there are 349 people. Logically, you cannot have a meeting of more than 100 people because it becomes a public rally. The National Assembly is a public rally. You cannot have a logical discussion with 349 people seated in one room. So, I ask and advice the Members of the National Assembly to fall from ignorance and rise to reason.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! The Speaker is fully on the Chair.

Hon. Senators, I would like to remind you that I do appreciate the very important nature of this discussion. That is why, uncharacteristically, I will allow almost everybody who has requested to talk; in fact, everybody. However, I also want to draw your attention to the Standing Order No. 90. Anytime I feel that you are encroaching on the four corners of the Standing Order No. 90, I will call you to order. So, you can proceed with that guidance.

Proceed, Sen. Dullo.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I support this Statement. From the outset, I wish to say that it is unfortunate and sad that the only thing that an elected National Assembly can do is to discuss the Senate, when Kenyans need service delivery.

Secondly, I have been to other jurisdictions - and we have discussed this matter severally - where the Senate is always a superior House. The Speaker of the Senate is referred to as "the President of the Senate" and Speaker of the National Assembly is referred to as "the National Assembly Speaker." Clearly, even in other jurisdictions, the

Senate is superior to the National Assembly. It is sad that, yesterday, one of the speakers on the Floor of the National Assembly said that they do not understand why the Senate summons Cabinet Secretaries. They do not even read the Constitution. Article 96(4) is clear that the Senate oversees state officers. I request them to go back to the drawing board, read the Constitution and understand the role of the Senate.

On the same note, one of them said that they should not even allow the Senate to operate because they have let the counties to mismanage funds allocated to them. Who made counties mismanage monies allocated to them? This House requested for facilitation. We have had several Committees to allow the Senate to get oversight funds. The only reason our Bills are shot down in the National Assembly is because they want to carry out the role of the Senate, which is oversight. Some of them want to go to counties and oversee them. It is unfortunate. Let them understand that the Senate is the superior House. Some Senators here were elected by more than 10 constituencies, when they have only one. Who is superior to the other?

Mr. Deputy Speaker, Sir, I remember when we went to court to protect this House and some of us even agreed to contribute the legal fees, to make sure that the Senate is protected. The leadership of this House needs to stand up and protect this House. The laws are very clear. They have even said that they will come up with a committee to demarcate the roles of the Senate and the National Assembly. They are not even busy. Committee work is clear. When we dealt with the Solai Dam tragedy and the issue of land in Ruaraka they said that it is their work. They do not know what their responsibility is. Let them sit down and understand what they are supposed to do.

Again, we proposed amendments to the Constitution, which will strengthen this House. It is high time that we dusted those reports and the proposed amendments from the shelves of the Senate and bring it to the attention of Kenyans to strengthen the Senate. If they think of abolishing the Senate, where will devolution go? It clearly means that the National Assembly is against devolution. We should make sure that we bring this to the attention of the public where---

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Organise your thoughts. Five minutes is the maximum.

Sen. M. Kajwang', proceed.

**Sen. M. Kajwang'**: Thank you, Mr. Deputy Speaker, Sir. When I heard that the National Assembly was discussing this matter yesterday, it reminded me that in this Republic, whenever there are big issues of corruption and political magnitude, someone always has to engineer a dispute between the National Assembly and the Senate, so that we get preoccupied with that and it takes the headlines away from corruption and other things that are bedeviling this Nation.

I was told not to respond to every dog that barks at me. I would have advised the Senate Majority Leader not to bring this Statement today, because we would be playing right into the hands of those who want us to fight forever and not deal with issues affecting the nation. But now that the Senate Majority Leader has brought this Statement,

I support it. We choose bicameralism, which is like polygamy. We have two Chambers of Parliament. If you are polygamous, you will have at least two wives. If you are like Sen. Faki, you will have maybe three or four.

*(Laughter)*

It means that before you make any decisions, you will have to consult two, three or four wives or six or eight, if you are Akuku Danger. That is bicameralism.

Mr. Deputy Speaker, Sir, when Mr. Mark Zuckerberg of *Facebook* had issues, when Cambridge Analytica was accused of data privacy invasion, he was called before the House of Representatives and the next day he appeared before the Senate. The questions he was asked were fairly the same, but you could see a greater level of maturity in the Senate. That is a feature of bicameralism.

My Committee has been accused of encroaching on the mandate of the National Assembly. Let me put this to those uninformed persons, who are talking about what we are doing on the issue of Ruaraka. My Committee is investigating the fate of schools that used to be owned by the defunct Nairobi City Council. As the Senate, we know that all the assets of the defunct local authorities were supposed to be transferred either to county governments or the national Government. That is why we put in place the Transition Authority (TA) and the Inter-Governmental Technical Relations Committee (IGTRC). We also put in place the County Assets and Liability Verification Committees (CALVCs). What we are doing is perfectly within the mandate of the Senate.

I agree with Sen. Murkomen, who has previously said that, in light of the Supreme Court Advisory No.2 of 2013, virtually everything affects counties. If the National Assembly wants us to draw a line between matters that affect counties or not, then we shall say that a matter that does not affect counties is a matter that counties have no obligation to follow. That would mean that a law that does not affect is one that counties have no obligation to follow. You then ask yourself if the Finance Bill or Act affects counties. Yes, it does because it has tax and revenue raising measures that have to be executed in counties.

Mr. Deputy Speaker, Sir, I want to focus more on the way forward, because I do not want to be caught up in the exchange and shady science that Sen. Malalah brought us here about the ratio of one to 10. I propose that we need to re-establish the joint committees. When we revised our Standing Orders, we killed all the joint parliamentary Committees. I appreciate that we have a bicameral system, but joint parliamentary Committees have helped in building some level of understanding of the mandate and roles of the two Houses.

Mr. Deputy Speaker, Sir, I sit in a joint parliamentary Committee that deals with sports. It is called the Bunge Sports Club, which has Members from across the two Houses. Members of Bunge Sports Club are not the kind of people you will find pouring the kind of diatribe that was on the Floor of the House yesterday. They respect the Senate and appreciate what the Senators do because they interact with them on a regular basis.

We had a joint committee on national cohesion. We need to think through that because joint committees will bring that understanding but more fundamentally, we asked



them to set up a committee and bring a report to this House on constitutional amendments that can be considered to entrench the role of the Senate and to entrench county governments and devolved governments.

I know that many of us will go for weekend rounds and pronounce ourselves on matters to do with the referendum but we really care for devolution and if we really care for this House, this is the moment that we need---

*(Sen. M. Kajwang's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang', your time is up. Let us have Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, thank you for giving me the opportunity. I thank the Senate Majority Leader for bringing this Statement. It is surprising that time and again, our colleagues in the National Assembly, the House which I was in the previous two terms, take issues with the Senate. It is unfortunate that every time they attack and intimidate the Senate. We are not here because the National Assembly wants us to be here but because the people of Kenya wanted the Senate to be in place. That is why we passed the 2010 Constitution which established a bicameral Parliament and the functions of both Houses are well articulated in the Constitution.

I urge our colleagues in the National Assembly to do their work diligently without making us scapegoats because we are not. They say simple minds discuss people, average minds discuss events and intelligent minds discuss ideas. Our colleagues in the National Assembly know where to place themselves in these three categories. The Senate is well anchored in the Constitution and we are here to defend devolution and whatever the Constitution of Kenya stands for.

I would also like to urge our Press to not only educate Kenyans but also themselves that Parliament does not mean the National Assembly. Two days ago, it was reported that Parliament will resume sittings after recess. That is ironical. The people who work in the Press are supposed to be intelligent and they should not be saying that. They should distinguish between the National Assembly and the Senate. They need to know that Parliament means both Houses.

Whatever is in the Constitution must be implemented. We must fight for our space according to the Constitution and do our mandate as required. The Speaker, who is the leader of this House, must stand and protect the interests of this House. In fact, laws that are passed by the National Assembly and sent for the President's assent without coming here are illegal. As it was said by my colleague earlier, we should go to court and declare those laws illegal. It is unfortunate!

I wonder why our colleagues in the National Assembly are hell-bent to demonize the Senate. We are not two wives competing for one husband. I think they are just jealous because our level of debates and the work output is worrying them.

I was a Member of the National Assembly for the past two terms. At the beginning it was a small House of about 220 Members only. When the number moved up to 349, I got worried. I used to equate it to a primary school with 40 pupils in each class

making it 320 plus with all the teachers and workers in one classroom. What you expect is noise and that is what we are getting from there.

I urge our colleagues in the National Assembly to do their job. We are not competing with them because we have a clear-cut job and they also do. We should work together for Kenyans. We are here because Kenyans decided that we should have a bicameral Parliament and both Houses have got their mandate. Let us do our job. They even have the audacity to say that they will abolish the Senate. That shows the level of ignorance.

As my colleague Sen. M. Kajwang' said, sometimes it is good to keep quiet because if you start arguing with fools, you become like them. Kenyans are wondering why the Senate and the National Assembly---

*(Sen. (Eng.) Mahamud's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senator, your time is up. Let us have the next speaker who is Sen. (Dr.) Kabaka.

**Sen. (Dr.) Kabaka:** Mr. Deputy Speaker, Sir, let me add my voice in support of the Statement by the Senate Majority Leader, Sen. Murkomen, regarding the unfortunate statement by some Members of the National Assembly.

I am amazed this afternoon that some Members of the National Assembly have not read the Constitution of Kenya, 2010. It is like a preacher or an imam in a mosque who has not read the holy Quran or a Pope in a Catholic domain who has not read the holy Bible and, therefore, they are not worthy the titles they purport to be. They should spare time and where they do not know, they should seek guidance from professors of laws like you, the Chair, on the definition of a Constitution, starting with the preamble of this Constitution.

