

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 21<sup>st</sup> November, 2018

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

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

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

##### VISITING DELEGATION FROM KISUMU COUNTY ASSEMBLY

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

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

They are-

- |                              |   |   |
|------------------------------|---|---|
| (1) Hon. Inviollete Adhiambo | - | Chairperson, Committee on Delegated Legislation |
| (2) Hon. Aslam Khan          | - | Member  |
| (3) Hon. Augustine V. Otura  | - | Member  |
| (4) Hon. Beatrice P. Ochieng | - | Member  |
| (5) Hon. Carren J. Oguok     | - | Member  |
| (6) Hon. Johnson Guya        | - | Member  |
| (7) Hon. Nancy A. Awiti      | - | Member  |
| (8) Hon. Olga A. Otieno      | - | Member  |
| (9) Hon. Samson O. Ameso     | - | Member  |
| (10) Hon. Seth O. Okumu      | - | Member  |
| (11) Hon. George Ogutu       | - | Member  |
| (12) Hon. Joseph Olale       | - | Member  |
| (13) Hon. Abil Nyasuna       | - | Member  |
| (14) Hon. Kennedy Agengo     | - | Member  |
| (15) Hon. Jane Manuche       | - | Member  |
| (16) Mr. David Ochieng       | - | Committee Clerk                                 |

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| (17) Mr. Silas Kapesa      | - | Serjeant-At-Arms |
| (18) Mrs. Josephine Amondi | - | Welfare          |
| (19) Mr. Fanuel Okode      | - | Hansard          |

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.

**Sen. Outa:** Thank you, Mr. Speaker, Sir. I join you to welcome the hon. Members and the staff of the great Kisumu City County. This afternoon, I am delighted that we have great hon. Members of Kisumu County. They are here to learn in order to be effective as people who are representing the people of Kisumu County in various matters, especially oversight.

Previously, I discussed with the Clerk of the Senate that in the near future, we, Kisumu County, will put aside a certain amount of money so that we can request the Senate to support capacity building for our hon. Members. We need to strengthen counties so that they can have the right tools to perform their oversight role and effectively handle matters that come before them.

Their mandate is similar to ours here in the Senate and, therefore, we want to equip them with all the transferable information so that they can effectively represent their people in Kisumu County by oversighting the executive – the Governor and his office.

I want to inform them that their work is not on behalf of the executive but to stand firm and protect all the monies that we allocate to that county. They should make sure that each penny that is given to Kisumu County is accounted for. That requires enough courage and people who understand what they are doing; they should be able to take the county government to task whenever funds are misappropriated.

I thank you for this great opportunity to have hon. Members from Kisumu County.

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. May I also take this opportunity to welcome hon. Members from the great Kisumu County. Feel most welcome.

Just to add briefly, the responsibility that is bestowed upon the Members of the County Assembly (MCAs) is so enormous. It is very important that their capacity is built so that the work is done in a proper manner. We do not want to encourage a reactive way of doing oversight, but they should be proactive.

They should be able to identify the difficulties or problems before they engage in oversight because it normally takes a very long time before we get the Auditor-General's report. For example, right now, we are dealing with the report of 2014/2015 and, therefore, there is a lapse of almost three years. It is important that we capacity build our MCAs so that they are in a position to be proactive in the way that they do things.

Mr. Speaker, Sir, secondly, counties are dealing with a lot of money and we are talking about billions of shillings. We know corruption has been devolved to the county units. If MCAs are properly trained and know their responsibility well, we should be able to make sure that *wananchi* benefit from the resources allocated to counties.

May the Members of the County Assembly feel most welcome.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. May I also join you in welcoming the delegation from Kisumu County. It is really a pleasure to have you in the Senate this afternoon, where you have come to see how we work while looking after the interests of counties.

You must have had a chance to look at the Order Papers, just to get a highlight of many of the issues that we have been dealing with. Yesterday afternoon, we were dealing with Private Public Partnerships and the dynamics of making those partnerships within the counties and the need for involvement through feasibility studies and through projects. We were also looking at the Local Content Bill and later on in the afternoon, the Urban Areas and Cities.

On the Floor of the House, we also started debating the Treaty Making and Ratification Amendment Bill, which are all very critical. We are also listening to various Petitions. All these are meant to work in sync with the county assemblies so that we are able to identify some of the pertinent issues and make legislation which can be cascaded to the county assemblies and we might be able to take this legislation and contextualize it within your counties and be able to ensure that development that is so much sought after through devolution is actually achieved.

Mr. Speaker, Sir, the Members of the County Assembly who are here run very important programmes in their counties because they are representatives of the people. Kenyans are looking forward to seeing that the social and economic rights that should be unleashed through devolution really does happen. I know we are doing the second round of devolution and we have had lessons learnt in the first round of devolution and this is the second round. As we wish them well, we also wish ourselves well. Together we can actually unlock the potential of these counties, which is what all Kenyans are looking forward to.

Thank you.

**The Speaker** (Sen. Lusaka): Sen. Mbogo George Ochillo-Ayacko, Migori.

**Sen. Ochillo-Ayacko:** Thank you Mr. Speaker, Sir, for this opportunity to welcome the delegation from Kisumu County. I want to thank this particular delegation for visiting Migori County when I was looking for votes. They were quite useful and orderly and were able to immensely contribute to my being elected. I want to take this opportunity to welcome them to this august House.

I want to say that the work that our colleagues at the county assemblies do is very important. It is the foundation of oversight and if they do it well, and we as Senators build upon what they do, this country is going to move forward by leaps and bounds towards good governance.

I want to conclude by congratulating them and Members of Senate from Kisumu, both Sen. Rose Nyamunga and Sen. Outa for undertaking to give them capacity building.

Thank you, very much.

**The Speaker** (Sen. Lusaka): Sen. Khaniri George, Vihiga.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. I was not going to speak until I heard that it is a delegation from Kisumu County.

Kisumu County, as you know, borders my County. I am bordered by Kisumu, Kakamega, Nandi and Siaya counties. Kisumu County is led by Prof. Anyang' Nyong'o, who was our colleague in the last Senate; a man I have immense respect for and a man that I know has great ideas. I know he will take the County to the next level. That is not to say that you should not oversight him; you must make sure that you oversight him properly.

For devolution to succeed, county assemblies are an integral part. You are our first line of defense; we heavily rely on you to ensure that governors and their governments are held to account to ensure that these resources do benefit the people in the counties.

I want to join the Speaker and Senators who spoken before me in welcoming you and thanking you for using this facility for benchmarking. The best practices can be learnt here, this is your big brother, we want to partner with you to ensure that devolution actually succeeds and benefits the people in the counties. I welcome you and wish you a fruitful stay in Nairobi.

Thank you.

**The Speaker** (Sen. Lusaka): Sen. Pareno Judith.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I am happy to join you in welcoming the Members of the County Assembly from Kisumu. I want to tell them that they have chosen the right path to come to benchmark and have some capacity building from the Senate. I am sure that they will learn a lot that they will take back to Kisumu County.

I would like to note that they have a very able Senator in this House; Sen. Outa. I am one person who is really proud to have him as a Senator and colleague here. I am representing women and we hope that you will be able to carry home some experience from the Senate.

Welcome.

**The Speaker** (Sen. Lusaka): Sen. Kilonzo Mutula Jnr, Makueni.

**Sen. Mutula Kilonzo:** Thank you, Mr. Speaker, Sir. I was not going to speak but after the Senator of Vihiga spoke, I thought I should inform the Members from Kisumu County that, please advise the people of Vihiga and Kisumu not to fight, we have passed the County Boundaries Bill. Please, pass through the Journals Office and collect the Bill. We have set up a method for all of you to live peacefully together with Maseno University so that you do not fight.

We have passed the County Allocation of Revenue Bill. Please, look at it together with the Private Public Partnership Bill. I am aware of discussions in Kisumu County about doing private partnership on cold storage of fish. This is one of those methods where Kisumu can make money and I am aware that Kisumu is one of those counties that have pioneered on revenue collection. We thank you, but we want the good Professor to be oversighted well, without impeaching your Speaker if you do not have to.

Thank you.

*Laughter*

**The Speaker** (Sen. Lusaka): Thank you, Sen. Mutula Kilonzo Jnr.

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Next Order.

## PETITIONS

### REVERSION OF MGENO GRAZERS LAND IN TAITA TAVETA COUNTY TO ITS RIGHTFUL OWNERS

Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk by residents of Mwatate Constituency in Taita Taveta County.

As you are aware, under Article 119 (1) of the Constitution:

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation”.

Hon. Senators, the salient issues raised in this Petition are-

(1) That, the residents of Mwatate Constituency claim to be the *bona fide* owners of land known as “Mgeno Grazers” in Taita Taveta County;

(2) That, the land was under the custody of the then Taita Taveta Council and is now held by Taita Taveta county government on behalf of the residents of Mwatate; and,

(3) That, part of the land has since been invaded by illegal settlers who have been gradually extending the land occupied yet the people of Mwatate have not been consulted or involved throughout the process.

The Petitioner, therefore, prays that the Senate-

(a) Assist in the gazettelement of the “Mgeno Grazers” integrated management committee members for easier management of the parcel of land.

(b) Directs that the national Government carry out survey and registration on Mgeno community land and issue title deeds for the parcel of land.

(c) Directs that the title deeds issued to the illegal settlers be revoked and the land reverted back to the people of Mwatate, who are the rightful owners of the land.

Pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. Mwaruma.

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity to stand and support the Petition by the people of Mwatate Constituency, which is a sub-county in Taita Taveta County.

It is true that there is a lot of land that seems to be idle. It is in form of grazing land and ranches. I have tried to pursue this particular case unceasingly through the Ministry of Lands and the relevant authorities, but it seems that it is not possible to get any meaningful way forward without involvement of the Senate.

I actually advised the people of Mwatate to do a Petition to this House because I know from the other Petitions that have been dispensed of in this House, that the people of Mwatate will get assistance. There are very many people who think that the areas that are not being occupied by the people of Mwatate and the rest of the ranches is free land. This is not free land but land that was set aside for grazing.

In our community, there is land for farming and some set aside for grazing. When invaders from neighbouring counties such as Makueni, Machakos and Kajiado counties

assume this land is idle, they invade it. It is only in the mien of our people that we are not warlike, otherwise, we would have gone to war.

Mr. Speaker, Sir, they are, therefore, seeking in their prayers which are very clear, that we assist them to get registration so that they can get title deeds. They also want the people who got title deeds illegally, that the title deeds be cancelled. I would pray that the Committee to which this Petition will be committed - most likely the Senate Committee on Land, Environment and Natural Resources - to dispense with it expeditiously so that the people of Mwatate can get justice, served hot and quickly.

I thank you.

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

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I support this Petition because it is the right of all the citizens of this Republic to petition this House at any point in time on any matter they feel warrants its attention. However, it is just a point of concern that if my memory serves me right, I have seen Sen. Mwaruma speak to two or three other petitions that have almost similar grounds to what is being raised by these residents; things to do with ranches in his county and human-wildlife conflict.

Procedurally, of course, any petition that comes, if it meets the threshold of what needs to be considered as a petition in this House, follows the normal process. I advise my good friend, because this appears to be a serious problem in your county, whether, you could consider if there is anything, we could do legislatively to help you sort out this problem. This is because petitions have limitations on what you can do. We will only make recommendations and say what should happen and that will be the end of it.

Secondly, a deeper or better public participation so as to consolidate all these efforts, because these are all residents of your county and it would be good to bring them all together at one table and put together one Petition on this ranching problem that appears to be a big challenge in your county.

However, I support the Petition as you seek justice for citizens of your county.

Thank you.

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

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir. Allow me to thank the Petitioners for bringing this Petition because they have trust in us, that as leaders, we can sort out their problems.

Mr. Speaker, Sir, I especially represent a county where almost all the land is community land. We had a problem with the way county councils had been dealing with community land. More often than not, they do not even follow the Trust Land Act which has been in place, for them to administer these community lands. That is why we find that community land ends up in private hands without following the due process where the communities are supposed to be consulted before any change of the land use is done.

In this case, I would also urge the communities who still hold community land to make use of the Community Land Act 2016, which was enacted by the last Parliament, which gives procedure for community land to be titled so that we avoid this kind of situation where communities lose their land without knowing because it is being held in trust.

Mr. Speaker, Sir, right now, county governments hold community land in trust. I think we have repealed all the Acts such as the Trust Land Act which were used to administer these lands. The earlier we advise our communities to register their lands, the better. We also have to sort out these disputes between boundaries of community land so that we can easily sort out this issue once and for all, because once they are titled, then we will not have these loopholes of community lands being grabbed.

Thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Ochillo- Ayacko.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I would like to add my voice in supporting this Petition.

Conflicts arising from land disputes are deadly, yet land is the basis of production, freedom and development. I am pleased that the Senator has brought this Petition so that an amicable settlement can be arrived at. I am equally pleased that this House has been identified as a House that can contribute immensely towards giving peaceful settlement to the communities involved.

Where I come from; Migori County, we have a simmering dispute over community land between Migori County and Transmara at the border of Awendo and Kilgoris. We also have a similar dispute in Kuria East and Kilgoris. We look forward to seeing how an amicable settlement can be arrived at by bringing this kind of Petition.

I, therefore, congratulate and thank the Senator and the people of Mwatate for doing a wonderful thing.

Thank you.

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

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for also giving me a chance to add my voice on the very important Petition from the people of Taita Taveta.

Land is a very sensitive matter; it is an important resource but it can also be a source of conflict. Therefore, it must be treated with a lot of knowledge and care. I only urge the Committee that this Petition is being committed to, to look at how the Ministry can help those communities which are still having communal land. The Ministry should issue title deeds and automate land systems, so that we do not have issues of people entering into pieces of land, dividing them amongst themselves and giving them fake title deeds. It is an issue that is happening in Taita Taveta and it is also happening in our other pastoral counties.

I agree with my colleague that whenever people see a free piece of land, they will always think of grabbing it. I think the Ministry should come in and issue title deeds to these people. The county government should also come up with a system of protecting this land in Taita Taveta that belongs to many group ranches. As he has said, even Maasais go there but normally they do not grab land. It is bad to assume that they come to Taita Taveta to grab land. Even the Maasais you see in Taita Taveta are from Tanzania and not from Kajiado County as you have indicated.

It is an important Petition that needs to be looked at very seriously. The county government should look at a system of making sure that the land is protected not only in Taita Taveta but also in other counties such as Kajiado and Narok.

I thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. Taita Taveta neighbours Makueni. I am aware of the tremendous issues on land that Taita Taveta faces. It is one of the poorest counties in Kenya but has the best land. It is a land of contradictions; that you have the best mines of Tanzanite and other things, but the community is poor. It is also the land that has got the Tsavo elephants but the people are poor.

Mr. Speaker, Sir, my only request to you and maybe the secretariat is whether you could facilitate the Senate Committee on Land, Environment and Natural Resources to have this Petition heard out there and not in Nairobi? It is only upon listening and seeing the poverty of the people of Taita Taveta that one truly understands the reason as to why an inch of land in Taita Taveta is like a gold mine. While there, they can also address the other issues that Sen. Mwaruma has raised regarding questions of land.

I am waiting for the time when Sen. Mwaruma will raise the question of the people who are mining in his County. The residents are suffering as people become billionaires out of the natural resources of Taita Taveta County. This County should be the richest in Kenya like Bavaria in Germany.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me the opportunity. I want to congratulate Sen. Mwaruma for this Petition and the petitioners from Mwatate.

Land is an important factor of production. When you have land, you can develop it hence create employment for the youths. That land can even attract tourists and tourism is a big venture that adds to the economy of the said land hence the locals can benefit from that.

Sen. Mwaruma has done something commendable by advising his people to bring a Petition for it to be heard in the Senate. These people did not go to the streets; neither did they fight each other. Issues of land make brothers fight and even kill each other. The sober advice of Sen. Mwaruma has made the residents of Mwatate to bring this issue to this House for it to objectively help the residents of the area.

It is a constitutional requirement that people's properties be protected. As a Senate, we are mandated to protect the counties. Mwatate residents are waiting to see what the Senate is going to do about this issue. The issue of public land being grabbed is not just affecting Mwatate residents but it is an issue of national concern. Land that is meant for public utility is being grabbed in many other places.

There is need for people to respect community land. If this land was reserved for purposes of grazing, it is important that the land be preserved for the animals so as to avoid a scenario where the animals attack the residents because of climate change. Animals attack residents because they are looking for food. There is need for the Senate to act with speed so as to ensure that this issue is sorted out.

We need to ensure that justice prevails and that the original owners are given back their land. There is need to investigate how the act begun. Who in the office of lands was involved in this act to the extent that title deeds were given? If the title deeds were given, are they fake title deeds or are they genuine title deeds? If they are fake title deeds,



whoever signed them should be brought to book for him to say the circumstances that led him into signing them.

The vulnerable people always have issues. We have cases where people with a lot of money grab public land and that should not be the case. Let us look at how we can help the residents of Mwatate for them to get back their land and when we do that, they will say that the Senate intervened.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I rise to support this Petition. If you refer this Petition to a Committee, I urge that they do a thorough investigation and make strong recommendations.

Somebody somewhere is making people to believe that grazing land is idle land. The fact that the land is called 'grazing land' shows that the land has real business and our grazing lands are not idle land. It is community land and we use it for purposes of grazing our animals. We should not have people invading land just because it is communal land or because of the fact that it does not have a title deed.

I am a pastoralist who lives in a community land called Jmaroro Mashuru Group Ranch which has over 70,000 acres of land. It has been in the process of subdivision for the last ten years and has not been subdivided up to now. However, our land is never idle because we use it for grazing. It worries me when I hear that people are invading people's land or two counties are fighting over rights of a particular communal land. This is because land clashes are not good for us. Instead, we should bring our communities together and have them live in cohesion.

As pastoralists, when we decide to move our animals, we do seek for permission to graze them. We keep moving from one place to another because of drought. I urge those who are moving to this land; the Kamba's and the Mwatate's, to consult and live in harmony. They should share the grassland that God gave them for we are not able to provide grass for ourselves and it is only God who provides. It should be the business of a brother or a sister to help another brother or sister instead of fighting over the communal land.

The issue is; if we divide this land, are we dividing it to the right people? We have had cases where land grabbers take the communal land that is being subdivided instead of having the land go back to the community. I urge that we treat this with the urgency that it deserves, even as we ensure that the real owners, those who were meant to be in that communal land, be the beneficiaries at the end of the day.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to add my voice to this Petition. I want to congratulate the people of Mwatate, through Sen. Mwaruma, for bringing this Petition to the Senate.

Mr. Speaker, Sir, as my colleagues have stated, land issues are very emotive. If they are not properly handled, they will explode into violence.

I like what Sen. Mwaruma has said, that the people of Taita Taveta County are not war-like people. However, I urge that neighbouring communities invading land belonging to the people of Mwatate in Taita Taveta County are not encouraged to take advantage of the peaceful nature of the people of Taita Taveta.

Mr. Speaker, Sir, therefore, I urge the Committee that this Petition will be forwarded to for action, without diluting the import of the Petition by the people of

Mwatate, to try and consolidate these issues. In so many parts of this country, we are having similar situations and problems where people invade ranch land, settle on it and through the backdoor, they process title deeds for that land.

Mr. Speaker, Sir, I am in full support of this Petition from the people of Mwatate. It is my hope that these people will get justice through the Senate.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir, for giving me the chance to contribute to this Petition by hon. Sen. Mwaruma on behalf of his people.

Land is an emotive issue, as hon. Sen. Enock Wambua has said. It is where people live, grow crops and graze their livestock. Therefore, it is not fair for other communities from outside to invade and grab other people's lands. This is because people need land to live in and grow their crops. However, when the land is grabbed, those people are left destitute and helpless with no place to go.

Land is a painful issue which is found in many places of the country. Boundary issues abound a lot in this country. Therefore, the Senate, as a body that can create peace between people should look into this matter. People should respect other people's boundaries and lands because the particular individuals also need land to live in. However, when they are grabbed, they are left without any form of help.

Therefore, it is not right for people to grab land that belongs to the people of Taita Taveta County and say that the land is idle. This is not true. This is the same thing that happens with Maasai and Turkana lands. These lands are not idle as some people say. They have their purposes and owners. For that reason, the Senate should support this Petition and bring peace and happiness to the people of Taita Taveta County.

I beg to support.

**Sen. Boy:** Asante sana Bw. Spika. Kwanza natoa kongole kwa Sen. Mwaruma kwa kuleta Ombi hili katika Seneti.

*(Loud Consultations)*

**The Speaker** (Hon. Lusaka): Let us consult in low tones.

**Sen. Boy:** Mheshimiwa Spika, swala la ardhi ni sugu sana katika nchi hii yetu ya Kenya. Watu wa Kaunti ya Taita Taveta wanapaswa kujua kwamba hili swala limeletwa katika Seneti. Kwa niaba ya watu wa Kwale, ambao ni majirani wa Taita Taveta, naomba, hili swala liweze kushughulikiwa kwa haraka sana.

Unapotoa mwelekeo wa kutatua swala hili, ningepomba Kamati husika waende nyanjani kwenye hizo ardhi. Ihali, wasishughulikie jambo hili wakiwa hapa. Wanafaa waende katika hizo ardhi wahakikishe na wasikize wananchi wa Taita Taveta. Nina hakika wananchi wa Taita Taveta watapata haki yao.

Bw. Spika, naunga mkono ombi hili.

**The Speaker** (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No. 232(1), the Petition stands committed to the Standing Committee on Land, Environment and Natural Resources. In terms of Standing Order No. 232 (2), the Committee is required, in not more than 60 days from the time of reading the Prayer, to respond to the petitioners by a way of report addressed to the petitioners and laid on the Table of the Senate.

I thank you.  
Next Order!

*(The Speaker (Hon. Lusaka) consulted  
with the Clerk-at-the-Table)*

Hon. Members, for the convenience of the House, I want to rearrange the Order Paper. I want us to go to Order No. 7.

## STATEMENTS

### IMPLEMENTATION OF UNIVERSAL HEALTH CARE IN COUNTIES

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. Before I read the Statement, I wish to say that health is a devolved function. It is really important for the Senate to be on top of things in terms of health functions and the sector in general. Secondly, there are various initiatives that have been put in place by the Government in terms of providing proper healthcare.

Mr. Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Health on the policy and implementation of universal healthcare in the counties.

In the Statement, the Ministry should explain-

(1) Why the Senate input in the formulation and approval of the universal healthcare in the counties was not taken into consideration;

(2) Explain why the Senate has not been involved in the entire exercise of planning for universal healthcare;

(3) Avail details of the agreements that were entered into between the Ministry of Health and county governments regarding the health package in terms of the leased medical equipment;

(4) Explain the variation in the figures for the payment of the equipment from the initial figure to the current figures that the counties are paying; and lastly,

(5) explain what policy, legal and regulatory framework govern the Ministry of Health in contracting the three companies through National Hospital Insurance Fund (NHIF) to offer universal healthcare in four counties and provide the contractual agreement between the companies and the Ministry of Health.

Mr. Speaker, Sir, I reiterate that the Senate is supposed to protect the interest of the counties. Unfortunately, in the matter of universal healthcare, where four counties, that is, Isiolo, Machakos, Kisumu and Nyeri are involved in the pilot project, the four Senators are not aware of what is happening on the ground. I also do not think the Committee is aware of what is happening yet the Ministry is going round launching the project in those counties without the involvement of the Senate.

This does not mean that we are against universal healthcare. We support the project but it is important to have a legal framework on how this project is being

launched so that it goes on without any problem. As far as medical equipment is concerned, over which I believe most of the counties have issues, there are variations in figures; from Kshs95million to Kshs200 million. This has not been explained to the counties. The other day, Nyamira County Executive appeared before the County Public Accounts and Investments Committee (CPAIC) and, they told us that they do not even know what has been procured.

Procurement is being done without their involvement. They are also paying for equipment that has not been delivered up to now. The figures have moved from Kshs95 million to Kshs200 million. Clearly, that is across the board in all the counties. If all the counties are paying Kshs200 million, how did they come up with a flat rate figure for all the counties yet the demand and needs of the counties are totally different?

The other point is that the rates charged on these figures are exaggerated compared to the market rate. This has to be explained by the Ministry of Health. Again, there is no disclosure. I am sure the Senator for Nyamira is here. We requested the Governor for Nyamira to give us the copy of the agreement and he said he does not have it and he has to look for it. The Ministry should provide all this information.

Mr. Speaker, Sir, there is no proper and adequate consultation in terms of how that equipment is procured. That has to be explained properly to the Senators. The procedures used in coming up with those figures have to be explained also.

There is also the issue of the cost of repairs of that equipment. Initially, we knew that maintenance costs and the repairs were supposed to be part of the agreement but right now the counties are taking that burden of ensuring that equipment is working through maintenance. That has to be explained by the Ministry. Why the change of plan?

