

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 6th December, 2018

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM ZANZIBAR HOUSE OF REPRESENTATIVES

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Members of Parliament (MPs) and staff from the Zanzibar House of Representatives.

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

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|---------------------------------|---|--|
| (1) Hon. Mgeni Hassan Juma | - | Deputy Speaker |
| (2) Hon. Shehe Hamad Mattar | - | Chairman of the House |
| (3) Hon. Haroun Ali Suleiman | - | Minister of State, President's
Office, Constitution, Justice, Public
Service and Good Governance |
| (4) Hon. (Dr). Khalid Mohammed | - | Minister |
| (5) Hon. Panya Ali Abdalla | - | Member |
| (6) Hon. Mohamed Said | - | Member |
| (7) Hon. Rashid Makame Shamsi | - | Member |
| (8) Hon. Miraji Khamis Mussa | - | Member |
| (9) Hon. Ali Salum Haji | - | Member |
| (10) Hon. Machano Othman Said | - | Member |
| (11) Mr. Mussa Kombo Bakari | - | Chief Legal Counsel and Head of
House Business |
| (12) Mr. Khamis Mohammed Salum | - | Head of Department of Sub Office |
| (13) Mr. Ramadhan Khamis Masoud | - | Standing Committees Coordinator |

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

I thank you.

(Applause)

VISITING DELEGATION FROM NAMIBIA
NATIONAL ASSEMBLY

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Staff from the Namibia National Assembly.

I request each officer to stand when called out so that they may be acknowledged in the Senate tradition. They are-

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|---------------------------|---|--------------------------------------|
| (1) Mr. John Shimaneni | - | Director, Information and Technology |
| (2) Ms. Leseina Lamek | - | Senior Administrative Officer |
| (3) Mr. Ian Van Wyk | - | Administrative Officer |
| (4) Mr. Vincent Sinalumbu | - | Administrative Officer |
| (5) Ms. Sophia Shivolo | - | Administrative Officer |
| (6) Ms. Paulina Dumeni | - | System Administrator |

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

I thank you.

(Applause)

Next Order!

Order, Senators! We are moving a bit fast. There is a request from Sen. Wetangula, which I have granted. He wants to make welcoming remarks to our colleagues and members of staff from Zanzibar and Namibia, who have visited us.

Proceed, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. It is in our tradition - and I apologise for not flagging my card - to welcome our visitors from the two friendly countries, Zanzibar is part of Tanzania in the East African Community. We are delighted to welcome all of you. Feel at home and when you go back home, remember to say hello to one Mr Kifijo, who served with me in the Commonwealth Parliamentary Union (CPU) for a very long time.

Our colleagues from Namibia are equally welcome. You know the role that Kenya played towards the independence of Namibia. Our distinguished General Opande went to command the United Nations (UN) force to assist our brother country in achieving independence. I have been to the country and know Katutura, Walvis Bay and many other places. I welcome you into this Chamber. Feel at home and at break time, we

should interact. All these good Senators would want to have a relationship with many of you.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you very much, Sen. Wetangula. For our colleagues who are visiting the Senate, Sen. Moses Wetangula has had the privilege of being a Minister for Foreign Affairs in our country, and that is why he knows many villages, towns and cities, not only in East Africa and Africa, but actually the world.

Senator for Narok, did you want to say something or transact some other business? You have one or two minutes.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. Likewise, I would like to extend a warm welcome to our friends from Namibia and Zanzibar. A couple of years ago, I went on holiday in Zanzibar and had a great time. It was good and I enjoyed it. I want to encourage all of you to make sure that you visit the Maasai Mara Game Reserve, which is a different kind of experience. I know that you are used to the ocean in Zanzibar, but here you will go and see the wild animals. I know you have them in Serengeti, but it is very different. Maasai Mara is where we have the best.