I would like to refer them to the part of the Preamble which states that—  
“We, the people of Kenya—

ACKNOWLEDGING the supremacy of the Almighty God of all creation:

HONOURING those who heroically struggled to bring freedom and justice to our land:

PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation:

RESPECTFUL of the environment, which is our heritage, and determined to sustain it for the benefit of future generations:

COMMITTED to nurturing and protecting the well-being of the individual, the family, communities and the nation:

RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law:

EXERCISING our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution:

ADOPT, ENACT and give this Constitution to ourselves and to our future generations.”

Are they not aware that Kenyans spoke when they passed the new constitutional order of 2010? Kenyans spoke emphatically by creating the three arms of Government. My emphasis is on what has already been stated clearly that we have a bicameral Parliament made of two Houses which are the National Assembly and the Senate.

Lawyers say in court that where there are two equities, the first one in time prevails. I dare say that at the historical inception of the Constitution of 1963, this country established a bicameral system of Government where the Senate was the upper House. So, there is nothing new which has been created with the new constitutional dispensation but rather than reinstating. No wonder what we are observing is abuse of power by some of the Members of the National Assembly.

During the French Revolution, there was a period known as Renaissance where intellectuals like Montesquieu, Voltaire and even John Locke were very clear on the abuse of powers. They felt that where power is concentrated in few individuals, they are likely to abuse and this is exactly what we are seeing. That has come to pass. That is why drafters of the Constitution of that time, which we borrowed from, provided that we should have separate arms of Government. These are the basics which are taught in universities to first year students.

Of course, I do not want to repeat what has been stated in terms of the role of Parliament under Article 94 of the Constitution. Article 95 designates the role of the National Assembly while Article 96 is very categorical about the role of the Senate.

Mr. Deputy Speaker, Sir, Article 261 is a final provision which deals with transitional and consequential provisions. It is very clear that if Parliament shall not legislate as required by the Constitution, then any person may petition the High Court on the matter---

*(Sen. (Dr.) Kabaka's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Kabaka! Your time is up.

Proceed, Sen. Poghisio.

**Sen. Poghisio:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to add my voice to this great Statement made by the Leader of the Majority. We should not be seen to be in defence or exchanging harshly with the people on the other side; enough has been said.

Mr. Deputy Speaker, Sir, it is well known that the enemies of devolution have spoken. In doing so, they are going to create enmity with the people of Kenya because, as it has been said, devolution is one of the biggest gains of our Constitution. Therefore, anybody who tries to disturb or demean the Senate is touching a raw nerve. This is a nerve that can affect devolution, and we do not want to get there.

Mr. Deputy Speaker, Sir, I encourage this House, first, to believe that in the eyes of Kenyans, we are doing a good job; that in the eyes of Kenyans, the Senate needs to be there; that in the eyes of Kenyans, even the most rural of them, the Senate is a very

important House to them. This is because of our oversight role, for supporting and defending the Constitution; and for defending devolution.

Mr. Deputy Speaker, Sir, the Speakers of these two Houses are basically from the same side of Government. I, therefore, hope that they can rise to a level where they can look at each other, eyeball to eyeball and silence this matter of one House thinking that it is the bigger or better House. The world over, the concept of a Senate is that it is the upper House in all jurisdictions. Therefore, the feeling that you have the chance to undermine the Senate or one House should be removed completely. I, therefore, urge the Speakers and leadership of both Houses to get a chance, from time to time, to show Kenyans that what happened yesterday was a bad move. Unfortunately, Kenyans are so sensitive because they watch these live proceedings. What they hear is not good for us and even the students, who come to listen to all these things, because they begin to wonder. I am, therefore, hoping that the Speakers of the Senate and the National Assembly will put these matters to rest. They should meet every week and sort out these matters as required.

Mr. Deputy Speaker, Sir, one of the things that frustrate us is that everybody, including the other House, thinks that the Senate is supposed to do monitoring and evaluation. If that is the case, I would expect that the Speaker and Members of the other House would fight for this House to be able to do the work we are supposed to, but that is not the case. I thank the Majority Leader, who has another task of ensuring that our Speaker, the leadership of this House and himself stand tall and not allow us to be put down. We have not yet gone to the point where we will begin to have exchanges. However, if push comes to shove, we will all begin to act in that manner. I do not know why we or they get away with these things.

Mr. Deputy Speaker, Sir, if we get a chance, which should be very soon, the leadership of this country should also decide which side they are on. Apparently, the Senate is being mistreated under their watch. It is very clear. We want to be told whether it is only convenient. At a time when it is easy to pass things, the Senate might be seen as a hinderance to some of those compromises. We want to know that the Senate is not for that, and that it is a place which stands to defend counties and devolution. The national Government should be proud of the Senate; it should support it and allow the Senate to get the budget for monitoring and evaluation.

Mr. Deputy Speaker, Sir, those who spoke yesterday in the other House will soon grow up and see that you do not talk in that manner. If you do not know, the opportunity to speak in the House is a privilege. Therefore, one should not abuse the privilege of speech in the House, because we want to be mature and sensible in the way we speak about each other. Therefore, I could not answer them directly because, like I said earlier, my age cannot allow that---

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

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

**Sen. (Prof.) Ongeru:** Thank you, Mr. Deputy Speaker, Sir. I want to appeal that, as we all are, we represent people with the same interest. Members of the National Assembly represent people at the constituency level while Senators represent people at

the county level. However, the point of departure from all this representation is that we now have a two-tier type of government; the national and the county governments. The drafters of the Constitution saw it prudent to have these two distinct services serving the people. They entrusted the welfare and care of the county governments to the Senate, among other things. Both Houses conduct their business through Bills, Motions and Petitions. The public has seen it fit that the Senate acts expeditiously when petitioned on issues that affect them. This is an important point that both Houses must appreciate and understand.

Mr. Deputy Speaker, Sir, the way I see it, resource allocation to the counties is going to progressively diminish on the side of the national Government and increase on the side of county governments. We should understand that this is the direction that we should take. You cannot pull the horse back when it is already in motion. This Constitution has bequeathed the right on the people to decide their affairs.

Mr. Deputy Speaker, Sir, I request the National Assembly to appreciate that the Senate and the National Assembly are constitutional offices. Therefore, there is no way you can utter words like: “We want to “kill” or “rubbish” the Senate.” That kind of talk should not come from my mouth because, unfortunately, it sounds pedestrian, and we should avoid it. This is because it does not help in building the bridges we need to build nor does it help in passing on the messages and expectations of Kenyans in terms of resource flow and everything else that we do. When you look at the distribution of functions between the national and county governments, almost 60 per cent of them belong to county governments. The only difference is that the resource allocation does not match the functions assigned to those counties. That is where the war should be.

The Members of the National Assembly should be with us in fighting and ensuring more resources flow to the counties. That is the most important action that we can fight for together rather than fighting supremacy wars. To me, who is more powerful than the other and who can do better than the other, is not important. It is a wrong a direction to take. The Senate, as the mature House, should possibly engage another gear.

Finally, Mr. Deputy Speaker, Sir, the only gear I know in my vocabulary is, when two siblings quarrel, a parent must sit them down and reconcile them. Therefore, there is need for the Speakers and leadership of both sides to meet and move forward more positively rather than engage the whole of this afternoon on negative issues that will not build up to the future of our nation. We must be all alive to the fact that what is required is to serve the people who reside in their homes.

This Constitution is about people, it is not about the National Assembly or the Senate. The Constitution provides the manner in which we must conduct our business. We must respect those provisions. There is no money Bill which does not involve county governments. Therefore, we should be aware of this and see how far we can accommodate each other so that we move forward.

I beg to support.

*(Interruption of Debate on Statement)*

**COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM MARELL  
ACADEMY, BUNGOMA COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senators. I have a short Communication to make.

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

I thank you.

I see the levels of interest have increased more than I had imagined. We have been on this item for quite a bit of time, so let us see how it goes. We might have to manage the time resource that we have this afternoon.

Proceed, Sen. Wambua.

*(Resumption of Debate on Statement)*

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to add my voice in support of the Statement brought to the Floor of the House by the Senate Majority Leader, Sen. Kipchumba Murkomen.

Mr. Deputy Speaker, Sir, from the onset, I state that my reading and understanding of that Statement is that it does not seek to cure or provide an answer to the superiority debate between the National Assembly and the Senate. That matter was long settled by the drafters of the Constitution.

What we saw yesterday on the Floor of the National Assembly was unfortunate. There was no justification whatsoever of the public display of juvenile emotions on the Floor of the 'lower' House yesterday.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wambua. Make yourself conversant with Standing Order No.90. In the meantime, I will allow you to proceed.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to proceed. If the reference is to the use of the word 'juvenile', I am just making reference to immature emotions.

Now that the enemies of devolution spoke yesterday, the champions of devolution must have their way today. It must be made clear that the Senate is not seeking validation from the National Assembly with regard to its roles. In the debate yesterday, there was talk of us encroaching into the work of committees in the National Assembly. There was also talk that Senators should concentrate on over-sighting counties. What a shame? The same hon. Members who are purporting to direct Senators to carry out oversight roles in the counties are the people who sat in judgment against the oversight funds.

I come from a community that says, if a young boy challenges his father for a fist-fight, the father has a responsibility to wedge serious war against that boy and teach him

a lesson. It is time for the Senate asserted its authority in the discharge of its responsibility and duties. I see this emanating from the performance of this House, especially the one that is being done by our committees. The effects and the quality of the work of the *ad hoc* Committee scrutinizing the events surrounding the collapse of Solai Dam, led by Senator for Makueni County, Sen. Mutula Kilonzo Jnr. speaks for itself. The work being done by the County Public Accounts and Investment Committee (CPAIC) of this Senate, chaired by Sen. M. Kajwang speaks for itself. The work being done by the Committee on Roads and Transport, chaired by Sen. Wamatangi, speaks for itself. Instead of the ‘lower House’ complaining about the Senate encroaching, I invite them for lessons on how to do their jobs. That way---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That way, your time is up.