In some of the counties where that equipment has been delivered, some of it is just lying there without experts to run it. If this equipment is run and managed properly, it will help Kenyans who are suffering, pay money from their pockets and travel all the way from those counties to Kenyatta National Hospital.

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

**Sen. Pareno:** On a point of order, Mr. Speaker, Sir. I stand to be guided whether this is in order. Whether you can read your statement and debate it at the same time.

**The Speaker** (Hon. Lusaka): I am sure she was just elaborating the key issues but please keep it short.

**Sen Dullo:** Mr. Speaker, Sir, Sen. Pareno needs to look at the current Standing Orders. It allows this.

**The Speaker** (Hon. Lusaka): Just proceed.

**Sen Dullo:** Mr. Speaker, Sir, I am just elaborating my statement.

Finally, if I may conclude, that equipment is underutilized. That should not be the case. It is important for the Ministry to explain to the Senators how they are running that equipment and the kind of contract they have entered into. On the universal healthcare, they need to explain the legal framework and so on so that the Senate will be on board in its oversight role.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I thank you for this opportunity. I congratulate Sen. Fatuma Dullo, the deputy majority leader for coming up with this very important statement. It is long overdue. The most devolved

sector under the Constitution is health. What concerns me most is this issue of leasing of equipment. There were protracted negotiations and fights between county governments and the national Government. We were assured that this will facilitate universal healthcare, access to health facilities and services at the local level. We appreciate the work and the intention that the national Government had while working with the counties. How comes this project is shrouded in too much mystery?

We would like the Committee, when they look at this issue - we would like to get clearly the amount of money that is due to the counties and the specific resources that are being allocated to specific facilities. Under the Intergovernmental Relations Act and Article 189 of the Constitution, there must be agreements between the national and county governments. Those agreements must be deposited in this House. To what extent are those agreements that county governments entered into with the national Government on the delivery of this service, without depositing the provisions of those agreements to this House, effective? If we are the House that oversees counties, what instruments will we use to oversee when you have an intergovernmental arrangement that does not explain the details of the agreement?

Secondly, we would like to know how the money spiralled from Kshs95 million per year to Kshs200 million per year. We particularly want to know from our governors why they are aiding and abetting a process that ultimately they make noise to us about. How is it that counties just run to us when they run into financial trouble without coming to us when the project was established?

Finally, to our Committee on Health, a little bit of vigilance is needed from this House. I am being modest. Sen. Mutula Kilonzo Jnr. is reminding me that I am being modest by saying "a little." I am doing so because out of responsibility, I have to be as diplomatic as possible. I request our Committee on Health to go out of its way to unearth all the information that is related to this leasing of equipment. They should be on top of things when it comes to the implementation of the universal healthcare which is provided for as one of the Big Four Agenda of the Jubilee Administration so that we help the country, the President and this administration to avert situations of corruption, rather than waiting for post mortem two or five years down the line to cry and lament over what we should have done to prevent situations where county resources are misappropriated or to the benefit of individuals.

Granted, this is one of those projects that, with the little I know, is under what can be called Public Private Partnership (PPP). The PPP Act must also be invoked. The extended supplies to this law must be observed. We want to know which experts were given to the counties to advise the authorities as the law says to ensure that when they enter into these agreements the truth is established and put on the table.

Mr. Speaker, Sir, I beg to support.

**Sen. Wetangula:** Mr. Speaker, Sir, I thank you for the opportunity. Sen. Dullo is absolutely right. We would want to see the Committee on Health get to the depth of this monstrous fraud that has been committed on counties through the Ministry of Health.

In the last Session of the last Senate, Sen. Mutula Kilonzo Jnr., Sen. Orengo, other Senators and I were at pains to ask the Government to show us a fixed term contract for a fixed period of seven years. How did the figure start changing in the leasing of this

equipment, first from Kshs4.6 billion, then to Kshs6.5 billion and now to Kshs9.5 billion. We have consistently asked; if it was a fixed term contract, where is the addendum to this country that varied these figures? Nobody has brought that contract here.

Mr. Deputy Speaker, Sir, what we have been consistently asking is that if it was a fixed term contract, where is the addendum to this contract that varied these figures? Nobody has brought that contract here. During the previous Parliament, some documents relating to this contract were brought to this House. It was scandalous to note that the Government has signed a contract to lease even disposable materials in hospitals, including plastic needles and gloves. How do you lease gloves that are used and disposed of after being used once? They leased biceps and all manner of tiny equipment including hand towels. How can you lease a hand towel? All these were reflected in the lease that was brought to this House.

Recently I met a governor from Rift Valley. In fact, he is the Governor for the distinguished Senate Majority Leader. He told me and he was ready to be quoted that equipment worth Kshs20 million was delivered to his county and he was billed Kshs200 million. This is the fraud that is going on in the Ministry of Health. So, the people of Elgeyo-Marakwet County are going to pay Kshs200 million taxed at source for equipment worth Kshs20 million. This is what is happening in all our counties.

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

Senior Deputy Clerk, Mr. Mohammed, I want the Deputy Speaker to hear me. In fact, Mr. Deputy Speaker, Sir, this is the kind of matter that you should direct that the Cabinet Secretary for Health appears before a Committee of the Whole so that this House can interrogate this matter thoroughly and properly. If you go to the counties, people are dying daily. In a radius of four or five kilometres in our counties, you can have six or seven funerals in one weekend. People are dying of preventable diseases. People are dying because medicare is not available yet somebody somewhere is not doing what they are supposed to do.

We have been crying about the Standard Gauge Railway (SGR) and talking about frauds. This is one scandal that if looked at properly will surpass even the SGR scandal.

As I finish, I urge this House that we engage in a serious conversation with the national and county governments to see how referral health services are being provided. For those who have proximity to Eldoret like my county, Trans Nzoia and others, they can go to the referral hospital in Eldoret or come to Nairobi for those in Machakos and others. What about somebody in Marsabit and Wajir counties? Which referral hospital can they go to? What about people in Turkana County? Which referral hospitals can they go to? They cannot because there are none!

As we support Sen. Dullo, any governor who is in complicity with the national Government in fraudulent transaction must be brought to book. The Ministry of Health must come clean and tell us who varied and amended this contract to lose this kind of money from the people of Kenya.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, have you spoken?

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

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

**Sen. Poghisio:** Mr. Deputy Speaker, Sir, as it is said, if something looks like a duck, walks like a duck, and even quacks like a duck, it must be a duck. This leasing thing is actually a duck. I have spoken about this in other quarters. If there is one way that counties have to bear burden, it is in the equipment which has been leased to them and put in their institutions but some of it has not been used since it was delivered.

My argument about all these is that if you want to equalise and standardise all hospitals and all counties health-wise then you better lease the doctors and the specialists as well. They should be the same doctors, same specialists and same technicians to handle the leased equipment but that is not to be the case. I spoke of a situation where some equipment was delivered even before buildings for putting them in were built. They are lying in storage and before they are used, they will already be obsolete.

I support the idea that the Committee on Health should get to the bottom of this and bring us a full report. Members should also have a copy of the contract so that we speak for ourselves. We should see what was signed and the benefits of leasing this equipment and putting them on the county governments.

Mr. Deputy Speaker, Sir, I support Sen. Dullo on this. I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Every Senator who gets an opportunity to speak will have no more than three minutes except the Senate Minority Leader whom I will give a maximum of five minutes.

Proceed, Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orengo): Mr. Deputy Speaker, Sir, I appreciate the Deputy Senate Majority Leader for requesting for this Statement. However, this is work cut out for the relevant Committee. If they do not do it to our expectations, then we will question whether they appreciate the role of the Senate.

The governors and the national Government get cozy on many other issues, they do not need the Senate. However, when problems begin to hit them both sides, then they remember there is Senate. So, the questions that have been put across by Sen. Dullo are so important. Looking at the constitutional arrangement, there is no other sector which is devolved more than the health sector. It is only second to agriculture. I hope that the Committee will do a thorough job.

I am attracted to what the distinguished Senator for Bungoma County was saying; that we probably need to call the Cabinet Secretary for Health to appear before a Committee of the Whole so that we have formal proceedings. If it is just the Committee, they may not take this matter as seriously as they should. I hope the Committee's work is time bound and that they will not have forever to carry out this work. Probably, within two or three weeks, a report should be available.

More importantly, as we go back to our counties, there is no question I have faced on a regular basis more than issues that relate to health. Therefore, I hope that this is work cut out for you. We expect the results and they should come as quickly as possible. I am saying that with absolute respect to the Deputy Speaker because the directions will

depend on what he will say eventually. However, if it is not the Committee on Health, then whoever is going to deal with it must give us a report that is worthy and responds to the questions which Sen. Dullo has raised because they are quite fundamental.

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senate Minority Leader. I will give three minutes to Sen. (Dr.) Mbito of Trans Nzoia County.

**Sen. (Dr.) Mbito:** Mr. Deputy Speaker Sir, let me congratulate Sen. Dullo for raising this important matter that touches on Universal Health Coverage (UHC), one of the four pillars of the President. This is an issue that the Committee has engaged the Cabinet Secretary on. We have raised those issues and one thing that we have noted is that the Senate has been excluded in all the arrangements pertaining to UHC. We made that complaint directly to the Cabinet Secretary (CS), who apologized and promised to involve us but continues to avoid us completely.

I would not want to repeat what Sen. Dullo has raised but there is a matter that also needs urgent attention of this House. When we summoned the CS to our Committee, she told us that they have been going on with plans for the UHC and those plans included several legislative amendments to the laws relating to health. These amendments have been taken to the National Assembly. Nobody has involved the Senate in seeking advice on what amendments will be required. There is even word that they are planning to sneak it directly for presidential assent.

I urge the Speaker to ensure that whatever amendments are being made at the National Assembly---

*(Sen. Ochillo-Ayacko stood up in his place)*

**The Deputy Speaker** (Sen (Prof.) Kindiki): Order! Order! Sen. Ayacko, I hope you are going to take tea. We are about to carry out a Division. I urge all Senators to remain in the Chamber but you can walk out briefly, if you must.

**Sen. (Dr.) Mbito:** Mr. Deputy Speaker, Sir---

**The Deputy Speaker** (Sen (Prof.) Kindiki): Mr. Chairman, are you responding to the statement? What are you doing?

**Sen. (Dr.) Mbito:** I am actually contributing to Sen. Dullo's point---

**The Deputy Speaker** (Sen (Prof.) Kindiki): So, what are you saying?

**Sen. (Dr.) Mbito:** I am actually requesting the House to assist the Committee---

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

**Sen. (Dr.) Mbito:** I am requesting the House to assist the Committee because legislative amendments are being done at the National Assembly---

**The Deputy Speaker** (Sen (Prof.) Kindiki): You are unable to deal with the issue, Mr. Chairman, that is what you are telling the House.

**Sen. (Dr.) Mbito:** I am unable to force the National Assembly to bring the amendments to us, because there is an allegation that they want to take it directly to the President for assent.

**The Deputy Speaker** (Sen (Prof.) Kindiki): But you have just said that the Senate has been sidelined by the ministry. Why has the Senate been sidelined by the ministry while you and your committee are there?



**Sen. (Dr.) Mbito:** Mr. Deputy Speaker Sir, we have engaged the Cabinet Secretary (CS) on this matter and we have invited her to come to this House on the 27<sup>th</sup> November, 2018, on Tuesday next week. She will appear before all of us, and I urge every Senator to be here and ensure that all these questions that have been raised will be posed to her.

**The Deputy Speaker** (Sen (Prof.) Kindiki): Has she confirmed?

**Sen. (Dr.) Mbito:** The letter went out and when we met her, she confirmed---

**The Deputy Speaker** (Sen (Prof.) Kindiki): Order Senator! Order. That is okay, Mr. Chairman. We will revert to you; the House will help you.

**Sen. Mutula Kilonzo Jnr:** Mr. Deputy Speaker Sir, I think you should take the cue from the Chairman, and help this Committee. I have no problem with them but I think this is a matter that has gone beyond their jurisdiction. The CS must be summoned here by you; The Deputy Speaker. That lady should sit here; we do not want stories. The documents that Sen. Wetangula is talking about- I am aware that there are three sets of contracts- must be tabled at the Senate.

Two, I am aware that only one governor refused to sign the contract; the Governor of Bomet County. The rest signed under duress. Let us say these things as they are. I sought a statement in this Senate in 2015, and I have tabled the equipment that came to Makueni County last year and nothing has happened.