To our friends from Namibia, we know that you have beautiful game parks there, but even if you go up to the sky you will never beat Maasai Mara. I want to welcome you and when you are here, do not be a stranger. Come and if you cannot afford, we will make sure that we accommodate you.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you very much. I think those views represent the entire House. Our guests from Zanzibar and Namibia, once more, you are most welcome. The Speaker has been to your countries and is familiar with a few places, although he has not been a Minister for Foreign Affairs like Sen. Wetangula.

Very well, next Order.

PETITIONS

NON-PAYMENT OF PENDING BILLS BY THE COUNTY GOVERNMENT OF KITUI

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to present a Petition before this House, on behalf of business people from Kitui County. This is a Petition to investigate non-payment of pending bills by the County Government of Kitui incurred during the Financial Year 2015/2016.

I beg to read the Petition.

“We, the undersigned, being citizens of Kenya and residents of Kitui County in the Republic of Kenya draw the attention of the Senate to the following:-

(1) That; we are contractors and business people operating within Kitui County and other regions.

(2) That; during the Financial Year 2015/2016, we were contracted by the County Government of Kitui through the Ministry of Lands, Infrastructure and Urban

Development to carry out various works, comprising drips and road work projects in the county.

(3) That; although we discharged our contractual obligations and were issued with completion certificates thereon, we are yet to receive payments for the work done, which amounts to approximately Kshs622 million, excluding accumulated interest.

(4) That; the non-payment of monies has grossly affected our businesses and subjected us to costly repayments of bank loans that we took to execute the county projects. Our assets are now at risk of auction by the said banks. Additionally, this has affected the credit worthiness of our businesses, which are at risk of being blacklisted by the Credit Reference Bureau (CRB).

(5) That; the accumulation of the county government's debts, which they are unable or unwilling to settle, is a big threat to and undermines the very tenets of devolution, which was meant to bring services closer to the people and spur economic development across the country.

(6) That; we have made efforts to have these matters addressed by the relevant authorities, all of which have failed to give a satisfactory response.

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

Wherefore, your humble Petitioners pray that the Senate urgently investigates this matter and initiates appropriate action thereon to ensure that the Petitioners herein are paid their dues and that measures are put in place to comprehensively address the recurrent issue of pending bills by county governments, which risks undermining the gains of devolution.”

This Petition is dated 5th November, 2018, and signed by 26 business people who are affected by the non-payment.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Hon. Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

The interest is extremely high, which is good for the House. We will try as much as possible to accommodate as many of us as possible. When you get the Floor, you have two minutes. Summarise your thoughts; the country and the world will hear you.

Sen. Kihika, your two minutes are running.

Sen. Kihika: Thank you, Mr. Deputy Speaker, Sir. I rise to congratulate Sen. Wambua for bringing this timely Petition. I also wish to bring to the attention of whichever Committee the Petition will go to that this issue is not specific to Kitui County only. It is an issue that we have seen in many counties across the country. Even in my county of Nakuru, I have had many contractors come forward and say that they are being auctioned; their houses, cars, assets and everything are being taken away.

Mr. Deputy Speaker, Sir, when we started the system of devolution, we were extremely excited that it would address issues in *mashinani*. However, the non-payment of bills is leading to the same people that we are trying to empower in the grassroots being auctioned and run out of business. It is a travesty that is happening across the country.

I would urge whichever Committee the Petition will go to that they should come up with real-time solutions for the counties across the country. The governors need to be paying bills. They cannot be getting money from the National Treasury and using it on, for example, investor conferences, when they have unpaid bills in the county. They should not do things that are not a priority, when our people are being run out of business because they have no money. They have done the work and provided the services, but the county has not paid. It is unacceptable.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Keep it short. Could we hear from Sen. (Dr.) Kabaka of Machakos County?