*(Laughter)*

**Sen. Wambua:** Mr. Deputy Speaker, Sir, kindly, add me one minute.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wambua, I will add you one minute.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, that way, this country--

*(Sen. (Dr.) Kabaka consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Kabaka! The Chair has no business favouring any Senator. If you are short of time, you request for time and the Chair has the discretion depending on many factors.

Sen. Wambua, proceed with your one minute.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for protecting me. The good book says, “Knock and the doors shall be opened”. I have just knocked and you have opened the door.

As I was saying, that way, this country will begin to get value from leadership. This business where the ‘lower’ House looks for excuses by calling Senators names whenever it has challenges in executing its mandate must come to an end. A time will come when we will need to look at the value for representation in this country beginning with the number of constituencies that we have and what they are doing for this country. Whereas Members of the National Assembly represent single constituencies, Senators represent counties.

Mr. Deputy Speaker, Sir, with those many remarks, I support the Statement. It is time this Senate stamped its authority and discharged its responsibilities without fear or favour.

**Sen. Seneta:** Bw. Naibu Spika, nina kushukuru kwa kunipa nafasi ya kuchangia mjadala huu. Inanishangaza kwamba bado tunaweza kutumia wakati muhimu sana kujadili ama kuzungumzia majukumu ya Seneti na Bunge la Kitaifa. Yashangaza kwa sababu wananchi wa nchi hii walipiga kura na kupitisha Katiba kwa sababu walitaka kupata ugatuzi ili wajisimamie na kuona maendeleo katika kaunti zao. Kwa hivyo, ni jambo la kushangaza kwamba bado kuna wenzetu katika Bunge la Kitaifa ambao

hawaelewi majukumu ya Seneti. Ningewaomba wajaribu kutumia nafasi hii kuwasaidia Wakenya.

Leo hii tunashida nyingi sana katika nchi ya Kenya. Tuko na shida ya maji katika sehemu nyingi za miji yetu ikiwemo Kaunti ya Nairobi. Vile vile, tuko na shida ya mabarabara, hosipitali na hata uufisadi ambao umekithiri katika kila sekta. Badala ya Wabunge wenzangu kuzungumzia vile tutatua shida ambazo zinawakumba Wakenya, bado tunamabishano kati ya Seneti na Bunge la Kitaifa.

Nilishtuka sana kumuona mmoja wa Wabunge wa Kitaifa ambaye ni rafiki yangu anayelitwa mhe. Junet - ambaye kazi yake mara nyingi ni kusema tu: “*Baba baba*” haelewi majukumu yake kama Mbunge.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Stay on the issues.

**Sen. Seneta:** Bw. Naibu Spika, haelewi majukumu ya Seneti.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Stay on the issues.

**Sen. Seneta:** Bw. Naibu Spika, ningependa kuwaomba Wakenya waelewe ya kwamba majukumu ya Seneti ni kuhakikisha ya kwamba kaunti zetu zinatumia vizuri pesa na rasilimali ambazo wamepewa.

Asante sana.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir. From the outset, I also want to add my voice. I fully associate myself with the Statement that was issued by the Senate Majority Leader and ably seconded by Sen. Wetangula.

We are in this Senate because of the sovereignty of the people of Kenya. Under Article 1 of the Constitution, sovereignty of the people is exercised through their democratically elected representatives. We are here because we have won the confidence of the people of Kenya to represent them in the Senate.

The role that we play as Senators is well captured in Article 96 of the Constitution. The Senate represents counties and serves to protect the interests of the counties. If we allow corruption in this country, we will have failed in protecting the interests of our counties. So, the Committee that is chaired by Sen. M. Kajwang’ is undertaking a probe into the Ruaraka land scandal in order to protect devolution. If we allow resources to be siphoned and end up in peoples’ pockets, we will have failed in our mandate of protecting the interests of our counties.

Secondly, under Article 174 of the Constitution, one of the objects of devolution is to ensure that there are checks and balances and there is democratic and accountable exercise of power. So, when we summon Cabinet Secretaries to the Senate Committees, to ask them how power has been exercised and hold them accountable, we are simply breathing life to Article 174 of the Constitution. We must remind our brothers in the National Assembly that they have to exercise the powers that have been donated to them by adhering to this Constitution.

Mr. Deputy Speaker, Sir, Article 73 on the responsibility of leadership is very clear. It says that power that has been vested on a State officer should be exercised responsibly and should be there to serve the people, but not to rule over the people. Therefore, the National Assembly must be seen to be acting in a responsible way. People who live in glass houses should be the last ones to throw stones.



The National Government Constituency Development Fund (NG-CDF) that has been hyped should not be a fund that is managed by Members of Parliament (MPs). Under the law, the people who are supposed to run the NG-CDF are the Constituency Development Committees that are supposed to be headed by people who have applied and been competitively recruited. However, what we have is a situation where Members of the National Assembly go to the people – they do not read the law to them - and masquerade that they have brought cheques for various projects.

I urge Senators to go back to the counties and educate our people on the provisions of the NG-CDF. As Senators, we are supposed to ensure that by now, every MP, through the Constituency Development Committees, should have held meetings to identify development projects in each ward in the various counties that we come from. You can go and read the law; I am speaking as a Senior Counsel. Their role is to go and witness issuance of cheques; they do not even sign those cheques. The cheques are signed by members of the committees.

Therefore, I urge you to go back to your counties and tell the people that it is them who should determine the projects that should be undertaken in their wards. Members of Parliament are supposed to go and witness, the way you, as a Senator, can go there and witness. We do not want people who breach the Constitution by not following what the law is saying. There is no provision in the NG-CDF Act for Members of Parliament to dish out cheques to anybody. That is one issue that we, as Senators, must---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Your time is up.

*(Interruption of Debate on Statement)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM LAISH ACADEMY  
SCHOOL, NAKURU COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have short Communication to make.

I would like to acknowledge the presence in the Public Gallery this afternoon, of visiting students and teachers from Laish Academy School from Nakuru County.

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

I thank you.

*(Resumption of Debate on Statement)*

Hon. Senators! It is approaching 5 p.m. and, unfortunately, we have to cut down on this item. I will give the remaining speakers a maximum of three minutes. Let us see if everybody can add their voice to this Statement. You have a maximum of three minutes and I will start with Sen. Halake.

**Sen. Halake:** Mr. Deputy Speaker, Sir, the three minutes always starts with me; but never mind---

*(Laughter)*

I am, therefore, already tempted to ask for more time even before I begin.

However, thank you very much for giving me the opportunity. I wanted to welcome the school children but forgive me for diving straight into the matter before us.

Mr. Deputy Speaker, a famous American poet, James Russell Lowell, once said that, "Democracy gives every man the right to be his own oppressor." So as not to question the proceedings in another House, as provided for in Standing Order 90(5), I will not speak to some of the things that were said there. However, I will speak to the nation with regard to the role of the Senate and the importance of the Senate *vis-a-vis* devolution.

Everybody has spoken about enemies of devolution and the lack of understanding on the role of the two Chambers. However, what is very clear is that this country had the National Assembly when it chose to introduce a Senate. There were very good and sound reasons for this, one of which was the quality of representation. This Senate has enhanced the quality of representation to our people. Just looking from what has been going on in the country, it was felt and deemed important that checks and balances be introduced.

Similarly, quality representation with regard to protection of counties and citizens in the smallest units of service provision in this country had to be introduced. This was mainly to be done by the Senate under Article 96 of the Constitution, where a clear mandate to do this was introduced.

Therefore, it is not just by accident that the Senate found itself here. The Senate was created because of a gap and the needs of the people, which the unicameral Parliament was not fulfilling. We, therefore, demand respect not just for the Senate, but for devolution and for county governments, because this is what---

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

Proceed. Sen. Faki.

**Sen. Faki:** Asante, Mheshimiwa Naibu Spika kwa kunipa fursa hii ili kuchangia Hoja ya Kiongozi wa Wengi katika Seneti kuhusiana na majukumu ya Seneti. Kwanza, ningependa kumkosoa ndugu yangu kutoka Kaunti ya Homa Bay aliposema kwamba niko na mabibi zaidi ya watatu. Huo sio ukweli, kwa sababu hadi sasa, niko na wake wawili peke yao na bado nitaendelea kutafuta.

*(Laughter)*

Jambo la pili, Mheshimiwa Naibu Spika, Waswahili wamesema: "Kelele za chura hazimzui ng'ombe kunywa maji;" na "debe tupu haliachi kuvuma;" na wakasema pia "nazi mbovu harabu ya nzima." Kwa hivyo kutokana na vitendo vya Bunge la Kitaifa, tumeona kwamba yao ni lile nazi mbovu, linalotaka kuharibia nazi nzima.

Hilo ni jambo ambalo sisi, kama Seneti, hatualikubali kwa sababu sote tumeundwa na Katiba moja na hakuna mwenye mamlaka juu ya mwengine. Sote

tunaongozwa na Katiba moja. Kwa hivyo, lazima tuisome hiyo Katiba na tujue majukumu yetu kama Wabunge na Maseneta katika Jamhuri ya Kenya.

Mheshimiwa Naibu Spika, hili suala la sheria tunazopitisha hapa kwenda katika Bunge la Kitaifa na kudharauliwa sio katika majukumu ya sheria peke yake. Hata zile kanuni tunazoangalia katika Kamati yetu ya “Delegated Legislation” pia zinapoenda kule, nyingi hutupwa nje kwa sababu ndogo ndogo zisizo halisi. Kwa hivyo, wakati umefika kwa ofisi yako – kama kiongozi wa Bunge hili, na ofisi ya Spika wa Bunge la Kitaifa – mkae chini ili mtatue mizozo hii inayoibuka mara kwa mara. Hii ni kwa sababu sio katika maadili ya kitaifa kwamba bunge mbili zinateta mara kwa mara.