This is a scandal. Let us call it what it is. Sen. Poghisiyo has said it is a duck. It smells like a duck but is worse than a duck. This matter is a scandal where each county is paying Kshs200 million per year for the next 5 years amounting to Kshs1 billion, including Lamu and Makueni Counties for leasing the equipment. How do you lease equipment like you are buying? It is more expensive than leasing. When you lease a car, you return it. When you lease equipment, it is as if you are buying it. We know that this was done by one person in the Ministry. That CS will be named here. We know what he did.

We should bring that matter here, but let us help Sen. (Dr.) Mbito and his Committee. They cannot handle this. It is too hot. We want everybody to come here and we deal with them here.

Mr. Deputy Speaker Sir, we are aware that there are some counties which have never received that equipment. But if we deal with this issue without the documents, the memorandums that the Council of Governors (CoG) tabled before the Ministry, we are not going to resolve it.

Lastly, the most interesting thing about this leasing of equipment is that; when you lease the nice car you have from any dealer, you do not pay for its repair in advance. This is the only contract I have seen on a lease where you pay for repairs; you anticipate it is going to break down and then you pay in advance. The variation from 94 to 100 per cent--- I am aware of these stories, they are as ridiculous as it comes. They were supposed to do what is called 'e-medicine'. It was supposed to be an IT solution so that you connect these machines to the hospitals. But when you go to Wajir, Marsabit and a county like Makueni and one hospital is on one end of Mtito Andei Town and the other one is in Wote Town and you ask them to connect the towns to IT, the cost is Kshs100

million per year and Kshs500 million for the next subsequent years. This is a scandal. Let us make that order.

**The Deputy Speaker** (Sen (Prof.) Kindiki): Thank you, Sen. Mutula Kilonzo Jnr.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. This matter stinks to the high heavens. It is unfortunate that, as a House, we have beaten around the bush---

*(Sen. Mutula Kilonzo Jnr. consulted loudly with other Senators)*

**The Deputy Speaker** (Sen (Prof.) Kindiki): Order! Sen. Mutula Kilonzo Jnr.. Order! Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. I am saying, for a long time we have played and fiddled around this matter because if you read the last two committee reports of the Senate Committee on Finance and Budget, we have raised our concerns about this issue. I think we also need to save the Senate from ourselves; Senators, because we are not so keen on how we do our work.

We started raising this matter more than two years ago but up to date, nothing has been done. That is why I agree and see the wisdom in the proposal by Sen. Wetangula that this matter should be canvassed at a Committee of the Whole so that all the 67 Senators can get the chance to question the CS and the Council of Governors as well. I do not buy this story that Governors signed the contract under duress. Let them show us the video clip where guns were held to their heads for them to sign. It is a fake story; let them come and tell us the truth.

If you have been elected as a governor of a county and one million people have put their lives into your hands and given you executive powers, you cannot just come back and say 'I signed under duress.' I think time has come for us to show whether we are real as the proper "Upper House" in this country as we pride ourselves or we just want to be like our infamous colleagues who were rumoured to have taken some money somewhere. If we do not solve this issue, I dare say, this House will never redeem itself in any other matter forthwith.

Mr. Deputy Speaker, Sir, I join my colleagues in requesting that you summon the CS. I do not even want to go into the details about whether this is a scandal or not. I just have one plea; summon the CS and the Governors before a Committee of the Whole. After all, Article 189(4) gives us the powers to arbitrate where there is dispute between the national Government and county governments.

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

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to add my voice to this conversation.

I want to begin by saying that it is only in Kenya where the value of medical equipment appreciates with the passage of time. I have never seen this happen anywhere in the world where you lease equipment at KshsX and the next year, the value for that equipment is KshsX + Kshs2 and the following year is KshsX × Kshs3.

Mr. Deputy Speaker, Sir, the argument that governors were forced to sign this agreement flies in the face of reality. I understand that every county government pays

Kshs200 million for this equipment every year. The money is deducted at source. Therefore, the governors do not even have an opportunity to decide whether to pay or not to pay.

Mr. Deputy Speaker, Sir, with all due respect to the Committee on Health, I join my colleagues in saying that this matter is, probably, bigger than the Committee on Health. It is a matter that the entire Senate needs to be seized of.

As the Senator has suggested, let us have the Cabinet Secretary for health in the national Government and the 47 governors in this country appear before the Committee of the Whole of the Senate and answer to questions on this matter.

**Sen. Halake:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity. I congratulate my Senator for bringing this all important Statement to the House. Unfortunately, I am not sure if we will get proper execution of this issue under the new Standing Orders. I hope that we can then depart from some of those provisions in order to deal with this issue very well.

Mr. Deputy Speaker, Sir, as we blame everybody else, we, as Senators, should also apportion some blame on ourselves. We know the number one tool of below optimal expenditure or performance is the budget. Sometimes back, Sen. Wetangula, brought a Statement before this House---

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

*(There was a technical hitch)*

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

*(The House was suspended for ten minutes)*

*(The House resumed at 4.00 p.m.)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! We are now back.

Sen. Abshiro is not here, so she foregoes her two minutes that were remaining.

Sen. (Eng.) Mahamud, you may proceed.

**Sen. (Eng.) Mohamud:** Mr. Deputy Speaker, Sir, let me also thank Sen. Dullo for bringing this very important---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please, be brief because we are waiting to raise the requisite number to vote.

**Sen. (Eng.) Mohamud:** Mr. Deputy Speaker, Sir, health is one of the most important sectors in this country. Therefore, universal health care is something we need to achieve in Kenya. As far as the leasing of equipment is concerned, we, as the Committee on Finance and Budget, have difficulties. As mentioned by my other colleagues who have spoken before me, the figure was initially Kshs4.5 billion, then it went up to Kshs6.1 billion in the Financial Year 2017/2018. In the current Financial Year 2018/2019, it is Kshs9.4 billion. This translates to Kshs200 million per county per year.

Kenya is very diverse. Lamu County is not the same as Nakuru County. However, the equipment is supposed to be the same. We are required to have two well equipped hospitals in every county. Personally, I went to Mandera and Elwak hospitals. They do not have the equipment. Even some which are there, are not connected. In fact, I do not know what they are for. The infrastructure in the counties is also not similar. There is a serious problem with the way this equipment is managed and paid for.

I am happy that the Senators asked for that question. We must engage the Ministry of Health to tell us what is involved in this equipment. Going forward, we need also to know how much is left for counties to pay. I do not think it is the Public Private Partnership (PPP) issue. First of all, we have not leased the equipment. We have bought them and paid for them. Unless *umechukua deni kidogo*.

It is a serious matter; we need to be given the answers. Going forward in the next Budget, when it comes, we, in the Committee of Finance and Budget, might refuse to put that money in the budget. If we do not get any proper explanation between now and then, then there is no reason for that money to be deducted from the counties as is being done now.

I support the request for the Statement.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Wako, you may proceed. You have three minutes.

**Sen. Wako:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. This is a matter of life and death. It concerns the lives of the citizens of Kenya. Health function has been devolved. Although we devolved it, this particular agreement has some issues. At that time of signing the agreement, the national Government was acting in good faith to assist the county governments in performing their duties and functions under the Constitution.

I believe very few people have seen the agreement itself. For those who have seen it, it is very much skewed against the county governments to the extent now where they are paying amounts of money which some have not even been incurred. This is because the equipment is not being used and some have not been delivered to hospitals.

To me, this matter has gone beyond the Committee on Health. The Committee cannot, on its own, deal with this very matter which touches on each and every county because they are paying for services they are not getting. Therefore, the county governments are not getting a fair share of the national cake to enable them perform their functions. The amount of money they get is only enough to pay salaries, but not to perform functions.

We have heard from the Chairman of the Committee on Finance and Budget as well as from the other leaders with regard to this matter. However, I doubt whether the Committee on Health on its own can perform. This can only be done by a bigger Committee beyond the Committee on Health. My worry is that this is not the only thing that is happening.

We now have an organisation called Living Goods Kenya, which is being used by the Government for the Universal Health Care Programme throughout the country. From what we know about this organisation, it is just there more or less, to exploit the good

people of Kenya the same way this agreements have been done. The time has now come when we must stop these types of shameful scandals within the Ministry of Health.

Mr. Deputy Speaker, Sir, my appeal is that this matter be referred to the Committee of the Whole and that you sit there as we delve into it. The governors attend and that original agreement be tabled so that we can go to the bottom of this matter and put an end to it, once and for all.

In the meantime, Mr. Deputy Speaker, Sir, the Government must stop all payments---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have one minute, Sen. Wako.

**Sen. Wako:** Thank you, Mr. Deputy Speaker, Sir. As we go into this matter, the Government should not debit the county governments with a single cent more until we have delved into this matter carefully. This is because everything is a waste of useful money which should go to assist our poor people in the county and for the county to perform its duties under the devolved governments.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have, Sen. (Dr.) Ali, Senator for Wajir County. I note that you also have another statement. You can also allude to it because we do not have time. It is on the file.

**Sen. (Dr.) Ali:** Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Dullo for bringing this Statement. As a Committee, we just have to say the truth that we have tried our best, but we have been overwhelmed. We will appreciate the support of the House.

Mr. Deputy Speaker, Sir, we had even asked the CS a few questions, which included even about the contracts. However, the answer they gave us is that they have brought these contracts, when they have really not done so. They claim that they have given us those documents when they have not given us anything.

Mr. Deputy Speaker, Sir, if the equipment can be deducted from the monies of the counties without asking the county government, then why can we not be involved. In some places, for example, Wajir, the hospitals have no drugs.

*(Loud consultations)*

*(Several Senators stood up in their places)*

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

**Sen. (Dr.) Ali:** Mr. Deputy Speaker, Sir, right now, some hospitals in Wajir do not even have cotton wool for patients who deliver. Yet we are being told here that from between Kshs4.5 billion to Kshs9.4 billion is being spent on health. Where does that money go when the counties are not given enough money?

A county like Wajir, which has a problem, cannot get money because their development funds have been stopped. Why can this Government not allow the Controller of Budget to deduct those monies the way they are deducting these other monies so that our counties get medicine as well?

Mr. Deputy Speaker, Sir, we have summoned and talked to the CS concerned about these issues. However, forget about answering our questions, they lie to us,

claiming that they have brought to us the contract. They have not given us anything up to now. I do not know which is better; whether it is appropriate for the Committee of the whole to deliberate on this matter, or whether we should have retreat where people hit one another properly. All governors can also attend so that they can say what they want.

Mr. Deputy Speaker, Sir, we support this Statement and we want these answers. I assure the House that Members of this Committee have had enough problems with this CS because she is not responding to our queries. She is not helping us solve our problems. One thing we have to know is that health is devolved, but we are not involved in that aspect. Therefore, what this Committee should do is to get all the money at the national level to go to the counties. They should not be keeping the money for the devolved functions at the headquarters---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! We have overshot our time on Statements.

Before I give my direction regarding the Statement raised by the Senator for Isiolo County, I direct the other requests for Statements – that is the request by the Senator for Wajir as well as those that were supposed to be issued by various Chairpersons under Standing Order 51 – be deferred to tomorrow. This is because we have to conclude other Business appearing on the Order Paper.

#### LACK OF MEDICAL SUPPLIES IN WAJIR COUNTY

*(Statement Deferred)*

#### ACTIVITIES OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

*(Statement Deferred)*

#### ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

*(Statement Deferred)*

#### ACTIVITIES OF THE COMMITTEE ON EDUCATION

*(Statement Deferred)*

### COMMUNICATIONS FROM THE CHAIR

#### IMPLEMENTATION OF UNIVERSAL HEALTH CARE IN COUNTIES

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the matter raised by the Senator for Isiolo County, Sen. Fatuma Dullo, is an important matter affecting the

entire country. It is also a matter that is affecting one of the most important functions within the framework of devolution; namely, the health function.

Hon. Senators, I have sat in this Senate for the last six years. I am aware that the issue of health has been troublesome across the country for a long time in terms of how it is being handled. I recall that in both the past in the current Senate, Senators have consistently raised an issue with regard to health, particularly the administration of the Managed Equipment Scheme under the Ministry of Health, where issues of cost have been raised.

Hon. Senators, at some point, I remember this House had a very heated debate on the adjustment of cost upwards. However, more importantly as other Senators have mentioned variously this afternoon, there have been issues that, perhaps, many of the equipment that are lying in many county hospitals across the country are either not required or could be obsolete. They also have not been requisitioned and the county governments have not been consulted on whether or not they need those equipment. I have also experienced, as a Senator, where you find equipment that has not used for the last two or three years, yet the county is paying routinely for the idle equipment using the meagre resources. This is equipment which does not even have one single person who is trained to operate it; neither does it have space for storage.