Sen. (Dr.) Kabaka: Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Wambua, the Senator of Kitui, for bringing this Petition to this honourable House. I would also like to join the other Senators from the other counties who are suffering a similar problem. Today, we were in the Committee on Finance and Budget and one of the issues that we dwelt heavily on was pending bills. It is within the public domain that the Cabinet Secretary for National Treasury and Planning, Hon. Rotich, has given directives that the county governments should clear the pending bills.

Machakos County is notorious for non-payment of these bills. In fact, businessmen have died because of shock. As we stand today, the records show that Machakos County has not paid Kshs937 million. I have seen that other counties, and I am not speaking on behalf of the Senator of Kisumu County for he will speak for himself, have not paid close to Kshs2 billion. You then wonder what the problem is. In the situation of Kitui, you will realise that---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your two minutes are almost over, Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Are they almost over, Mr. Deputy Speaker, Sir?

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, you have twenty seconds.

Sen. (Dr.) Kabaka: Mr. Deputy Speaker, Sir, the counties should observe their legal obligations. This is a legal matter and I do not know the reason as to why the traders of Kitui County have not gone to court. There is time value for money. This money attracts interest and penalties from the banks where they borrowed the money.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula, are you on a point of order?

(Sen. Wetangula spoke off record)

You are in the wrong queue. You are headed to the wrong direction. Could we hear from Sen. Dullo? Do organise your thoughts. You strictly have two minutes.

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Wambua. This House needs to take Petition issues very seriously because it is a method or way established by Parliament for the members of the public to communicate and appeal to the House.

Secondly---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Are you suggesting that this House does not take Petitions seriously?

Sen. Dullo: Mr. Deputy Speaker, Sir, I have a reason for saying that and I will not go over it.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator of Isiolo County. Sen. Dullo, you cannot say that this House does not take any of its Business lightly. You are advised not to travel that route. You could say that a particular Committee has delayed with a certain Petition and even when you say so, you must not impute improper motives on any Member of this House.

So ordered! Proceed now. I will add you an extra minute.

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. For a good reason known to me, I will avoid that route though it is a matter that we need to revisit.

Pending bills is a matter that is affecting the whole country and this Senate needs to take it seriously. The last time we revisited the issue of pending bills, the total amount of the whole country's pending bills was over Kshs900 billion. I, therefore, think that this is serious and the House of the Senate needs to do something about it. In Isiolo County, after elections, the pending bills amounted to over Kshs200 million. The last time the Governor of Isiolo County appeared before the Committee on County Public Accounts and Investment, he said that the pending bills were Kshs97 million and that figure has changed over the months. It looks like we do not have correct figures in terms of pending bills in the counties.

Members of the public have delivered services to those counties and I do not see the reason as to why most of them are reduced to poverty today to a point where they cannot get credit from the banks. This is a serious matter and the Senate needs to deliberate on it and get a way forward.

The issue of pending bills is brought about by the fact that counties get into supplementary budget without looking at the initial budget for they are ---

(Sen. Dullo's microphone went off)

Sen. (Prof.) Ekal: Thank you, Mr. Deputy Speaker, Sir. Allow me to congratulate Sen. Wambua for bringing this topic to the Floor of this House. As my fellow Senators have said, this is a countrywide problem. It is happening in all counties. As they have emphasised, it is not good to make people work, do projects, complete them then not pay them. People should be paid for their services. It behoves the Senate to get serious on this matter and make sure that counties pay their bills on time.

(Sen. Cherargei consulted the Deputy Speaker)

The Deputy Speaker (Sen. (Prof.) Kindiki): I would have called Sen. Cherargei but he is right here with me. Therefore, I will give the Floor to Sen. Seneta.

Sen. Seneta: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate Sen. Wambua for bringing this important Petition to the Floor of this House. I want this House to look into two things.

First, we need a framework on payments for services that have been rendered to the counties. We need to have a framework that sets timelines for payments to people who have been given tenders or contracts to deliver services or carry out works for the county governments. That will save Kenyans from this suffering. It is a nationwide problem because all counties have this issue.