Mheshimiwa Naibu Spika, Bunge la Seneti ni Bunge la waungwana, wazee na watu wenye busara nyingi. Kwa hivyo, hailingani na maadili ya kitaifa kuwa tunalumbana mara kwa mara na watu ambao hawajajua majukumu yao kikamilifu. Iwapo utatumia fursa hii na ofisi yako kuleta uwiano baina ya bunge zote mbili, itakuwa ni jambo kubwa la kusaidia taifa letu kusonga mbele.

Mheshimiwa Naibu Spika, jambo la Constituency Development Fund (CDF) limezungumzwa hapa. Utaskia kwamba shule za chekechea zinajengwa na kaunti, halafu CDF inajenga shule za msingi na za upili. Jambo hili sio sawa kwa sababu shule za chekechea zinajengwa vizuri, halafu Wabunge wanakuja na kuzikabidhi kwa serikali ya Kitaifa bila sisi, Maseneta kujua. Kwa hivyo, majukumu mengi yanayofanyika---

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Asante sana, Sen. Faki.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Thank you, Mr. Deputy Speaker, Sir. There are two things that I want to say. One, that I support this Statement by the Leader of Majority. Today in the morning, in one of the leading media stations, I said that we are exposing the underperformance, lethargy and corruption that is perpetuated by various National Assembly Committees. The way we are doing our work with a lot of seriousness, attention, integrity and focus that it deserves, is what is exposing the underperformance, non-performance and mis-performance of Members of the National Assembly. I am happy and proud because there are many reports that I have seen, including the one on the Solai Dam tragedy.

Sen. Mutula Kilonzo Jnr., is one of the Members in my Committee of Justice, Legal Affairs and Human Rights and I know that they will make earthshaking recommendations that will change the dynamics on how investigations or committees operate in this country.

Mr. Deputy Speaker, Sir, secondly, without the Senate, we do not have devolution. I would, therefore, request the Speaker of the National Assembly to organize an elaborate induction so that Members of the National Assembly can understand the spirit, letter and substance of the law. This should be done such that they realize – as my learned Senior Counsel, Sen. Omogeni has said – that it is the Senate that breathes life into the wheels on how devolution works in this country.

I, therefore, call upon the Speaker of the National Assembly to organize an elaborate retreat so that the MPs can be brought up to speed; so that they stop ambulance chasing and bowing to the highest bidder when it comes to some of the investigations.

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Senator! Stick to the issues.

**Sen. Cherargei:** Mr. Deputy Speaker, Sir, I have become emotional, because I expected Members of the National Assembly to extend their sobriety and even read Article 10 of the Constitution on national values and principles of good governance. They must respect us. We will continue working very hard. We will continue working with integrity, focus, openness and transparency in anything that we do. We will expose their lethargy; underperformance, mis-performance and anything that they do that will undermine the focus of the Government and implementation of all Kenyans in this country.

I thank you and beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. That is good management of time.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I support the Statement. First, we have belaboured the point. Secondly, the words; hugging, kissing, fraternizing with witnesses and collecting money from witnesses did not emanate from the Senate. This Senate breathes life into this country. We are interrogating what people do not want to be interrogated. We are uncovering what they want to cover. We are removing the snakes from under the stones and they are shaking in their boots.

When somebody says that they want to pass a Bill to scrap the Senate, yet they have not done even a single sentence in the National Assembly, I begin to wonder. That is not a dream; it is not even a wet dream, it is a bad dream!

*(Laughter)*

Mr. Deputy Speaker, Sir, we should learn to increase the number of buttons we have in the Senate – from “abstain,” “yes” and “no” to “ignore.” Every time they say something, we ignore it.

*(Applause)*

We should start interrogating everything they do; in fact, let us make them even more upset. Let us interrogate this sugar issue, because we might find mercury, copper and zinc. That way, we will embarrass the devil that brings corruption into the Houses of Parliament.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Good management of time. Could we hear from Sen. (Dr.) Langat? I do hope that you will follow suit.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir. It is unfortunate that some people are still day-dreaming of scrapping the Senate when the Constitution is in its second term. It is unfortunate that when the whole world is embracing cooperation, collaboration for development purposes, some people here are still engaging us in competition. It is obvious that we are the ‘upper’ House.

It is unfortunate that Members, from the other divide, that we respect and regard to be mature legislators are the ones who have inferiority complex and want to engage in

unnecessary competition. It is interesting that they want to compete with us when we are partners in this country.

They are doing so, yet we have been covering their shame, especially when it comes to vetting of members of the public into positions. Yesterday, a Member from their divide directly told someone who was being vetted that he is a thief and yet his case is in court. We have actually been questioning their integrity when it comes to such things and they are now engaging us into a competition.

I want to summarise by saying that this House is a House of great minds. I want to quote Eleanor Roosevelt who once said that great minds discuss ideas, average minds discuss events and small minds discuss people, or the Senate, in this case. I would like to ask them to discuss ideas and come to our league of discussing great things.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. We should have started that way. Anyway, they always say that the end of the matter is better than the beginning.

**Sen. Boy:** Asante sana, Bw. Naibu Spika. Nitachukua muda mfupi sana. Kwanza, ninataka kuunga mkono jambo liloletwa hapa na kiongozi wa wengi; Sen. Murkomen. Kama unavyojua, sisi Maseneta ni watu muhimu sana katika nchi hii, hasa katika kaunti. Hakuna mtu ambaye anaangalia rasilmali ya kaunti na kila kitu katika kaunti isipokuwa Bunge la Seneti.

Hawa Wabunge wenzetu katika Bunge la Kitaifa wanafikiria ya kwamba sisi Maseneta tutaacha useneta na kwenda katika ugavana miaka inayokuja. Hii ndiyo shida yao kubwa. Mimi ningeomba Seneta wenzangu tuungane ili tuweze kupigania Bunge letu la Seneti na kuhakikisha kwamba Seneti inaheshimiwa na isimame imara kuwatumikia wananchi wetu katika nchini na kaunti zetu.

Ndugu zangu Maseneta, tunapigwa vita na wenzetu katika Bunge la Kitaifa. Tungeomba Spika wa Seneti na yule wa Bunge la Kitaifa waketi pamoja ili kuhakikisha kwamba Bunge zote mbili zinaheshimiana.

Kwa hayo machache, ninaunga mkono.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. Chinua Achebe told us that one of the true tests of integrity is its blunt refusal to be compromised. The Senate has refused to be compromised and that is why we have all the hue and cry from our colleagues from the National Assembly.

I want to specifically congratulate the team that has been handling investigations into the Solai Dam tragedy and the team that has been looking into the Ruaraka scandal. When all is said and done, that is where the crux of the matter is. We have won the hearts of the nation for people have looked at how our Committees have conducted themselves with dignity and decorum.

We have breathed fresh air into the House of Parliament. We should be celebrated and not condemned. Congratulations to those teams.

I also thank the leadership of the Senate led by our able Senate Majority Leader for standing up to these bullies. They might have succeeded to intimidate us in the Eleventh Parliament, but this time round, they should be assured that we shall match them pound for pound, dollar for dollar. Long live the Senate.

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

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. The National Assembly is trying to divert the attention of this country from the scandals. Many people are not happy with the fact that the Senate is investigating Solai and Ruaraka issues. Members of the National Assembly say they will take drastic measures. We will deal with those drastic measures and return them to sender. I dare them to come with those drastic measures.

It is a shame that instead of spending time to debate important issues, we are debating how low the National Assembly has gone. Why can they also not encroach if they are complaining that we are summoning people for malpractices and they feel that we are encroaching? If encroachment is the way to bring sanity to this country, so be it. Let them encroach and let them do their work until we all feel that there is too much encroachment then we will all sober up and bring this country to what we want it to be.

We have no apology to make for what we are doing. I think that they are still living in the past and they do not remember that we do have a new Constitution that decentralized powers. Power is making people too drunk. They still think that they have too much power such that they even want to share what we have. This is the way to go. We have no apology to make for doing our work.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Last but not least is Sen. Kwamboka.

**Sen. Kwamboka:** Thank you, Mr. Deputy Speaker, Sir. I support the Statement by the Senate Majority Leader. It is unfortunate and shameful for the Members of the National Assembly. I think they have forgotten their mandate. I want to remind them that they were not elected to oversight or discuss the Senate. By doing so, it means that they do not have ideas. I am here courtesy of devolution to represent Kenyan citizens, protect the interest of women as well as that of the counties.

We are here to participate in law making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113. Therefore, it is very shameful for the National Assembly to spend the whole of yesterday discussing the Senate and inciting citizens of this country against it instead of doing what brought them to Parliament. I will urge them to concentrate with Big Four Agenda and fighting corruption instead of discussing the Senate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Thank you, Senators. We have come to the end of this Order. I wish to make the following further directions regarding the remaining items in today's Order Paper.

Order Nos.8, 9, 10 are deferred to tomorrow. Further, I direct that items appearing in Order Nos. 12, 13 and 14 be deferred.

## BILLS

### *Second Reading*

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

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*(Bill deferred)*

*Second Reading*

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

*(Bill deferred)*

*Second Reading*

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

*(Bill deferred)*

### **COMMITTEE OF THE WHOLE**

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

*(Committee of the Whole deferred)*

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

*(Committee of the Whole deferred)*

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

*(Committee of the Whole deferred)*

We shall now proceed to transact the business under Order No.11. Upon exhaustion of Order No.11, if time permits, we can then have an opportunity to transact the businesses under Order No.15 going downwards. It is so ordered.

Next Order!