Hon. Senators, we have beaten around the bush for a long time. It is good that the Chairperson of the Committee on Health has admitted that they are unable to deal with this issue. However, it is a huge indictment to you and to your Committee; but to you particularly. This is because if we are here, lamenting how the Senate has not been able to rein in on the national Government in terms of making sure that the relationships which are supposed to be maintained between the national and county governments are maintained; and that devolution is respected on matters health, then the blame lies squarely on your doorstep and your Committee. As the leader of that Committee, the buck stops with you.

Having said that, hon. Senators, we cannot keep on lamenting all the time. For the few months I have been in this Chair, I have noticed the tendency of Government functionaries thinking that Parliament and the Houses of Parliament just exist as a by the way; and are subservient to the other arms of Government. Nothing can be further from the truth than that.

*(Applause)*

Given the outcry expressed this afternoon by every Senator from every county and part of the country, I direct the Senate Majority Leader on behalf of the House and the Committee on Health, to invite the Cabinet Secretary for Health next week on Tuesday, 27<sup>th</sup> November, at 10 a.m. in the morning without excuse and failure.

*(Applause)*

I say this with full cognizance that we have seen all manner of excuses and many of our Committees are complaining that our friends in the Executive think that the

Legislature exists at the mercy of the other two arms of Government. Therefore, in the letter by the Senate Majority Leader on behalf of the Committee on Health - which has been unable to handle this matter for so long – should inform the Cabinet Secretary that all the Senators of the Republic of Kenya will be present during that meeting.

Thereafter, after we have listened to the Cabinet Secretary, I will make further orders on a separate date on other stakeholders who also need to explain to this House why they are silent and watching as the health sector goes to the dogs. That is the order of this House.

*(Applause)*

**Sen. Mutula Kilonzo Jr.:** Mr. Deputy Speaker, Sir, on a point of order.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I am informed we need to vote since we have the requisite numbers. Therefore, I will only grant Sen. Mutula Kilonzo Jr. because he is very brief. In one minute, what is your point of order?

**Sen. Mutula Kilonzo Jr.:** Mr. Deputy Speaker, Sir, thank you for the good ruling. I thought that the further order would read that the Cabinet Secretary table before the Senate of this Republic the documents that pertain to all the contracts. That must be in the order. It is very consequential because the Cabinet Secretary can come here and give us stories such as she was not told. We have to tell them to come with the documents or not come at all.

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

I further direct following the intervention by Sen. Mutula Kilonzo Jr., that the letter inviting the Cabinet Secretary disclose in detail the agenda and what she is required to bring, including all the issues raised in the request for a statement today by the Senator for Isiolo County, Sen. Dullo.

She should also furnish us with any information that relates to the whole issue of the management of the equipment scheme and health in general. We need to have a meeting that exhausts all the issues.

#### CONVENING OF SENATE KAMUKUNJI

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have another brief Communication to make on a separate issue. I wish to inform you that the Speaker of the Senate has convened a Senate *Kamukunji* scheduled to be held tomorrow, Thursday 22<sup>nd</sup> November 2018, at 10 a.m. in the Senate Chamber. The agenda for the meeting will be as listed in the circular conveyed to all Senators earlier today. There was a circular circulated today and it is in connection with issues of the Parliamentary Service Commission and the medical cover of Members of Parliament. I urge all Members to plan to attend the crucial meeting.

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I thank you.

We will come back to all the orders later. I direct the Clerk of the Senate to read Order No. 8, where we shall go straight to Division.

## BILLS

### *Second reading*

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2018)

*(Sen. Murkomen on 14.11.2018)*

*(Resumption of debate interrupted on 14.11.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We will carry Division on this matter and thereafter we will proceed to Order Nos. 9 and 10. I direct that the Division Bell be rang for two minutes.

*(The Division Bell was rung)*

Sen. Cherargei, please, take your seat. I now direct that the doors be locked and the bars drawn.

*(The doors were closed and Bar drawn)*

Hon. Senators, log in for voting.  
Voting starts now, you have 53 seconds left.  
Assisted voters, please, approach the Table.

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Land Value Index Laws (Amendment) Bill (National Assembly Bill No.3 of 2018) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua

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County; Sen. Mwaruma, Taita Taveta County; Sen. Ochilo-Ayacko, Migori County; Sen. Omanga, Nairobi County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows:-

**AYES:** 29

**NOES:** 0

**ABSTENTIONS:** 0

The “Ayes” have it.

*(Question carried by 29 votes to 0)*

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

Next Order.

*Second Reading*

THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL  
(SENATE BILLS NO.29 OF 2018)

*(Sen. (Eng.) Mahamud on 15.11.2018)*

*(Resumption of Debate interrupted on 15.11.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct that the bell be rang for one minute. You can symbolically withdraw the bars.

*(The Division Bell was rung)*

*(The Bars were withdrawn and doors opened symbolically)*

Hon. Senators, I now direct that the bars be drawn and the doors be locked.

*(The doors were closed and the Bar drawn)*

Hon. Senators, prepare for voting.

*(Senators proceeded to vote)*

Assisted voters, please, approach the Table.

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question that, the County Allocation of Revenue (Amendment) Bill (Senate Bills No. 29 of 2018) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo Ayacko, Migori County; Sen. Omanga, Nairobi County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, these are the results of the Division:-

**AYES:** 29

**NOES:** 0

**ABSTENTIONS:** 0

The “Ayes” have it.

*(Question carried by 29 votes to 0)*

*(The Bill was accordingly read the Second Time and Committed to a Committee of the Whole Tomorrow)*

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

Hon. Senators, prepare for voting. You can start voting now. We have five seconds to do so. Assisted voters make sure that you have voted.

*Second Reading*THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO.52 OF 2017)*(Sen. Murkomen on 20.11.2018)**(Resumption of debate interrupted on 20.11. 2018)***DIVISION**

## ELECTRONIC VOTING

*(Question, that the Public Private Partnership (Amendment) Bill (National Assembly Bills No.52 of 2017) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbitio, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Omanga, Nairobi County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; and, Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, these are the results of the Division.

**AYES:** 29

**NOES:** 0

**ABSTENTIONS:** 0

The "Ayes" have it.

*(Question carried by 29 votes to 0)*

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

Hon. Senators, that is the end of voting. I now direct that doors be opened and bars be withdrawn.

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*(The Bars were undrawn and the doors opened)*

Hon. Senators, we still have other very important agenda this afternoon, including a Committee of the Whole. However, in the meantime, in exercise of powers conferred under Standing Order 40(3), I direct that we first deal with Order 5 and then proceed to Order 11. After that, we shall proceed to the Committee of the Whole as per the Order Paper.

Next order.

### **PAPERS LAID**

#### **REPORT ON FINANCIAL STATEMENTS OF KILIFI AND KISII COUNTY EXECUTIVES**

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I beg to lay the following papers on the Table of the Senate today, Wednesday 21<sup>st</sup> November, 2018:

Report of the Auditor General on the Financial Statements of the County Executive of Kilifi for the year ended 30th June, 2017.

Report of the Auditor General on the Financial Statements of the County Executive of Kisii for the year ended 30th June, 2017.

*(Sen. Murkomen laid the documents on the Table)*

**The Deputy Speaker** (Sen. Prof. Kindiki): Thank you, Senate Leader of Majority. I further direct that the other notices of Motion be deferred, because I cannot see Sen. (Dr.) Musuruve and Sen. Malalah. I will call out Order No.6 just to confirm that the two Senators are not here.

### **NOTICES OF MOTION**

#### **SUPPORT FOR DYSLEXIC PEOPLE TO REACH THEIR FULL POTENTIAL**

#### **REVIVAL OF THE POSTAL CORPORATION OF KENYA**

*(Notices of Motion Deferred)*

We now go to Order 11.

*(Sen. Murkomen stood in his place)*

What is it, Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, since we have 28 or 29 delegations, it looks like people can wait for another ten minutes. With your permission under Standing Order 1, if we can go to Order No.12 first, which is a Committee of the Whole for the County Allocation of Revenue Act (CARA), which is a financial issue given the fact that we have an assurance of the numbers today.

There is no amendment in the Committee Stage and it will just pass. I suggest that we vote and release this money to go to the counties. We can then come back to the next orders. With your kind permission and the request of the Senators here, who seem to agree with my position, because we still have more than 24 Senators present.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, who is the Seconder?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it is the Senate Minority Leader.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senate Majority Leader. Is that the mood of the House?

**Hon. Senators:** Yes.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Accordingly, Clerk, call out Order No.6 on Notices of Motion.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Since Sen. Malalah and Sen. (Dr.) Musuruve are not here, both items are deferred.

Pursuant to the request by the Senate Majority Leader and supported by the Senate Minority Leader, with the approval of the House by acclamation, I direct that we dispense with Order No.12. I understand that no amendments have been canvassed.

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

#### THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL (SENATE BILLS NO.29 OF 2018)

**The Temporary Chairperson** (Sen. Lelegwe): Hon. Senators, we are now in the Committee of the Whole to consider The County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018).

*Clause 2 and 3*

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

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Division will be at the end.

*The Title and Clause 1*

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

Division will be at the end.

I now direct that Bell be rung for one minute.

*(The Division Bell was rung)*

I direct that the Doors be closed and the Bars drawn.

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

*(Voting in progress)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that Clauses 2 and 3, the Title and Clause be part of the Bill put, and  
the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ochilo-Ayacko, Migori County; Sen. Omanga, Nairobi County; Sen. Omogeni, Nyamira County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County, and Sen. (Dr.) Zani, Kwale County.

**NOES:** Nil

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

**AYES:** 26

**NOES:** 0

**ABSENTIONS:** 0

The 'Ayes have it'.

*(Question carried by 26 votes to 0)*

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move that the Committee do report to the Senate its consideration of the County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018) and its approval thereof without amendments.

**Sen. Murkomen** seconded.

*(Question proposed)*

*(Question put and agreed to)*

*The House Resumed*

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

### **REPORT AND THIRD READING**

#### THE COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL (SENATE BILLS NO.29 OF 2018)

**Sen. Lelegwe:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018) and its approval thereof without amendment.

**Sen. (Eng.) Mahamud:** Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report and I ask Sen. Murkomen to second.

**Sen. Murkomen:** I second.

*(Question proposed)*

*(Question put and agreed to)*

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move that The County Allocation of Revenue (Amendment) Bill (Senate Bills No.29 of 2018) be now read a Third Time.

I ask Sen. Murkomen to second.

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

*(Question proposed)*



## DIVISION

## ELECTRONIC VOTING

*(Question that the County Allocation of Revenue (Amendment) Bill  
(Senate Bills No. 29 of 2018) be now read a Third Time,  
put and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Iman, Garissa County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Murkomen Elgeyo-Marakwet County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ochillo-Ayacko, Migori County; Sen. Omanga, Nairobi City County); Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Seneta, Kajiado County; Sen. Shiyonga, Kakamega County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wario, Tana River County; Sen. Wetangula, Bungoma County; and Sen. (Dr.) Zani, Kwale County

**NOES:** Nil

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the results of the voting are as follows:

**AYES:** 26

**NOES:** 0

**ABSTENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 26 votes to 0)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct that the doors be open and the Bars withdrawn.

*(The Doors were opened and Bars withdrawn)*

Next Order!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. We now go to Order No.11, which is a Procedural Motion, and then, proceed accordingly as per the Order Paper.

**MOTION****APPROVAL OF SENATOR TO SERVE IN  
SELECT COMMITTEES**

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to move the following Motion-

THAT, pursuant to Standing Orders 187 and 189, the House approves the nomination of Senator George Ochillo-Ayacko Mbogo, EGH, MP, to serve in the following Select Committees of the Senate –

(a) Committee on Agriculture, Livestock and Fisheries; and

(b) Committee on National Cohesion, Equal Opportunity and Regional Integration.

Mr. Deputy Speaker, Sir, as you are aware, Sen. George Ochillo-Ayacko is otherwise known as Mbogo.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that an alias?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it is not usual for people from the region where he comes from that the name ‘Ochillo’ would go with ‘Mbogo.’ However, I saw in the by-election that led to his election that his competitor and him, apart from just having names that are from the Luo community, also have names that are attributed to the people of the former Central Province; the Kikuyu. So, this is a beautiful country.

Yesterday, I watched in the news a child who was among the top students in the country. His name is Ochieng Kipchumba. This country has changed for a long period of time. The fact that at his age, Ochillo-Ayacko, has this name shows that there were people who had foresight, to accept different cultural names and willing to walk with the rest of the country in terms of uniting this nation. I can definitely say that Sen. Ochillo-Ayacko, or maybe the parents, had started ‘building bridges.’