It will also be good for us to encourage our county assemblies to come up with Bills for payments of services that are rendered to the county governments for people not to work yet they are not paid for years.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Could we hear from Sen. Wetangula?

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. I support Sen. Wambua's Petition. Pending bills are now the nightmare of every county. It is a terrible drawback on devolution.

I want to correct my colleague from Isiolo County. The total amount of pending bills by county governments is a staggering Kshs110 billion and not Kshs900 billion. These are small traders, young women, youths, disabled persons and persons who borrow money from merry-go-rounds, micro-finance institutions (MFIs) and SACCOs in the villages where they are charged shylock interests. At the end of the day, each one of them is under the auction hammer.

Mr. Deputy Speaker, Sir, the case of Kitui County should bring to the attention of the Chairman of the Committee on Finance and Budget - who does not seem to be here - to go beyond this Petition and call for a meeting between the County Executive Committees (CECs) on Finance, the Minister for Finance, the Controller of Budget and all those involved in the chain of disbursement of funds to counties.

When you go to counties, you are routinely told that they only disburse funds for recurrent expenditure. However, the Public Finance Management (PFM) Act says very clearly, and you, Chair, as a professor of law, know that you cannot procure for goods and services without an attendant budget and money in your kitty. Those who are procuring services and goods without having budgets are breaking the law. This Senate has to bring counties to order to protect innocent and weak business people who are trying to grow up and are being truncated by non-payment of bills.

I want to urge the Governor for Kitui County, with whom we have worked in this Parliament and Cabinet, to listen to this Petition and pay her constituents promptly. I urge all other governors to follow suit.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Wetangula. You have spoken on behalf of almost every county. I will allow two more comments. The first will be from Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir. I support this Petition. I also congratulate the Senator for Kitui for bringing it to the House. Whatever input and economic development that is supposed to come from any county depends on the output from her people. The people of Kitui County are so indebted to an extent of not being

able to service their loans. It is a pity that their children go without food, healthcare and other basic needs. They are really suffering.

This puts to question the effectiveness of how counties are run in this country. Are our governors really managers or leaders? If they are, they should have known the impact their action of not settling these pending bills has on the economy of the country as a whole. Will the people of Kitui County be able to generate enough revenue to run their own county in terms of sustainability for the future?

I urge the Committee that will deal with this matter, not only to do thorough analysis of debts owed by Kitui County alone, but do so for other counties in the country because our people are suffering. We are told that Nairobi County owes suppliers of goods and service providers over Kshs60 billion as at the end of last financial year. So, if the people of Nairobi County are not able to pay their bills, you can imagine what is happening to other counties, especially Kitui. If they consume services---

(Sen. Farhiya's microphone went off)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Nyamunga, you may proceed.

Sen. Nyamunga: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity just to add my voice to what my colleagues have already alluded to. I thank Sen. Wambua for bringing this Petition to the House because it was long overdue.

When we passed the 2010 Constitution, it was very clear that services and running of governments was being taken closer to the people. However, from what we are seeing, it is the contrary and the opposite. Many young people have lost the little money that they had for business. Even the 30 per cent of all the contracts at the county level, which should have been given to the women and youth, has really not brought any assistance to our people.

It does not matter whether you are a sitting or former governor, but so long as these pending bills are legitimate, they should be paid in good time. If we look at Kisumu County alone, for example, we have a pending bill of over Kshs2 billion. That is a lot of money that the county government is keeping on behalf of the people of Kisumu who really need it to continue with their daily activities.

With those few remarks, I support this Petition.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will exercise a little bit of discretion, Sen. (Eng.) Maina, you have two minutes.

Sen. (Eng.) Maina: Thank you, Mr. Deputy Speaker, Sir. The issue of Kitui is not peculiar. Where did these pending bills originate from? Let us face the fact. For example, in the case of Kitui, we are told they accrued as a result of construction of roads. Why are we not being told that they were as a result of procuring drugs and other simple medical equipment for dispensaries in Kitui County?