### **COMMITTEE OF THE WHOLE**

*(Order for the Committee read)*

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

IN THE COMMITTEE

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

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

**The Temporary Chairperson** (Sen. Pareno): Hon. Senators, we are now in the Committee of the Whole to consider The County Boundaries Bill (Senate Bills No. 6 of 2017). We shall move Clause by Clause.

*Clauses 3, 4, 5 and 6*

*(Question, that Clauses 3, 4, 5 and 6 be part of the Bill proposed)*

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

*Clause 7*

**The Temporary Chairperson** (Sen. Pareno): I call upon the Mover, Sen. Mutula Kilonzo Jnr., to move the amendment.

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

THAT the Bill be amended by deleting Clause 7 and substituting therefor the following new Clause-

**Establishment of a County Boundaries**

**Mediation Committee.**

7. (1) The Senate may pass a resolution for the establishment of a County Boundaries Mediation Committee upon —

(a) A request by the governor of any county whose boundary is disputed; or

(b) A request by the Senator of any county whose boundary is disputed;

(c) A request by a registered voter of a county whose boundary is disputed; or

(d) The recommendation of the Senate, made under Section 21, for mediation as the means of resolving a boundary dispute.

(2) A request under Subsection (1) (a) to (c) shall be made to the Senate and shall be accompanied by —



(a) Evidence that notice was given to every county government of a county whose boundary is the subject of the dispute referred to in subsection (1); and

(b) A description in writing identifying the specific disputed county boundary under the First Schedule.

(3) The Senate shall consider a request under Subsection (2) within twenty-one days.

*(Question of the amendment proposed)*

*Clause 8*

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I beg to move—  
THAT Clause 8 of the Bill be amended by deleting the marginal note and substituting therefor the following new marginal note —  
Appointment of members of a mediation committee.

*(Question of the amendment proposed)*

*Clause 9*

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, I beg to move—  
THAT Clause 9 of the Bill be amended in Sub-clause (1) by—  
(a) deleting paragraph (b) and substituting therefor the following new paragraph—  
(b) One person from each of the affected counties with at least five years' experience in conflict management, nominated by respective the governors;  
(b) deleting paragraph (c) and substituting therefor the following new paragraph—  
(c) a commissioner of the National Land Commission nominated by the National Land commission from amongst the commissioners;  
(c) Inserting the following new paragraph immediately after paragraph (c) —  
(ca) a licensed surveyor nominated by the Land Surveyors' Board established under the Survey Act; Cap.299.

**The Temporary Chairperson** (Sen. Pareno): Division will be at the end. I call upon the Chairperson of the Standing Committee on Devolved Government and Inter-governmental Relations to move another amendment.

**Sen. Cherargei:** Thank you, Madam Temporary Chairperson. I beg to move—

THAT Clause 9 of the Bill be amended-

(a) by deleting the marginal note and substituting therefore the following new marginal note –

Composition of the mediation committee.

(b) in clause (2) by deleting the word “ten” appearing immediately after the words “in the last” and substituting therefor the word “five” in paragraph (a).

*(Question of the further amendment proposed)*

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

*Clause 10*

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

THAT Clause 10 of the Bill be amended in the introductory phrase to sub-clause (1) by inserting the words “by the President” immediately after the words “may be removed from office.”

*(Question of the amendment proposed)*

*Clause 11*

*(Question, that Clause 11 be part of the Bill proposed)*

*Clause 12*

**The Temporary Chairperson** (Sen. Pareno): I call upon the Chairperson of the Standing Committee on Devolved Government and Inter-Governmental Relations to move the amendment.

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

THAT Clause 12 of the Bill be amended by inserting the following new clause immediately after sub-clause (2)-

(2a) The secretariat referred to under subsection (1) shall include officers with knowledge and at least five years experience in physical planning or land survey.

*(Question of the amendment proposed)*

*Clauses 13 and 14*

*(Question, that Clauses 13 and 14 be part of the Bill proposed)*

*Clause 15*

**The Chairperson** (Sen. Pareno): Let us have the Mover Sen. Cherargei.

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

THAT Clause 15 of the Bill be amended by deleting the introductory phrase and substituting therefor the following introductory phrase –

The mediation committee shall within three months of the resolution of the Senate establish a mediation committee under Section 7, report to the Senate on -

*(Question of the amendment proposed)*

*Clauses 16 and 17*

*(Question, that Clauses 16 and 17 be part of the Bill, proposed)*

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

*Clause 18*

**The Temporary Chairperson** (Sen. Pareno): Yes, Mover, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr:** Thank you, Madam Temporary Chairperson.

I beg to move-

THAT Clause 18(1) of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) —

(ba) The Senator of a county whose boundary is proposed to be altered or a Member of the National Assembly representing a constituency within the county whose boundary is proposed to be altered;

Thank you.

*(Question of the amendment proposed)*

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

*Clause 19*

*(Question, that Clause 19 be part of the Bill, proposed)*

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

*Clause 20*

**The Temporary Chairperson** (Sen. Pareno): Yes, Mover, Sen. Mutula Kilonzo Jnr.?

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

THAT Clause 20 of the Bill be amended in the introductory phrase by deleting the word “twenty-one” appearing immediately after the words “the Senate shall within” and substituting therefor the word “thirty”.  
Thank you.

*(Question of the amendment proposed)*

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

*Clauses 21 and 22*

*(Question, that Clauses 21 and 22 be part of the Bill, proposed)*

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

*Clause 23*

**The Temporary Chairperson** (Sen. Pareno): Yes, Mover, Sen. Mutula Kilonzo Jnr.?

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

THAT the Bill be amended by deleting Clause 23 and substituting therefor the following new clause-

Consideration  
of report of  
special  
committee by  
the National  
Assembly.

23. (1) The National Assembly shall consider a resolution received under section 22(b) within thirty days of receipt of the resolution.

(2) If the National Assembly —

(a) concurs with the resolution of the Senate for the establishment of a commission, a commission shall be established in accordance with section 24 of this Act;  
or

(b) does not concur with the resolution of the Senate for the establishment of a commission, the petition shall be referred to a parliamentary mediation committee comprising an equal number of members from each House.

(3) If the National Assembly fails to consider the resolution of the Senate within the specified time, the National Assembly is deemed to have approved the resolution of the Senate.

(4) Where the National Assembly approves the resolution of the Senate, the Speaker of the Senate shall, within seven days of the approval by the National Assembly, forward the resolution to the President for the establishment of a commission in accordance with section 24.

(5) (a) The parliamentary mediation committee under sub-section (2) shall, within twenty-one days of referral of the petition, consider the petition and agree on a recommendation in terms of section 21 (1).

(b) If the parliamentary mediation committee arrives at a common recommendation, each House shall vote to approve or reject the resolution of the parliamentary mediation committee.

(c) If the parliamentary mediation committee recommends the establishment of a county boundaries parliamentary mediation committee, section 22(a) shall apply with necessary modifications.

(d) If the parliamentary mediation committee recommends the establishment of a commission, subsection (4) shall apply with necessary modifications.

(e) If the mediation committee fails to agree on a recommendation, no further proceedings shall take place in respect of the Petition.

Thank you.

*(Question of the amendment proposed)*

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

*Clause 24*

*(Question, that Clause 24 be part of the Bill, proposed)*

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

*Clause 25*

**The Temporary Chairperson** (Sen. Pareno): Yes, Mover, Sen. Cherargei?

**Sen. Cherargei:** Thank you, Madam Temporary Chairperson.

I beg to move-

THAT clause 25 of the Bill be amended in sub clause (1) by —

(a) deleting the word “President” appearing at the end of paragraph

(b) and substituting therefor the words “Independent Electoral and Boundaries Commission”;

(b) deleting the word “President” appearing at the end of the paragraph (c) and substituting therefor the words “National Land Commission”;

(c) by inserting the following new paragraph immediately after paragraph (c) —

(ca) the Principal Secretary for the time being responsible for matters related to land and physical planning or a representative of the Principal Secretary designated in writing;

Thank you.

*(Question of the amendment proposed)*

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

*Clauses 26 -30*

*(Question, that Clauses 26, 27, 28, 29 and 30 be part of the Bill, proposed)*

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

*Clause 31*

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

Jnr.?

**Sen. Mutula Kilonzo Jnr:** Thank you, Madam Temporary Chairperson.

I beg to move-

THAT the Bill be amended by deleting clause 31 and substituting therefor the following new clause-

Tenure of 31. A commission shall stand dissolved within one month -

the (a) after the submission of its final report to Parliament; or

Commission. (b) after the conclusion of any legal proceedings, to which the commission is enjoined as a party, arising from the work of the

commission.

Thank you.

*(Question of the amendment proposed)*

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

*Clauses 32-39*

*(Question, that Clauses 32 - 39 be part of the Bill, proposed)*

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

*Clause 40*

**The Temporary Chairperson** (Sen. Pareno): Yes, Mover; Sen. Cherargei?

**Sen. Cherargei:** Thank you, Madam Temporary Chairperson.

I beg to move-

THAT Clause 40 of the Bill be amended in sub clause (2a) by deleting the words “the county gazette” appearing at the beginning of the paragraph and substituting therefor the words “the Kenya Gazette and the county Gazette,” in subparagraph (ii);

Thank you.

*(Question of the amendment proposed)*

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

*Clauses 41-44*

*(Question, that Clauses 41, 24, 43 and 44 be part of the Bill proposed)*

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

*Clause 45*

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

**Sen. Mutula Kilonzo Jnr:** Thank you, Madam Temporary Chairperson.

I beg to move:

THAT the Bill be amended by deleting Clause 45 and substituting therefor the following new clause-

Coming into effect of a 45. (1) A resolution for the alteration of the boundaries of a county under section 42(3) shall take effect upon the next delimitation of the

resolution  
No. 9 of  
2011

constituency and ward boundaries following a boundaries review process under Article 89 of the Constitution and section 36 of the Independent Electoral and Boundaries Commission Act.