Mr. Deputy Speaker, Sir, Sen. Ochillo-Ayacko is a friend of mine and a person I know. He is senior to me in the legal profession, though not at the level of Sen. Orengo. He is somewhere in the middle. He is not a Senior Counsel like Sen. Orengo, the Senator *Emeritus*, Amos Wako and the Senator for Nyamira County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Did you say ‘Senator *Emeritus*?’ The implication is grave.

**The Senate Majority Leader** (Sen. Murkomen): No, Mr. Deputy Speaker, Sir. I said Sen. Amos Wako alias Attorney-General *Emeritus*.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is clearer.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, Sen. Okong’o Omogeni is also a Senior Counsel, but Sen. Ochillo-Ayacko is somewhere, in the legal profession, between them and us.

Sen. Ochillo-Ayacko went to school properly, so speaking, because I have met some of his classmates. He was a student at the University of Nairobi. He was active in student leadership, although he did not rise to the level that Sen. Orengo did as the chair

of the Student Organization of Nairobi University (SONU) Chair. However, he was somewhere in the middle supporting student leadership activities.

Besides that, Sen. Ochillo-Ayacko also did his Masters of Law Degree at the University of Nairobi, where yours truly had a privilege of having him as a student in his class. I can attest that he was a very bright student who got an A in International Trade Law. So, he is a diligent man. He speaks with a very soft voice, but is a man who has got a lot of conviction in his heart. I believe that when he joins the Committee on Agriculture, Livestock and Fisheries and the Committee on National Cohesion, Equal Opportunity and Regional Integration he will use that energy to invigorate these Committees; assist them perform and discharge their responsibilities together with their leadership and the Members.

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

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

Madam Temporary Speaker, as far as national integration is concerned, we want to see this Committee walking in the same direction with the Committee that is headed by Sen. Wako and Sen. Haji, whose responsibility is to ‘build bridges’ to the proverbial Canaan. I say so because I had a conversation with Sen. Orenge about the Canaan in the Bible and the Canaan which is proverbial. In the Biblical Canaan, in Joshua Chapters 2 and 3, there were neither bridges nor crocodiles. However, in the imaginative Canaan that we have, we have to build a bridge and there are crocodiles, according to Sen. Orenge.

I hope that in the Committee on National Cohesion, Equal Opportunity and Regional Integration, Sen. Ochillo-Ayacko will make his contributions towards making Kenya a better place to live in. I also hope that he will provide guidance and leadership to this House in engaging that important Committee. I am very happy that every time this country seeks the intervention of the Senate and this nation has wanted to do something that is momentous, it has always resorted to the leadership of the Senate.

Madam Temporary Speaker, when we wanted to change the election laws, Sen. Orenge and Sen. Kiraitu Murungi then provided leadership, and yours truly was a Member. When this country wants to ‘build bridges’, it is Sen. Wako and Sen. Haji who provide leadership. I have no doubt going forward that Members of this House, being respected legislators in this Republic and having the capacity to provide leadership in various sectors, including Sen. Ochillo-Ayacko, will play an important and integral role in taking this country forward in matters of integration.

In the sector of agriculture, he will work in the Committee on Agriculture, Livestock and Fisheries to ensure that agriculture, which apart from health is the most devolved function, becomes a sector that is enviable in this country. This is particularly at a time we are talking about issues of maize, sugar and coffee. I hope the Committee will work tirelessly with the Select Committee that we put in place to come up with solutions.

I am glad that the Senate - both the Minority and Majority sides - has never been a House of lamentations, but solutions. People raise issues and suggest solutions. Senators

take initiatives to become part of the solution. That is why Sen. Wetangula and Sen. (Prof.) Kamar are providing leadership on the maize issue.

I believe that in the other sectors, the Committee on Agriculture, Livestock and Fisheries should now seize the opportunity to provide leadership. This is because, while others are writing lamentations of 21<sup>st</sup> Century, we cannot in the Senate be crybabies. We are solution givers. We are leaders and part of the solution.

Madam Temporary Speaker, I beg to move and ask the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, since this is a Procedural Motion, I will not take a lot of time. I support the Motion. Allow me to use the instrumentality of this Motion to congratulate Sen. Ochillo-Ayacko. As it has been said, Sen. Ochillo-Ayacko is a man with rare Curriculum Vitae (CV). He is a lawyer. He has done a Masters Degree and has been a Member of Parliament. He is not coming to this Parliament as a new Member as it were because he served several times in the National Assembly.

If you go back to the elections in 2002, Sen. Ochillo-Ayacko is one of the people who played a very important role in providing a forum to enable the Government, at that time, which brought the country together, to set a working Committee between the various formations within National Rainbow Coalition (NARC). No lesser person than President Kibaki had occasion to talk to me at one time about what Sen. Ochillo-Ayacko and others did to bring that team together before and after the elections of 2002. I am sure that he will play that role effectively in the two Committees.

Madam Temporary Speaker, let me assure the Leader of the Majority that crocodiles are not everywhere. Certainly during the election in Migori County, if anybody had any doubt that the 'handshake' was working, the Jubilee Party did not offer a candidate in the County. In fact, some of the Jubilee Members of Parliament (MPs), including Sen. Sakaja, went to Migori to campaign for Sen. Ochillo-Ayacko. I hope that in the process of 'building bridges,' the Jubilee Party may also decide not to offer a presidential candidate in 2022. Let that continue to be the order of the day.

Madam Temporary Speaker, I also want to inform my friend, Sen. Murkomen, that there are some names which are common from a long time ago. Our people were doing wonderful things before we started to divide ourselves in terms of ethnicity. There used to be a lady in this City who was very powerful. In fact, she caused the former President, Mwai Kibaki, to migrate to Othaya. Her name was Jael Mbogo. In fact, right now, many people would consider it a nilotic name. There are other names like Ngala from the Coast and Ukambani. In fact, for a long time, there was also an MP from Homa Bay by the name Ngala. However, I hope that, as it has been said here – and the Attorney General *Emeritus* is here – we do not take too long 'building' these bridges. We are hoping that by June, the way forward and structures would be in place to make sure that the peace that we have today continues up to 2022.

Madam Temporary Speaker, I do not have anything else to say, but to congratulate the Senate on how we have come together in this Motion, just like we came together when we lost our friend, the late Sen. Bernard Okello. We got together to make sure that Sen. Ochillo-Ayacko got elected as the Senator for Migori County.

I beg to second, Madam Temporary Speaker.

*(Question proposed)*

**An hon. Senator:** Just put the question.

**The Temporary Speaker** (Sen. Nyamunga): No. I cannot put the question because some Senators are interested in debating the Motion.

Proceed, Sen. Omogeni.

**Sen. Omogeni:** Thank you Madam Temporary Speaker. I also want to take this opportunity to congratulate my good and learned friend, Sen. Ochillo-Ayacko, on his nomination to serve in these Committees. I have known him for many years. We were students together at the University of Nairobi and I succeeded him as the Treasurer of the Students Union of the University of Nairobi (SONU). I, therefore, know him as a man with immense leadership capabilities.

I was very happy when he joined politics and became a Member of Parliament (MP) ahead of some of us. It is also good to see the people of Migori showing confidence in him by electing him as the Senator of our neighbouring County of Migori. I congratulate and wish him well as he serves in these two Committees.

Thank you, Madam Temporary Speaker.

**Sen. Wako:** Thank you, Madam Temporary Speaker, for this opportunity to speak on the nomination of Sen. Ochillo-Ayacko, otherwise known as George Mbogo, to these two important Committees.

Madam Temporary Speaker, when I saw the Majority Leader speaking on television yesterday, and was referring to the names Kipchumba and another one, I said: "Yes, he may be the son of someone called Kipchumba Murkomen, and that is why he has done very well; if he is like his father."

*(Laughter)*

Madam Temporary Speaker, I knew Sen. Ochillo-Ayacko because we both served in the Cabinet at one time. I initially wondered why such a young person had been appointed to the Cabinet. However, after working with him there, I knew the reason. He was very competent; he mastered his subject and was able to negotiate issues even at the international level. I remember that from one memorable journey that we made to the United States of America (USA).

The Committee on Agriculture, Livestock and Fisheries also deals with fisheries, and it is no doubt that there is fishing in Migori County. I do not know geography very well, but I think Ndhiwa Constituency has some beaches and does some fishing. Therefore, I have no doubt that even him, as the Senator, would be interested in the development of fisheries in this Country.

What is not very well known is that the Committee on National Cohesion, Equal Opportunities and Regional Integration deals with many issues. In as much as it deals with national cohesion, I look forward to working with that Committee and relying on him to help us to integrate and make recommendations in our advisory capacity under the

‘Building Bridges Initiative’ for unity. However, the Committee does much more than that, because if you look at its mandate, it covers regional integration.

Regional integration refers particularly to the East African Legislative Assembly (EALA) and the Pan-African Parliament (PAP). I know that he is experienced as a former Minister in the Government, and that will put him in very good stead when it comes to matters of the East African Community (EAC) and, in particular, the EALA. We are now at a stage where we feel that the countries of East Africa should move closer on issues of integration, be they political, economic or social. As we move closer, many problems arise. We shall, therefore, rely on him and this Committee to guide the Senate on these matters.

Madam Temporary Speaker, I am particularly passionate on these issues, because I believe that the Senate has not played its role effectively on issues of East African integration. The National Assembly had a specific Committee, which deals with this issue and, therefore, they were fairly active when it came to regional matters. However, the Senate did not quite put enough emphasis on issues relating to the EAC, which might be because before that, this particular docket was under the Committee on National Security and Foreign Relations. National security alone can consume a lot of attention on the Committee. It is, therefore, no wonder that under the current Standing Orders, we moved that docket to this particular Committee. I, therefore, look forward to the Committee playing its role in guiding the Senate to take its rightful role, on issues of the East African integration.

Madam Temporary Speaker, I welcome and wish him all the best.

**Sen. Outa:** Thank you, Madam Temporary Speaker. I join my colleagues in congratulating Sen. Ochillo-Ayacko on his nomination to these two important Committees.

Madam Temporary Speaker, Sen. Ochillo-Ayacko is a very soft-spoken man. Over the years, I have known him as a very straightforward person, with a wealth of knowledge in guiding where there are conflicts. He, therefore, comes in handy. I personally welcome him to our Committee on National Cohesion, Equal Opportunities and Regional Integration because, at this juncture after the ‘handshake,’ all Kenyans want to live together.

Madam Temporary Speaker, I truly believe that Sen. Ochillo-Ayacko will bring an incentive to our Committee, so that we can support the initiatives that have been started by the two heroes in this Republic of Kenya, who are His Excellency Uhuru Kenyatta and the People’s President, Raila Amollo Odinga. I know that we will continue to ‘build bridges.’

The Senate Majority Leader has talked of crocodiles. This time round, we will put more nuts in the bridges that we have started building, so that we sail through to the end of this term. That is only when we unite our people together. Sen. Ochillo-Ayacko will join our Committee on National Cohesion, Equal Opportunity and Regional Integration, so that we can enhance the work of ‘Building Bridges Initiative.’ Sen. Wako and the Chair of the Committee on Security, Defence and Foreign Relations are part of that team. They will go round the country to unite all our people.

Sen. Ochillo-Ayacko is a man of his word. I truly believe that as he will be serving in the Committee on Agriculture, Livestock and Fisheries, he will look into the matters of sugarcane in his area. The production of sugar has dwindled and many of our farmers are still wallowing in poverty. I truly believe that with his knowledge, because he served as a Minister, he will guide this Committee to find a long-lasting solution for the farmers in not only Migori County, but the entire Kenya, especially sugarcane growing areas like Nyando Sugar Belt, Mumias and others across the country.

Madam Temporary Speaker, I join my colleagues in welcoming Sen. Ochillo-Ayacko, a man of few words. He means well for the Republic of Kenya.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Senator.

Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Thank you very much, Madam Temporary Speaker, for giving me this opportunity to join my colleagues in congratulating the nomination of Sen. Ochillo-Ayacko to serve in the two Committees. I will speak for the Committee on Agriculture, Livestock and Fisheries, where I am a Member. We are privileged that Sen. Ochillo-Ayacko will join us in the Committee because we know the contributions he will make. He will help us address most of the concerns, especially when it comes to livestock and fisheries, and any other matters that appertain to the Committee.

I will never go without commenting on Sen. Ochillo-Ayacko's voice. I used to listen to his soft voice.

*(Laughter)*

When he joined this House, I was keen to know who that voice belonged to. It is not about the voice, but he will make tremendous contributions to the two Committees.