The answer is clear. This is normally a design for people to gain through the process. If you analyse the dates when some of these things are alleged to have happened, you see that they either happened just when the county governor was about to exit. During that time, a lot of bills are incurred. Therefore, the intention is normally not

service, but how one would gain from the process. A fundamental question to ask here is: Was any work done?

The people who are suffering most are the youth and other vulnerable groups. When the youth accumulate bills and they do not have money to pay for the ‘services,’ so that they are paid their money, then their claims ends up as pending bills. It is illegal for anybody to procure goods or services when he knows he has no money.

This is a serious matter. We should go deeper into it. For example, there is need for us to even appoint external auditors to audit some of these bills. It is just not a question of paying. However, we should make it a crime for a county government to deny to give local people jobs.

I am aware of a case where somebody committed suicide because he could not make his ends meet after he rendered his services to the county and he was not paid. He was living a very humble life, but he was approached by officers from the county who promised him big business deals in the county. He pumped in a lot of money. He later mortgaged himself and ended up being auctioned. It was very sad. This is a serious matter. It is not what we envisaged when we ushered in devolution into this country. The suffering of our people must be brought to an end.

I plead with the Committee to recommend to this House that we engage external auditors so that they can do an analysis of all pending bills in this country.

The Deputy Speaker (Sen. (Prof.) Kindiki): Conclude, Senator.

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

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

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Petition by my brother, Sen. Wambua on pending bills. The biggest question we must ask ourselves is: why is it that many counties still owe their suppliers a lot of money yet we have laws? For example, the Public Procurement and Asset Disposal Act 2015 states very clearly under Section 140 that if any supplier is not paid their money on time; it will accrue a lot of interest.

When I sat down with the Cabinet Secretary of the national Treasury, Hon. Rotich - I remember engaging him on this in Narok - he indicated that there is no excuse as to why counties should have pending bills because all their money had been released. If you look at Kitui County, for the last financial year, they received about Kshs9.3 billion and a majority of that money went into recurrent expenditure. When you look at the Controller of Budget report, the amount spent on development expenditure indicates 44 per cent. However, when you go to the summary of the projects which are supposed to have cost a lot of money, only three out of the ten projects were concluded at 100 per cent.

There is a disconnect and it has been clearly indicated in the Controller of Budget report who has cited serious issues with the Integrated Finance Management Information System (IFMIS) and procurement. Therefore, as we try to balance this war, where we are listening to the excuses given by the Cabinet Secretary of the national Treasury, Hon. Rotich, versus the excuses the county governments are giving for not receiving their money, we have to figure out who is telling the truth and who is not.

I support my colleagues who said that we should further investigate this matter. I am sure the Committee on Finance and Budget and also the Committee on County Public

Accounts and Investment that I belong to will deal with it. I am aware that we interrogate these issues on a day to day basis. If in Kitui County, about seven out of ten projects are not completed - some of them are at 15 per cent - I dare say, when you follow the procurement process of these entities, they are not even on IFMIS. We have to approach this issue wholesomely to ensure that those companies that have supplied services to---

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

Sen. Halake: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I will start by congratulating Sen. Wambua. As it has been said, the issue of debts and debt management starts from the national Government itself, where our debts are becoming unsustainable and the counties are doing the same things.

What I have noted is that, every county has a County Medium Term Debt Management Strategy. I do not know what those strategies are for, or are they are just pieces of paper that are written to fulfill certain requirements. In the past, we have been told - for instance, in the case of other counties like Isiolo and Nairobi counties - that they were verifying the debts. This is understandable. If you come into office and find some debts have been incurred and you do not know how they were done---. We were told that these were being verified. I do not know if that is the case for Kitui County.