(2) The Independent Electoral and Boundaries Commission shall, in its report under section 36 (5) of the Independent Electoral and Boundaries Commission Act, state how a resolution under section 42(3) of this Act has been taken into account in the constituency and ward boundaries review process.

(3) The report referred to under subsection (2) shall be submitted to the Senate and the National Assembly for consideration.

(4) The Independent Electoral and Boundaries Commission, in preparing its final report under section 36(8), shall take into account the views of the Senate and the National Assembly.

Thank you.

*(Question of the amendment proposed)*

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

*Clauses 46-49*

*(Question, that Clauses 46, 47, 48 and 49 be part of the Bill, proposed)*

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

*New Clause 42A*

**The Temporary Chairperson** (Sen. Pareno): Yes, Mover?

**Sen. Cheragei:** Thank you, Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by deleting Clause 42 and substituting therefor the following new clause —

Concurrence  
By  
Parliament  
on alteration  
of a  
boundary.

42A. (1) Where the National Assembly does not concur with the resolution of the Senate to recommend the alteration of the boundaries of a county under section 42, the resolution shall be referred to a parliamentary mediation committee comprising an equal number of members of each House.

(2) The parliamentary mediation committee under subsection (1) shall, within twenty-one days of the referral of the resolution, consider the resolution and agree on a recommendation in terms of section 42(3).

(3) If the parliamentary mediation committee arrives at a common recommendation, each House shall vote to approve or reject the resolution of the parliamentary mediation committee.

(4) If the parliamentary mediation committee recommends the



alteration of the boundaries of a county, section 42(3) shall apply with the necessary modifications.

(5) If the parliamentary mediation committee fails to agree on a recommendation, no further proceedings shall take place in respect of the resolution to alter the boundaries of a county.

Thank you.

*(Question of the New Clause proposed)*

*(New Clause 42A read the First Time)*

*(Question, that the New Clause 42A be read a  
Second Time proposed)*

*(Question, that the New Clause 42A be part of the  
Bill proposed)*

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

*New Clause 47A*

**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 47-  
Petition to the High Court  
on alteration of boundaries.

47A. (1) A petition challenging the alteration of a county boundary under this Act shall be filed in the High Court.

(2) A petition under subsection (1) shall be-

- (a) filed within twenty-one days of the publication of the boundaries in the Gazette under section 42(3); and
- (b) determined within sixty days of the filing of the petition.

(3) Any appeal from a decision arising from a petition filed under subsection (2) shall be heard and determined within sixty days of the filing of the appeal.

*(New Clause 47A proposed)*

*(New Clause 47A read the First Time)*

*(Question, that the New Clause 47A be read a  
Second Time, proposed)*

*(Question that the New Clause 47A be*

*part of the Bill, proposed)*

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

*First, Second, Third, Fourth and Fifth Schedules*

*(Question, that the First, Second, Third, Fourth and  
Fifth Schedules be part of the Bill, proposed)*

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

*Clause 2*

**Sen. Cherargei:** Madam Temporary Chairperson, I beg to move—  
THAT Clause 2 of the Bill be amended by —

- (a) deleting the interpretation of the word “cabinet secretary”; and substituting therefor the following new interpretation “cabinet secretary” means the cabinet secretary for the time being responsible for matters related to land and physical planning;
- (b) deleting the interpretation of the word “county executive committee member”; and substituting therefor the following new interpretation “county executive committee member” means the county executive committee member for the time being responsible for matters related to land and physical planning in the county;
- (c) inserting the following new definition immediately after the definition of the word, “commission” —  
“dispute” means disagreements between two or more neighbouring counties over the possession or control of land bordering the two or more neighbouring counties;

*(Question of the amendment proposed)*

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

*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, we shall report progress of the Committee of the Whole. I now call upon the Mover to proceed.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Chairperson, pursuant to Standing Order No.142, I beg to move that the Committee do report progress on the consideration of the County Boundaries Bill (Senate Bills No. 6 of 2017) and seek leave to sit again tomorrow.

**Sen. Cherargei** seconded.

*(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, Senators! The Temporary Chairperson, proceed.

### **PROGRESS REPORTED**

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

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I beg to report progress that the Committee of the Whole has considered the County Boundaries Bill (Senate Bills No.6 of 2017) and seeks leave to sit again tomorrow.

I beg to report.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Mover to proceed.

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

I request my colleague, Sen. Cherargei, to second the Motion.

**Sen. Cherargei** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot. I almost said that this is not somewhere else. You know where I am talking about.

Next Order.

### **BILL**

#### *Second Reading*

#### THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017)

*(Sen. Dullo on 24.7.2018)*

*(Resumption of debate interrupted on 24.7.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! Sen. Seneta, you had 11 minutes remaining for your contribution. Do you still need them or we go to the next speaker?

**Sen. Seneta:** Mr. Deputy Speaker, Sir, let us move on to the next speaker.

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

I see no requests. There being no further requests, I call upon the Mover to reply. Where is the Mover? Where is the Senate Majority Leader or the Deputy Senate Majority Leader? Is there any delegation by the Mover?

Hon. Senators, shall we proceed for Division in the absence of the Mover or---

*(Sen. Murkomen walked into the Chamber)*

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, the Senate Majority Leader! You cannot be on a point of order when you are out of order. The best thing to do first is to get yourself in order and then you proceed. What is your point of order, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, with your permission, I was in my office when you called for---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! When you are in your office, you are supposed to delegate either to your deputy or to any other such person.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg your indulgence.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): In fact, I thought you should say that you were elsewhere.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have many offices.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I thank hon. Senators who have made tremendous contributions on the Irrigation Bill. This Bill had come to this House before it was introduced again in the National Assembly. It is an important Bill and a subject matter that is dear to all of us, especially as Senators, and in so far as the Government's objectives of food security and regulation of irrigation activities in the country are concerned.

We have just come from a terrible disaster in Solai and many issues were raised in so far as the licensing of those dams is concerned. The same applies to irrigation. It is

important to have a legal framework to regulate irrigation activities. This Bill provides that important framework.

As I said, there is a link between irrigation and conservation. It is that conservation of resources that will facilitate existence of water for irrigation. This is important because there is a debate in the country about conservation of our water towers.

I have personal experience and contributions to this nation in so far as the conservation of Cherangany Hills Water Tower, particularly where I come from in Embobut Forest. As a result of an agreement between the Government and the local residents, citizens became agents of conservation. If you come to my place now, in Embobut, people who live around the forest have a lot of interest in the conservation of that forest. We want to do irrigation on the lower part which is the side of Tot. You have traversed Elgeyo-Marakwet County more than anyone else that I know apart from myself.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! In what capacity?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, in your official capacity as the Senate Majority Leader and my friend.

*(Sen. M. Kajwang' spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang'!

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, you have visited the lower and upper sides of Embobut Forest and Embobut River. You know how the River is important for irrigation in both Elgeyo-Marakwet and Baringo counties. When it rains, you know the importance of Kerio River to West Pokot and Turkana counties. There are also irrigation activities that are going on in Tot, Lodwar and Weiwei.

I believe that with such a legal framework, the county governments partnering with the national Government can engage in important irrigation activities that will protect and provide food security for the rest of the country. That is why that link is important. Those of us who live in the higher areas like Mau, Mt. Elgon, Cherangany, Mt. Kenya and Aberdares must be given the necessary resources to conserve the environment. We must also create partnership between citizens and the Government.

I am saying this because, the other day, I went to Mau Forest to look after local residents whose houses were being burned in the name of conservation. The Government cannot correct one wrong by committing another. You cannot brutalize people to conserve the environment. You cannot also destroy the environment to save a few.

We must save the whole generation and achieve intergenerational equity for many years. To achieve that, it is important for that balance to be observed. The Government should sit the people down and find a solution, so that we do not have a situation like what is being projected in Narok County. It should be one community versus the other community or these people versus the other ones. We want a harmonious county where people sit down and look at issues as they are, without looking at them parochially or in a narrow sense for personal interests.

As the Senate, we have dual responsibility. I am here as the Senate Majority Leader, but I am the Senator for Elgeyo-Marakwet County. Even as the Senate, we are

representatives of counties and county governments. I do not think it is fair for any of us in this House to try and reprimand his colleague for speaking out on behalf of his own people. You can give a different view on the same issue, like Sen. Olekina gave in the case of Mau. You can have an alternative view, which is useful to finding a solution.

However, for fellow Senators to try to intimidate another Senator, let alone a Majority Leader; that he cannot speak on behalf of people or present the concerns of the people, and if he does so, there is a place where you might be caned, is barbaric and old age. It is not what we expect of ourselves.

Let me add that Sen. Pareno and I, among others, traveled to Russia to watch the World Cup and we have explained the reasons we did it. Members in this House travel for different reasons, including building capacity for the future---

**Sen. Seneta:** On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Majority Leader in order to purport to be moving this important Bill on irrigation and, at the same time, talk about Mau Forest eviction, which is a very emotive issue to many of us? Is he also in order to begin a debate on Russia, which is still a pending issue that will come to this House?

**Sen. Outa:** On a point of information, Mr. Deputy Speaker, Sir.

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

**Sen. Outa:** Mr. Deputy Speaker, Sir, I would like to inform Sen. Seneta.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Seneta, would you want to be informed by Sen. Outa?

**Sen. Seneta:** Mr. Deputy Speaker, Sir, I do not want to be informed.

*(Laughter)*

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

Sen. Murkomen, proceed.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, the context of my conservation debate is not just about the Mau Forest, but also Embobut and Mt. Elgon. This is because we can never achieve irrigation without conserving the water, in the first place, where we will do that irrigation.

In fact, the Bill itself talks about the national Government having a responsibility for licensing, so that then they can regulate the use of water between the upper and lower riparian users.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What about the World Cup?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have not even finished. Do you want me to say that I saw a lot of irrigation in Russia?