Madam Temporary Speaker, I know that people are keen to hear my next statement. I welcome Sen. Ochillo-Ayacko to the two Committees and wish him all the best.

**The Temporary Speaker** (Sen. Nyamunga): Finally, Sen. Pareno.

**Sen. Pareno:** Madam Temporary Speaker, I rise to congratulate Sen. Ochillo-Ayacko and the Mover for moving this Motion, for this House to allow him to sit in the two Committees. I specifically welcome him to the Committee on National Cohesion, Equal Opportunity and Regional Integration, where I sit.

This is a bit significant because at the time Sen. Ochillo-Ayacko was elected and sworn in this House, we were trying to show how much cohesiveness we needed in this country pursuant to the 'handshake' that came into being. It is symbolic that he came in because of the cohesiveness that was sweeping this country, after we had a lot of issues and 'resisting.' He came in at the time when we needed to show unity of purpose as a country.

His election gave us an opportunity as a country to show that we are serious in the 'handshake', being together as a nation and that we wanted to move forward together as a nation. At the end of the day, that is why our counterparts did not even field a candidate, and went out to campaign for him. His coming ushered in that cohesiveness. It is even

more important that he will sit in the Committee on National Cohesion, Equal Opportunity and Regional Integration.

I welcome my brother and I am sure he will be a person of reason. I have severally said that he is a person who has shown leadership in a lot of areas, including our party activities. I have just confirmed that he was just about two classes ahead of me. Being a senior lawyer, I am sure he will be of use to this Senate and the Committees that he will serve in.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, finally, let us have the Senator for Migori County himself, Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Thank you very much, Madam Temporary Speaker. I thank my colleagues, and specifically this august House, for the good words they have spoken in my support. I express my gratitude to the Senate Majority Leader for this Motion and also his support when I was vying for the seat in Migori County. He was very supportive both in word and deed. I will not mention what he did for me, but he has always been supportive. I confirm that when I was at the university for Masters, he indeed, taught us very well International Trade Law and was a good “professor.”

I come from a county where integration and cohesion is needed. We have institutions of Government, such as the Office of the Governor, the Office of the Senator and the County Assembly, and we are in perennial conflict. We also have diversity of ethnicity and religion. The wonderful Committee on National Cohesion, Equal Opportunity and Regional Integration will go a long way in serving its purpose in my county.

I also come from an agrarian county, where we grow sugarcane, tobacco and other crops. We also have fish that are born in Kenya and grow up in Tanzania and Uganda, and need to be integrated. So, these two Committees will be useful to me as a person, and I believe in this wonderful House.

Having said that, I assure the distinguished Members of this Senate that I will offer my services to the Committees selflessly and with a lot of passion. I hope that I will be useful to the Members of the Committees.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): I now call upon the Senate Majority Leader to reply.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Madam Temporary Speaker. I thank all the Senators for making fantastic contributions to this important Motion.

I wish Sen. Ochillo-Ayacko the best as he serves the country in the two Committees. I look forward to the partnership of this House in supporting these Committees to succeed.

I beg to reply.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, since this Motion does not affect counties, I will now put the question.

*(Question put and agreed to)*



**COMMITTEE OF THE WHOLE**

THE URBAN AREAS AND CITIES (AMENDMENT)  
BILL (SENATE BILLS NO.4 OF 2017)

**The Temporary Speaker** (Sen. Nyamunga): The Order is hereby deferred.

*(Committee of the Whole deferred)*

Next Order!

**COMMITTEE OF THE WHOLE**

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

**The Temporary Speaker** (Sen. Nyamunga): This one is also deferred.

*(Committee of the Whole deferred)*

**COMMITTEE OF THE WHOLE**

*(Order for Committee read)*

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

IN THE COMMITTEE

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

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

**The Temporary Chairperson** (Sen. Pareno): Hon. Senators, we are in the Committee of the Whole to consider The County Governments (Amendment) Bill (Senate Bills No.13 of 2018).

*Clause 2*

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

THAT the Bill be amended by deleting Clause 2 and substituting therefor the following new clause –

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Amendment of Section 58

of No.17 of 2012 Section 58 of the County Governments Act be amended in –

- (a) Subsection (1) by –
- (i) deleting paragraph (c) and substituting therefor the following new paragraph-  
c) the secretary to the board who shall be nominated and appointed by the governor with the approval of the county assembly.
- (ii) inserting the following new subsections immediately after subsection (1)-  
(1A) The Secretary to the board shall be an *ex-officio* member of the Board and shall have no right to vote at any meeting of the Board.  
(1B) In nominating or appointing a person as a member of the Board, the Governor shall-
- (a) Observe the principles of gender equity, ethnic and other diversities of the people of Kenya, and shall provide equal opportunity for persons with disabilities; and,
- (b) Take into account the national values and principles set out in Articles 10, 27 and 232 of the Constitution.
- (b) subsection (3) by deleting paragraph (c) and substituting therefore the following new paragraph-
- (c) in the case of the chairperson-
- (i) possesses a minimum of a bachelors degree from a university recognised in Kenya;
- (ii) is registered as a human resource management professional of good standing under the Human Resource Management Professionals Act; and,
- (iii) has at least ten years working experience in a managerial position either in the public or private sector.

*(Question of the amendment proposed)*

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

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

The Division will be at the end.

Sen. Cheruiyot.

**Sen. Cheruiyot:** Madam Temporary Chairperson, I beg to move that pursuant to Standing Order 142, the Committee of the Whole reports progress on its consideration of The County Governments (Amendment) Bill (Senate Bills No.13 of 2018) and seeks leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*[The House resumed]*

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

**The Temporary Speaker** (Sen. Nyamunga): Order, Senators! I call upon the Chairperson of the Committee of the Whole to report progress.

### **PROGRESS REPORTED**

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

**Sen. Pareno:** Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered the County Governments (Amendment) Bill (Senate Bills No.13 of 2018) and seeks leave to sit again tomorrow.

**Sen. Cheruiyot:** Madam Temporary Speaker, I beg to move that the House do agree with the Committee of the Whole on the said report.

I request Sen. Seneta to second.

**Sen. Seneta** seconded.

*(Question proposed)*

*(Question put and agreed to)*

### **COMMITTEE OF THE WHOLE**

#### THE CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY BILL (SENATE BILLS NO.17 OF 2018)

**The Temporary Speaker** (Sen. Nyamunga): The Order is deferred.

*(Committee of the Whole deferred)*

Next Order!

### **BILL**

*Second Reading*

#### THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL (SENATE BILLS NO.23 OF 2018)

*(Sen. Dullo on 20.11.2018)*

*(Resumption of Debate interrupted on 20.11.2018)*

**The Temporary Speaker** (Sen. Nyamunga): Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. When we stopped yesterday, at 6.30 p.m., the question had not been proposed. The Bill had been moved and seconded, but the question had not been proposed. We probably need to propose the question and then I will be happy to contribute.

*(Question proposed)*

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. I stand to support this important amendment to The Treaty Making and Ratification (Amendment) Bill (Senate Bills No.23 of 2018).

The original Bill that is being amended is the Treaty Making and Ratification Act No.45 of 2012. From the outset, treaty making and ratification is very important. We exist in an international community and normally have international laws come to the country from organisations such as State International Development Organization (SIDO), the United Nations (UN) and many others.

The Constitution that was promulgated in 2010 is very clear and has various provisions for ratifying these treaties within our context. In fact, Article 2(6) of the Constitution gives effect for Parliament to enact this ratification. It says ‘Parliament’ and not ‘the National Assembly’ or ‘the Senate,’ which means that it alludes to both the National Assembly and the Senate.

Multilateral or bilateral treaties are important because they address important issues. They might address security issues in Kenya, sovereignty, independence of the country, the rights and duties of Kenyans, relationship between Kenya and any other international organization or environment and natural resources. We are cognizant of the fact that the Senate should address matters touching on counties. Clearly, almost all of these issues happen within a county context, where the Senate is fully contextualized to make its specific contribution.

Consideration of treaties is done in the National Assembly at various levels, such as the Committee level and the public participation level. Through that process, the Members of the National Assembly have provision to the process and the reservations; in terms of either agreeing with the reservations or not agreeing with them. That means that they may either approve or disapprove the reservations.

Section 15 of the original Act says that in terms of public awareness, once every financial year, a report concerning all matters of these treaties is raised in the National Assembly.

Madam Temporary Speaker, this brings me to the concern that Sen. Dullo is addressing. Matters on treaties should touch on both Houses, that is, the National Assembly and the Senate. In her amendments, especially to Section 8, she indicates that:-

“Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speakers of Parliament for approval by the Parliament.”

This is key. It is through this process that we hope that the provision of Article 1(3) of the Constitution can be operational. However, the decision will be made by the Speakers,

whether or not it is a matter that touches on counties. Therefore, this particular amendment contextualizes that decision.

Sen. Sakaja and Sen. Mutula Kilonzo Jnr. are in the process of coming up with a Bill to actualize this legislative process, which is important for us.

The proposed new Section 8A (1) states that:-

“The process of approval of the treaty shall commence in the National Assembly”.

The proposed new Section 8A (2) states that:-

“The National Assembly shall consider a treaty within 14 days of its submission in the National Assembly and shall forward its resolution to the Senate for consideration”.

That is the key nexus of this particular amendment. It will not only be dealt with at the National Assembly level, but also forwarded to the Senate.

The proposed new Section 8A (3) is an important provision because we know what has been happening in terms of the Bills between the National Assembly and the Senate. A provision is made in terms of timeliness. Therefore, at the expiry of 14 days, the Senate shall commence its consideration of the treaty and forward its resolutions to the National Assembly.

This is a very important mechanism so that we do not have a lull, especially with the international treaties and timings that are made for their ratification. It will not be good in international limelight for us to be caught up in a debate of the National Assembly and the Senate, and a treaty is waiting. Therefore, this amendment ensures that the procedure can continue automatically. If the Bill is not passed to the Senate within 14 days, we can actually seize it, which is very critical.

In the proposed new Section 8A (5), the Mover proposes that the treaty to be referred to a joint Committee, which is to do with mediation. As it happened in the 11<sup>th</sup> Parliament, many Bills ended up in mediation. Therefore, in case anything goes wrong, the two Houses can form a mediation Committee and come up with a version of the Bill that is accepted by both Houses. That mediation Committee usually consists of equal number of Members. Three Members from both Houses has been the tradition. Therefore, some agreement has to be made at that particular level. Therefore, it gives a provision, for example, where there is a disagreement between the National Assembly and the Senate.

The proposed new Section 8A (6) states that:-

“Parliament shall not approve-

(a) the ratification of a treaty or part of it if its provisions are contrary to the Constitution;”

It should be part and parcel and integral to the Constitution.

This is an important Bill. When it comes to the understanding of how international treaties are simulated and ratified within our context, sometimes there is a conflicting piece of information. This is because for some of the international treaties, we say that we are automatically signatories and make ourselves part and parcel of that process, but the sovereignty for doing that, when it comes to the legislative agenda, is done within Parliament and in the provision of Article 2(6) of the Constitution.

Therefore, the ratification process is very important and any international treaty should go through it. It has to be ratified by a country, in this instance, Kenya. It is a small amendment but very critical. It is quite straight forward; just to bring in the Senate on board as part and parcel of a process and legitimize Article 2(6) of the Constitution, which clearly says that Parliament – not the National Assembly - will give effect. Parliament includes the National Assembly and the Senate.

**Sen. Pareno:** Madam Temporary Speaker, I rise to support this Bill. I congratulate the Mover for bringing this very noble idea to amend a very glaring lacuna. When we have an Act that in its provision does not recognise the Senate, then it is high time that we amend our laws to upgrade and audit them, to ensure that the proper place of the Senate is adhered to.

This is a very straightforward amendment and I will be surprised if anybody will have a problem with it. This is because it is simply amending an Act to recognise that we have a new Constitution in place. We now have the “upper” House and the “lower” House, and each House plays its role.

More so, lately we have had issues with some of our regulations going to the National Assembly and being passed without passing through the Senate, yet most of them affect the counties. We are here, as a Senate, to take care of the interests of the counties. Therefore, this is a noble amendment that I support.

Madam Temporary Speaker, it would then require that not only one House deals with treaties. That would mean that the National Assembly will deal with it in the first instance. The Bill goes ahead to even provide that if it does not do it in the first instance, then we will not hold anybody hostage. The Senate will start the process and *vice versa*.