The cure for debt is to pay. Therefore, these counties must pay this debt. We do not care how they verify, but the verification must also happen within a reasonable time. It cannot be that certain debts are predating 2013 and even going to the old town councils. They include statutory obligations that are not being paid by counties and loans granted by financial institutions, most importantly, the supplier payments, which are critical.

Mr. Deputy Speaker, Sir, sometimes you go to a county office and you find that the internet has been suspended. You find that all the services including electricity has been cut. Even garbage is rotting there. It is becoming a real issue. When they are not paying the suppliers, it becomes an issue of services not being provided to the residents of the counties even as we speak now because of this issue.

If our mandate under Article 96 of the Constitution is to protect counties and their governments, then this is one area that this House must take very seriously in order to ensure that the sustainability of the counties---

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

(Sen. Cherargei walked to the Dispatch Box)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cherargei, you should have been through by now.

Sen. Cherargei: Mr. Deputy Speaker, Sir, thank you. I would like to thank Sen. Wambua. I know the issue of pending bills is one of the biggest challenges in devolution. However, as the money has already been spent and we have pending work and bills, as a House, we should look further into these issues.

As we have heard, most colleagues and businessmen---. It is now shameful and embarrassing to tell young people to apply for contracts in county governments because

they are fully aware that they are unable to pay suppliers. This is a big problem, because most banks and financial institutions are auctioning some of the properties and collateral that the business people provided before they took on the jobs within the county governments.

Mr. Deputy Speaker, Sir, it is important that, as we look into this matter, we need a special forensic audit on what happens so that if there is any responsibility - either personal in terms of the heads of county departments such as heads of procurement and governors - they must be held accountable. This is one of the reasons that has entrenched and perpetuated corruption in our county governments.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well spoken, Sen. Cherargei.

Sen. (Eng.) Hargura: Mr. Deputy Speaker, Sir, thank you. I would like to also thank Sen. Wambua for bringing up this issue. I am, however, surprised, because I worked in the Civil Service a few years back. Before, we used to have budgets and at every end of the financial year, whatever money you had left was sent back to the national Treasury. Therefore, how counties are generating pending bills is a surprise because none of their money goes back.

Once you have a budget, you should have a procurement plan that you follow. Whatever you procure, you must have it in your budget. Therefore, why counties are having pending bills of up to Kshs120 billion is just criminal since it does not follow procurement laws and action needs to be taken against the governors. It is that simple! It is not that they have pending bills anywhere; it is somebody who is not paying for what they have procured. They procure a contract then they do supplementary and divert the funds to another project and they procure again. Kenyans are losing their money in this kind of practices and it needs to stop.

The Deputy Speaker (Sen. (Prof.) Kindiki): Finally, the Chairperson on the Committee on Finance and Budget, Sen. (Eng.) Mahamud, what do you have to say? You have three minutes.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, let me thank the Senator for Kitui County for bringing this Petition. Indeed, pending bills is a big issue in this country. This morning, we were looking at the report of the Controller of Budget, and at the end of June 2017, Kshs108 billion is supposed to be outstanding pending bills.

There is no reason at all for this amount of pending bills because counties get their money and it is only that they do not plan properly. In fact, there is a lot of misapplication. What we have realized is that when counties do their budget, it looks okay but mid-way, a lot of supplementary budgets are done and the money is misapplied.

We have seen this and we will take it upon ourselves. In fact, we need the help of the whole House, because as we go ahead, we want to engage the Controller of Budget. We wonder how fast are bills released to counties---

The Deputy Speaker (Sen. (Prof.) Kindiki): How do you want the whole House to help you?

Sen. (Eng.) Mahamud: No, by the time we bring our report, we will---

The Deputy Speaker (Sen. (Prof.) Kindiki): Obviously, I am sure if it is a good report the House will be in support.

Sen. (Eng.) Mahamud: Correct.