*(Laughter)*

The point I wanted to make is that as a representative of the people, just like my colleague, Sen. Seneta has spoken, Mau is an emotive issue, because it is important to the country. It is about conservation, land ownership and settlement. So, it is emotive. In that regard, Senators, like Sen. Seneta and all of us must listen to each other.

I was trying to say that we failed when one of us went public and said: “Some people traveled and it is wastage of public funds.” The same person who said that is now in London. It is not nice for us, as the Senate. We need to develop a practice where all of us respect the different views that we have, but also avoid hypocrisy when it comes to conversations.

Be that as it may, I insist that this Bill is important. I have listened to the views of Senators and so many of them are opposed to the Bill in so far as involvement of counties are concerned and the representation of counties in the board; the statute body that has been established. We had this conversation with you and a few others and I have listened to the Members.

I will propose a half a day workshop with the sponsors of the Bill from the Executive to run us through the Bill. We will invite the Council of Governors (CoG) representative on matters of agriculture and craft the amendments that we want so that we have a Bill that is representative of the people and county governments. I could go on and on but let me end there.

I beg to move and request you to defer the putting of the question to another day, under Standing Order 54(3).

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, you have said you would like to entertain further consultations. In that connection, would you want to step down further transacting of this Bill until consultations are done or do you want us to continue with the Division tomorrow on the Second Reading?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I request that we vote for the Second Reading because in any case, it will not stop the amendments that Members have. However, before we go to the Committee of the Whole, we must go for the workshop to agree on the amendments that we require.

This is an argument we have heard before. Maybe Members will agree that we vote on the Second Reading because right now, there is nothing we can do to the Bill. Before we go to the Committee of the Whole, we should come with all the amendments that we will propose in the workshop. That will be useful to all of us because if the Bill is defeated, it will have to go for mediation but it will not add any value and it will lack our contribution. If we allow it to go to the next stage, we can incorporate our comments.

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I urge the Mover of this Bill that if we rush to vote on this Bill for the Second Reading and it collapses, then the entire thing collapses.

Sen. Murkomen, there could be some wisdom in considering what the Chair has proposed, that you pause transactions until consultations are done then after we are done with the consultations, we will come and vote so that the matter proceeds to the next stage. Am I in order to render that kind of advice?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can only be in order in so far as the Mover of the Bill is interested in your advice.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it makes no difference. Even if we do not vote now, there is no difference because nothing will change in the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, the only issue for your consideration is that it is your Bill and it is up to you to decide what should be done. The only consideration you may want to put in mind is if the vote is carried out and it is not in the affirmative. Do you think you can whip Members to come and vote? I am sure we do not want your Bill to die. I am assuming you do not want your Bill to die because that would be a case of euthanasia and I cannot assist you to kill your own Bill.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have no problem when this Bill is voted on. We can even postpone it. The issue I am trying to mention here is that it makes no difference. In terms of strategy, we can wait until the consultations have been done but practically speaking, it makes no difference. The only way is to kill a Bill when it does not capture what you wanted during the Committee of the Whole.

During a consultation meeting, we will have many amendments and the Committee will still incorporate them and bring them to the Committee of the Whole. So, even if we do not vote tomorrow and wait until after the workshop, we will still come back here and vote for the Bill as it is and wait for amendments during the Committee of the Whole.

**Sen. (Prof.) Kamar:** Point of information.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, would you like to be informed by Sen. (Prof.) Kamar?

**The Senate Majority Leader** (Sen. Murkomen): Yes.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, the information I would like to give the Senate Majority Leader is that this Bill came when he was absent. There was also an argument that the same Bill had been thrown out and it came back without any change. The mood of the House at that time was that if it is in that form, it might face the same fate.

I just wanted to inform him because he was away on an important tour. He was not here when we discussed that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Prof.) Kamar! Senate Majority Leader, how do you want us to proceed?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have limitation on what to request as per the Standing Orders.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can I direct that the Division takes place tomorrow?

**The Senate Majority Leader** (Sen. Murkomen): If we have the numbers which I am not sure of.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I direct that Division takes place tomorrow in the afternoon.

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

Let us move on to the next Order.



**BILL***Second Reading*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Where is Sen. Moi? He is nowhere to be found. I have seen this item on the Order Paper for many weeks now. This House will not entertain this. Whoever reaches Sen. Moi should inform him that he should either prosecute this Bill or we prioritize other Bills.

**Sen. Outa:** On a point of order, Mr. Deputy Speaker, Sir. I would like to inform you that Sen. Moi is busy trying to settle issues of Mau Forest.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Outa! Are you for or against Sen. Moi?

**Sen. Outa:** Mr. Deputy Speaker, Sir, I am not. I am just saying that he would have been here but---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But the information you are giving is likely to be an aggravating circumstance. It is actually against him. Are you telling us that the business of this House is secondary to the Mau Forest settlement? Is that the argument?

**Sen. Outa:** That is not the argument. I just wanted to tell you that he is out to sort out issues of national concern and Mau is one of them.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Outa! I am not sure where to place that. I can see another intervention by Sen. M. Kajwang'.

**Sen. M. Kajwang':** Mr. Deputy Speaker, Sir, I wanted to make a similar report but Sen. Outa has done so.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. M. Kajwang'!

**Sen. Cherargei:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Sen. Outa and Sen. M. Kajwang' to claim that Sen. Moi is pursuing issues of national interest? They should be honest and say that Sen. Moi is planning to run for president because it seems they are his confidants.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Cherargei! I am almost convinced that all these points of order are neither helping the House nor helping Sen. Moi who we do not know where he is.

**Sen. Halake:** Mr. Deputy Speaker, Sir, I would like to point out that as much as Sen. Moi is not here, this is the first time we have reached this item on the Order Paper. It is not that this has not been dealt with by the virtue of his being out of the House---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But he is supposed to be here this afternoon and that is why the item is on the Order Paper.

**Sen. Halake:** Yes, but it is not true that it is by virtue of his absence that we have not discussed this Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Halake, what are you trying to impute? The point is simple; when you are a sponsor of an item on the Order Paper, you

are supposed to be present on the day it appears, whether it is the first, second or the hundredth day.

I, therefore, direct that, that order be---

I can see a few points of orders here. What is it, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, as a representative and leader of Sen. Moi from the majority side, I beg your indulgence that this Business be rescheduled for another date.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): On what grounds?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, as we establish his absence, it worries me because I thought it was notified to the Speaker. If the Speaker is not sure about it, I then beg your indulgence that the Bill be deferred to a date that will be determined by the Senate Business Committee.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. That is the kind of information I was looking for. Therefore, Leader of Majority, look for one of your own and convey the sentiments of the House.

I direct that, that item be deferred.

Next Order.

*(Bill deferred)*

## BILL

### *Second Reading*

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

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

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir, for giving me this chance. I beg to move that the County Governments Amendment Bill (Senate Bills No. 13 of 2018) be now read a second time.

The County Government Act No. 17 of 2012 was to provide for powers, functions and responsibilities of county governments to deliver services. The principle objective of the amendment Bill before this House this afternoon is to amend section 58 of the County Governments Amendment Act to provide for appointment of human resource management professionals as the chairpersons of County Public Service Boards (CSPB).

Mr. Deputy Speaker, Sir, it is of great interest to remember that the Senate is the primary defender of devolution and that, at all times, we should seek to push forward thoughts and processes that build and establish devolution---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot! I would want you to take into consideration that we have about 30 minutes. Once you have started moving a Bill, it must be seconded and the question put before 6.30 p.m., so that, then, debate can proceed tomorrow. Therefore, there is a technicality there. You might have a

little more time, but you are constrained. The moving, seconding and proposal of the question must take place by the rise of the House.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I am properly guided.

Mr. Deputy Speaker, Sir, this is not a very lengthy Bill and, therefore, I do not intend to take the normal duration or the maximum amount of time one is given when they are moving a Bill.

One of the core duties or mandates as a House, is that we should, at all times promote and think of ideas that will establish devolution and give it the impetus needed to give hope to our people. It should never be lost on us, as Senators, that before the promulgation of the 2010 Constitution, this country had travelled an extremely difficult journey.

For many years, we, as a people, felt that the centre was not holding together any more. The people were becoming extremely helpless and hopeless, especially with regard to development and pushing forward the agenda of the people of this Republic. Therefore, when we gifted ourselves the object of devolution and gave the Senate as its protector and custodian, we should always try to find ways and means of ensuring that devolution becomes better.

We should ensure that the first cycle of devolution from, 2013 to 2017, is followed by an even greater cycle from 2017 to 2022. Otherwise, if we get to a point where citizens do not know where to turn to because the centre was found to untenable, it will be a great tragedy of unmeasured proportion.

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

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

If we do not give the necessary support to our county governments to ensure that they succeed and give meaning to the lives of the citizens of this country, we will then find ourselves in a very difficult situation.

Mr. Deputy Speaker, Sir---

Madam Temporary Speaker, I apologize. I did notice that the Chair had changed while I was on the Floor.

Madam Temporary Speaker, we must ensure that at all times, we promote good behavior in our county governments. Because the Senate is the primary institution that makes laws on behalf of our county governments, we should always seek to find where there are challenges so as to provide the necessary legislation. In doing so, our counties will succeed and we will not end up finding ourselves in a situation where citizens say that because we cannot trust the center and the devolved units, maybe it is better for the Kenya Revenue Authority (KRA) to collect revenue and divide it equally amongst all Kenyans. Then you make your contribution and see what you want to do. For us not to get to that state, it is good for us to ensure that all facets of devolution are properly supported.

Madam Temporary Speaker, this Bill seeks to address the challenges that have been seen in human resource management in our counties. I am sure that you are aware

of the kind of complaints that the citizens continue to raise about the quality of staff being hired in our counties and the process.