The Constitution of Kenya provides for very broad principles through which we are supposed to enact legislation. In fact, it says that Parliament shall enact legislation to actualize the provisions of the Constitution. This is one such amendment that will ensure that the provisions of the Constitution and the principles that are so broad--- We could not specify everything in that Constitution--- Setting broad principles means and calls on us to put in place legislation to actualize the spirit and letter of the Constitution.

I am happy that in this amendment, we are also providing for a principle that was brought in on behalf of the people – the principle of public participation. If we do not include public participation in treaties, we will not be speaking the language of the Constitution. The intention of the Constitution is that every other law that we pass is inclusive, including the domesticating of treaties; the people have a say.

I am happy with this amendment because the citizens will be given space. The committees that will handle any treaties that are supposed to be domesticated will hear from the people. It has even given a provision for reservations. We must not always take everything that comes along the way. I am happy that people will have a say on what they want reserved maybe for some time and how their interests will be taken care of.

We need to take the issue of treaties seriously. You will forgive me because I keep talking about the East African Community (EAC) because it is part and parcel of me, having been there. We sign and domesticate treaties. We speak on behalf of the citizens who want the EAC integration. However, as at one month ago, the EAC was not fully funded. You will find that there is a country that has paid only 20 per cent when the

financial year is halfway and another one only 15 per cent. There is even a country that has not paid a cent, yet it is party to a treaty.

As we domesticate treaties and bring them home, we believe that they are for the interest of the people. As we make these laws to actualise the provisions of the treaties and make them to serve the people, let us be serious on the treaties we sign and fully take up the mandate given to us.

I am happy that this amendment will not allow anybody to hold the other hostage. In Clause 3, this Bill seeks to amend the principal Act by inserting a new section immediately after Section 8. It provides that:-

“The principal Act is amended by inserting the following new section immediately after Section 8—

8A. (1) The process of approval of a treaty shall commence in the National Assembly.

(2) The National Assembly shall consider a treaty within fourteen days of its submission to the National Assembly and shall forward its resolution to the Senate for consideration.

(3) If within fourteen days of submission of a treaty to the National Assembly, the National Assembly has not forwarded its resolution on the treaty to the Senate, the Senate shall commence its consideration of the treaty and shall forward its resolution to the National Assembly.”

Therefore, the Senate shall not hold the National Assembly hostage and neither will the National Assembly be held hostage by the Senate because the processes spell out what should happen if one were to delay. I like this because it will allow us to implement our Constitution. It will also allow us to speak for the people and have a say in which treaties we will get into and not get into.

I beg to support.

**Sen. Ochillo-Ayacko:** Thank you, Madam Temporary Speaker, for giving me an opportunity to make a few remarks in respect to this important Bill. It is important to appreciate the primacy of our Constitution. The Constitution is a supreme document that binds all institutions and citizens. It is the basis upon which mandate is exercised.

It is clear that any time there is mention of the word “Parliament” that gives or lends credence that Parliament means the National Assembly and the Senate. Any attempt at excluding the Senate from the meaning of Parliament – for those who are vigilant, loyal or committed to constitutionalism – is an affront. This is a Bill that intends to make us sticklers to the Constitution. It is a Bill that intends to make the exercise of ratification of treaties or treaty making comply with the spirit of the Constitution, which requires that both Houses ventilate or speak to the subject of the treaty that should be ratified.

Before I joined this House, I read and listened to people talking about quarrels between the two Houses. Such issues should not arise. These are issues that the makers of our Constitution, 2010 addressed. Therefore, we should also understand, so that we proceed in harmony.

I am happy that at long last, in the context of treaty making and ratification, there is recognition of the role of the Senate. It is important that the interest of county governments and the people who may be affected by those treaties are capture, and there

is opportunity to discuss those matters inside the Senate Chamber. I believe that this is the right way to go. Even if it did not provide for mechanisms of expediting the processes before either Chamber, it is important that as the Senate, we look at treaties because they will affect counties.

If you look at the genesis of the existence of senates the world over, you will find that it was stated in the federalist papers that there was need to have an upper House because legislation that emanated from the lower House was generally hot and made in haste. So, there was need to have an upper House. The same way when you have tea that is hot, you need to have a saucer to cool the tea, so that it does not scald or burn your mouth.

It is important as a country that we do not rush the processes of treaty ratification. I know that globalization is with us and ratification of treaties is how to actualize and benefit from acts of globalization, But, again, Bills or treaties that emanate from the lower houses may come expeditiously and may not have received what we call sober consideration. So, it is important to give them a second shot; look at them in revised and calm fashion, the way we look at things in this House, so that members of the public ultimately benefit immensely from the wealth of experience that we have in this House.

Madam Temporary Speaker, you know that in this House we have several Senior Counsels, including the Attorney General *Emeritus*, Sen. Wetangula, among others. So, a treaty that would be injurious or harmful to this country will not escape the vigilance or the hawk-eyed Senators who sit in this House. I think for good measure, we need to have it in our legislation.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Wetangula.

**Sen. Wetangula:** Thank you, Madam Temporary Speaker. I was, in fact, going away when I heard on radio the debate on this Bill going on. I had to rush back to speak to it because this is one Bill that this House must pass to reclaim its position under the Constitution. I say so because I have been in the Senate Committee on Defence and Foreign Relations that has been working on this Bill since the last Parliament.

The Constitution provides very clearly that any treaty signed by the Republic of Kenya, in which case it will be either the Cabinet Secretary (CS) responsible for foreign affairs or any designated CS, shall not become part of our law unless it is ratified by Parliament; not the National Assembly.

Madam Temporary Speaker, in the last Parliament, there was a crude attempt by the National Assembly to amend the Constitution and edit out the Senate from treaty ratification. This is so that treaties entered into by the Republic of Kenya end up in the National Assembly to take legal effect, and the Senate is cut out. We protested this mischievous amendment very loudly and vehemently to the National Assembly, but they completely ignored us. In the process, that amendment to the Treaties Act was sneaked to the President and he assented to it.

Madam Temporary Speaker, this brings me to the point that we have been saying; that Article 110(3) of the Constitution – and I have seen a Bill drafted by Sen. Mutula Kilonzo Jnr. or somebody else – must be operationalised by a simple Act of Parliament that will take us to the process that Amos Wako, as Attorney-General, used to go through.



Sen. Wako started serving this country during the single-party era. He moved with a very conscious operational structure, where no Bill was taken to the President for assent without the necessary vellums being put in place, with the necessary signatures to show from the Speaker and other people, reflecting what went on in the House.

Madam Temporary Speaker, I remember going to Amos Wako's office once, and he was actually reading the HANSARD to see whether what was published in the Bill was a reflection of the proceedings of the House. Today, Article 110(3) of the Constitution says that before any Bill – not 'some Bills' but 'any Bill' – is introduced in any House, it must be placed before the two Speakers of both Houses for concurrence on whether or not it affects counties.

The Supreme Court, in our advisory reference, told us that they cannot envisage any Bill that does not concern counties. Whether it is a budgetary matter, defence or agriculture, they are all about counties. Whatever you can think of, the theatre of operation of every issue in this country is in the counties. In fact, there is no Bill – whether or not it is a money Bill – that does not concern counties. This is because when we collect taxes, we collect them in the counties. When we expend taxes, we expend them in counties. That is why this Bill is very critical.

Madam Temporary Speaker, hon. Aden Duale and his group edited the Senate out of treaty making and amended the law to now read that no treaty shall become or enjoy a force of law without ratification by the National Assembly. That language is not in our Constitution. By passing this Bill here, we are simply rolling back and restoring the Constitutional position that the Constitution gave authority to this House.

This is because Parliament is not Parliament without both Houses; the Senate and the National Assembly. As a matter of fact, the Senate is the "upper" House; the House of revision and reference, where Bills from the National Assembly ought to come to this House.

Madam Temporary Speaker, all of us travel to comparable jurisdictions. When you go to Australia, England or wherever, people out there laugh when they hear that a National Assembly has veto powers over Bills from the Senate. They also laugh when they hear that Bills go to the National Assembly and never end up in the Senate. There is nothing in this country that does not concern counties. In fact, I have been arguing – and I will continue arguing – that we must relook at our Constitution, even on revenue sharing.

As we correct these imbalances and the erratic changes in the law, revenue sharing must be changed. This is where Amos Wako and his team went wrong. We cannot share revenue on account of historical figures based on audits, knowing that Parliament either deliberately or because of incapacity, is unable to keep abreast with audits.

Right now, we, as the Senate, are bringing audit reports of the Financial Year 2013/2014 to this Floor. We are what Sen. Wako called us; morticians who carry out post-mortems on dead bodies, instead of helping the living to live. We must stop this because if we do not do it, we will continue to cheat counties. For example, we have a budget of Kshs3 trillion and are sharing out to counties Kshs970 billion, and we say that this is the revenue available for sharing. In Nigeria, revenue sharing is based on every

current budget, and 52 per cent of the current budget goes to devolved units and 48 per cent is left with the national government.

Back to this Bill, I want to urge this House to pass it because this House is reclaiming its constitutional position in treaty making. Moreover, where we have said that every treaty becomes law, if this Senate as the defender and protector of counties, their governments and interests does not get involved, you will find somebody sitting in the national Government signing a treaty giving away Lamu or Mombasa ports or our highways or oil without us getting involved.

We must defend our territory. As Justice C. B. Madan used to say, jurisdiction is not given, it is grabbed. This House must grab back our jurisdiction and look for even more jurisdiction. We must reclaim the internationally acclaimed position that every Senate, wherever it lies, is the upper House and the National Assembly or House of its equivalent, is the lower House. Therefore, things will always move. As we say in science, hot air rises; it does not go down.

I beg to support.

**Sen. Wako:** Thank you very much, Madam Temporary Speaker. I will be brief.

As Sen. Wetangula and other Senators have said, this Bill is for us to reclaim our position in the Constitution. There is no better place for us to reclaim this than those places where the National Assembly, if you may recall, passed many laws touching on the counties. Those laws went through the Third Reading and then submitted to the President, who signed them and they became law. It took this Senate a lot of meetings to bring up comprehensive amendments to those laws to make them illegal.

One of those areas is the treaties. I would have lectured quite a bit on the treaties, some which are self-executing and so, there is no need for ratification because they are there but some need ratification. Currently, under the Constitution of Kenya 2010, every treaty requires ratification through Parliament because Article 2 (6) states that treaties are part of the law of the land. Further, under Article 92, it is Parliament which makes the laws of the land.

Madam Temporary Speaker, the international relationship has now reached a level where a number of treaties touch on the functions, which have been conferred on counties. When I talk about agriculture, it is a devolved function, and we have the Food and Agricultural Organization (FAO) in Rome. When we talk about health services, it is a devolved function, and we have the World Health Organization (WHO) in Geneva. When we talk about air pollution, which is a devolved function under Article 6 (3) of the Constitution, where the county government controls air pollution, it is a devolved function.

We also have the United Nations Environment Programme (UNEP) here. In fact, on environment, the Constitution goes further to say that even where the national Government has done something on natural resources and environment, under Article 10, it also becomes the responsibility of the county government to implement that. Therefore, treaties entered into in these areas have to come here, so that we can see whether or not they touch on the functions of the counties, which is our basic concern.

In conclusion, Madam Temporary Speaker, the Supreme Court ruled, in effect, that although the Constitution says that we are concerned with legislation which touches

on and concerns counties, they could think of no area of activity of the national Government which does not touch on counties.

The Supreme Court even went further and said that even national security – which is a preserve of the national Government in the Constitution - also touches and concerns county governments. It is, therefore, a legitimate concern of the county governments. Therefore, at the end of the day, the Supreme Court was ruling that any law that goes to the National Assembly should also come to the Senate for approval. That is why we are now saying that this Bill is important, because we are now recapturing the authority, which is ours under the Constitution and is to be involved in this important area of international law about making treaties.

Madam Temporary Speaker, one can even say that if human rights treaties, which touch on fundamental freedoms, including those that touch on economic, social and cultural activities concern counties and, therefore, also concern the people of this country. They are, therefore, a legitimate concern for us, and this law should be passed very urgently so that we can begin looking at these treaties.

Earlier on today, in this august Assembly, we talked about the East African Integration and the fact that those treaties, which are being passed in Arusha, do not come to us for ratification. They just go to the National Assembly, where they comment on them and go back to Arusha. Those laws must come to us from the National Assembly, for us to also approve them. Therefore, this Bill is one way of reclaiming our lost authority, and I recommend that we pass it unanimously.

Madam Temporary Speaker, with those few remarks, I beg to support.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, pursuant to our Standing Orders, the House stands adjourned until tomorrow, Thursday, 22<sup>nd</sup> November, 2018, at 2.30 p.m.

The House rose at 6.30 p.m.