The fact that CSPBs need to be professional bodies, was well thought-out by the drafters of our Constitution and the House that gave life to the County Government Act. These bodies are supposed to ensure that the people who are hired to work in our counties are not just political cronies, friends, families and concubines, but men and women of great repute that can push the agenda of devolution forward in our counties.

However, Madam Temporary Speaker, that is not the case in many of our counties going by the cries that continue to come to this House through the petitions that are presented before us, who sit in the Committee on Finance and Budget. Many a times when we question the finance officers – who are the men and women that are charged with the responsibility of taking care of finances of counties – some of the answers given to us are extremely shocking.

For example, we have faced somebody who was hired to be the County Executive Committee (CEC) member in charge of finance making school boy errors in terms of accounting practices. We then wonder what process led to the hiring of this particular fellow.

Madam Temporary Speaker, the CSPBs were meant to be given a life of their own and a sort of semi-autonomy. It was expected that after the approval of the chairperson of CSPB, they would retreat and ensure that the quality of staff they give to our counties is something to be celebrated. That is not the case. We are much aware of the practice where we find the chairperson and the secretariat of the County Public Service Boards (CPSB) draw a list on need basis from the Executive, conduct interviews, then indicate a particular candidate is suitable for hire or not and pass it to the governor for approval. Depending on their political arithmetic, the county governor will choose whom to hire and leave others without any regard for due process and professionalism.

It is important for this House to stamp its authority by ensuring that the chairperson that is in charge of this institution is a trained human resource person. As we discussed about this morning when we had a meeting with Commission on Revenue Allocation (CRA), human resource is extremely important.

Many times, counties are obsessed with how much is being devolved to them. However, I pause and push forward the argument that it does not matter how much a county gets. However, if it is placed on the hands of men and women who do not push for development and growth agenda of a particular county, then after three or four cycles, the difference will be so clear.

One will not believe that devolution was rolled out at the same time in all the 47 counties. We are only in the second cycle of devolution and there are a few county governments that we can celebrate. After five or six financial years, they have put forth industries that generate income and employ their young people. The living standards of people in those counties have greatly improved.

Madam Temporary Speaker, human resource is as important as the financial resource that we fight for in this House. Therefore, if we do not put in place legislation to ensure that people that are charged with this function are men and women of the right mental capability and training, then we shall be failing our counties. Therefore, I

imagined a better way of running our counties is where professionalism counts. We need to hire human resource professionals who manage their human resource better, so that a county can become better, richer and successful.

Madam Temporary Speaker, counties that have advanced have not done so because of their resources. There are countries with oil that are successful. However, there are others with oil, but their citizens languish in abject poverty. We also know of many African countries with immense natural resources and minerals, but because of lack of trained human resource personnel, their citizens languish in poverty. Israel is a county with limited resources. However, they have men and women in the correct mental frame charged with the responsibility of leading and it has become a super power of this world.

Madam Temporary Speaker, if we are not careful with our counties, a situation will come, probably, in the fourth, fifth or sixth cycle of devolution where some counties will be so advanced in their development that they will be able to loan resources to their neighbouring counties. The difference will be those that managed their resources better against those that squandered their resources.

Therefore, as a House that is charged with the responsibility of ensuring that counties thrive and serve our citizens who voted for us, it is important that we put our thoughts together and find ways in which we can improve our counties. I have made a suggestion to ensure that the chairperson of CPSB is a human resource professional of good standing.

Madam Temporary Speaker, we had a debate here a few weeks ago where challenging the requirement of 10 years experience in management as proposed by some of the Bills we bring in this House. There was a big debate whether 10 or five years is the adequate number. In this Bill, I propose seven years. This is because a person with seven years of experience in human resource will be able to provide leadership to the CPSB. Therefore, I urge colleagues to support this Bill. I also urge them to suggest amendments that can improve it to ensure the human resource function of our counties is better handled. Human resource professionals must adhere to the County Government Act for them to be effective in the counties. I welcome Senators to give those suggestions so that we may improve on the human resource function in our counties.

Madam Temporary Speaker, I am alive to the realities of time and what had been communicated to me earlier by the Speaker.

With those many remarks, I beg to move and call upon Sen. M. Kajwang to second.

**Sen. M. Kajwang:** Thank you, Madam Temporary Speaker. I beg to second the County Governments (Amendment) Bill, (Senate Bills No.13 of 2018) that has been moved by the good Senator for Kericho, Sen. Aaron Cheruiyot.

Madam Temporary Speaker, I believe that people who work in our counties must be viewed as assets and resources. If you look at the managerial framework that has been called the resource-based view, people who deliver services and sacrifice everything to support our counties and build this nation must be looked at as assets that are valuable, rare, inimitable and non-substitutable.

It is only with that approach that we will turn the talents and skills of the people in the counties so that our counties can change the lives of the people that live there. For us

to manage people in our counties as an important and rare resource, we need a CPSB that understands the science and art of human resource management.

Madam Temporary Speaker, the CPSB - if I was to use an analogy - is the human resource department of all counties. We have an interesting situation in the County Governments Act where there is a CPSB and a County Secretary who is the head of CASB, yet we have CPSB which ideally needs to have autonomy, space and mandate to manage human resources. This Bill attempts to introduce a qualification for the chair of the CPSB. The existing qualification is that the chair must have a degree from a recognized university in addition to 10 years working experience.

Madam Temporary Speaker, what Sen. Cheruiyot has incorporated is that the Chair must also be a human resource professional of good standing with the Institute of Human Resource Management. Parliament made human resource management one of the regulated professions, just like Law, Medicine and Procurement.

It is important that whoever will manage people in the counties must be someone who understands that science. I, therefore, support that. It does not mean that it must be a degree in Human Resource Management. One can be an engineer and become a member of the Institute of Human Resource Management through certification or study. Therefore, let the message not go out that Sen. Cheruiyot is only saying that the Human Resource graduates are the only ones that can chair County Public Service Boards (CPSB). Even a doctor, who decides to be a member of the Institute of Human Resource Management---

*(Sen. M. Kajwang's microphone went off)*

Madam Temporary Speaker, I do not know if my time is up. Kindly guide me.

**The Temporary Speaker** (Sen. Pareno): Please, proceed.

**Sen. M. Kajwang'**: Thank you, Madam Temporary Speaker. I thought that you were rationing my time. I will be done in two minutes, so that we can put the question. I know that, as the seconder, I may not get another opportunity to contribute to the Bill. I would urge my fellow Senators that when we consider this Bill, we should also look at Section 55, all the way to Section 80 of the County Governments Act that talks about the County Public Service Board and the County Public Service.

I believe that we can take advantage of Sen. Cheruiyot's Bill to redefine and clarify the relationship between the County Secretary and the County Public Service Board. It has brought a lot of conflict in some counties. We can also take this advantage to identify where the board is required to do regular reports and how regular those reports should be. Are they weekly or monthly? We can put in a very precise reporting requirement. We can also enrich or clarify the procedure for the removal of the CPSB. The grounds for removal are related to Article 251, but the procedure for removal is different.

Madam Temporary Speaker, as I speak, in my County, Homa Bay, we do not have a CPSB because the County Assembly decided to remove them. The CPSB went to court and they are now in office, thanks to a court ruling. We need to full-proof the

process of removal to avoid abuse. We must also look at the issue of term of office, where governors get into office and find a hostile CPSB.

Finally, we can take advantage of this Bill to address issues of staff mobility across counties.

I beg to second the Bill proposed by Sen. Cheruiyot.

*(Question proposed)*

**Sen. Seneta:** Madam Temporary Speaker, thank you for giving me a chance to also add my voice on this important Bill that concerns the human resource of our counties. I congratulate my colleague, Sen. Cheruiyot, for having thought deeply about this important asset in our counties.

Human resource, personnel or workforce is a very important asset to our counties. It is also the backbone of development in our counties. The reason many Kenya citizens supported devolution is because they wanted to decentralize development. We wanted development to go to every part of this country. We wanted development to be felt by everyone in this country. We also wanted our counties to run services that benefit everyone so that every part of this country can develop and help its own citizens through service delivery.

Developing the capacity of our human resource is a very great idea. We cannot have personnel in our counties that are not professionals and who will not be able to deliver or perform to the expectations of our citizens. Therefore, this Bill seeks to give capacity to the CPSB, which is mandated to employ and recruit staff in the counties. Therefore, I support that the chairperson of this body should be a professional. He should have diverse knowledge and experience in terms of recruitment, selection, performance, management, training and development of the human resource in our counties.

Madam Temporary Speaker, it is not only the chairperson of the board, but even the members of the board should be able to scrutinize the staff we are recruiting in our counties. It really saddens me at times when you meet a person employed in our counties who does not even know his role and the scope of his work. Therefore, this amendment to the County Government Bill has come at the right time when we need to improve more on those people who are entrusted with the important role of giving service to people in our counties. We need to recruit people who can play their role without politicizing everything. You will find people in our counties today who have possibly been employed because they supported a certain politician. However, when it comes to service delivery, they are not able to deliver services effectively and efficiently and this leads to delayed service provision in our counties because we have personnel who are not well trained and who lack the capacity to perform.

Madam Temporary Speaker, this Bill will go a long way in improving the recruitment process in our counties. It will go a long way in reducing tribalism, nepotism and clannism that we see in our counties. You will find someone with the required qualifications, but because of lack of professionalism of the members of the County Public Service Board, this person is denied the job. This happens simply because the

reasoning level of the officers at the board is not at par with that of the applicant professionally.

Therefore, I know that this Bill will go a long way in strengthening our County Public Service Boards which are very important institutions in our counties. I wish that my colleague, Sen. Cheruiyot, would also look at the linkage between the county---

**The Temporary Speaker** (Sen. Pareno): Order, Senators! Sen. Seneta, you will have a remainder of 13 minutes when debate resumes.

### 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 26<sup>th</sup> July, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.