Mr. Deputy Speaker, Sir, this is a very important thing. I said two days ago in a forum where I was invited, that counties must pay their bills. In fact, they were asking if the Government can help bail them out. I told them that there is no money coming from anywhere else; they must pay. The ruling is that, it must be a first charge to the subsequent budget.

In fact, some counties are approaching a situation where their pending bills are almost similar to their equitable share amount and that is dangerous. We cannot accept that and people must pay---

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

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

Sen. Seneta: Mr. Deputy Speaker, Sir, I want to seek clarification from the Chairperson of the Committee on Finance and Budget. I have heard him say that he might need the assistance of this House in bringing a report. Already, we have so many victims and people who have not been paid their debts. Waiting for a report to be brought in next year, February---

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

Sen. Seneta: Mr. Deputy Speaker, Sir, I am only seeking your direction whether the Chairperson can seek for urgent measures in this House. We seek for your direction so that we save these Kenyans.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will pronounce myself on that issue. Proceed, Chairperson; you have one minute to conclude.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, this is a very serious matter as I have said and only this morning, we were discussing it. We will take it seriously and get to the bottom of it and come up with a report. If need be, we will go to Kitui County. It is not only Kitui County, it is a whole mess and, in fact, the Schedule---

The Deputy Speaker (Sen. (Prof.) Kindiki): You have one minute to conclude.

Order, Senators. I want to make a number of clarifications

First, I gave some directives yesterday concerning the petition from Isiolo County, which the Senator of Isiolo – who was away last week or earlier this week – had requested Sen. Cherargei to raise such an issue about that petition. I did say that the Committee is supposed to visit Isiolo in consultation with Sen. Dullo; and meet whoever they wanted to meet and talk to; and file a report on 11th February, 2019. That is what I said yesterday.

However, I want to clarify that the date for filing the report is 13th February, 2019, and not 11th February, 2019, because we are resuming on 12th February, 2019. Normally on that day, we do not have any Business because that is the day we constitute the Senate Business Committee (SBC), which is a pre-requisite for scheduling of Business. Therefore, technically the first day of normal ordinary Business, other than the procedural business of 12th February, is on 13th February, 2019. Therefore, that clarification should be provided for the HANSARD and also for the Committee.

Generally, I also want to clarify that I am a bit concerned; there is a crippling tendency in our House where committees want to sub-contract their roles to the whole House. For every little matter, you put two or three committees together, or you bring the

whole House on it. There are very many reasons the House works through committees, which include; efficiency, expertise *et cetera*. We should, therefore, desist from transferring our responsibilities as committees to the whole House because it will defeat the purpose why we have committees.

I do acknowledge, especially on the issue of Isiolo, among others, that while there is hue and cry; where a Senator with a Statement or a Petition is always seeking either the enjoining of many committees or the whole House; I am afraid to say that in certain committees, there seems to be some--- Let me put it this way; there is need to improve our efficiency in committees. Therefore, the Senator for Mandera and the Chairman of the Standing Committee on Finance and Budget; this House will support you if you come with a good report. However, we will not support your Committee to do its work.

I, therefore, urge you, very respectfully, to let committees to do their work. As I said yesterday, I am actually happy with the way we are doing our things here of late; except that we can do better. Before a matter is even brought here, the relevant committee should be seized of that matter. A good example is the issue of this Petition; everywhere in this country from Vanga to Lokitaung; from Migori to Mandera, the hue and cry of small people who are doing business with counties is devastating. I, therefore, ask myself sometimes; do we not have a committee responsible for this? Must you wait for people to commit suicide and for petitions to come here?

In my understanding, the oversight we do is both pre-mortem and post-mortem oversight; that is preventive and curative oversight. Meaning that you do not wait until things have happened and you are busy saying; “jail this one” or “fine this one.” People have committed suicide; others have been wound up! We can actually prevent that. Even on the issue of the looting that is happening in counties, we can act in advance, because it is oversight. You do not have to wait to come here to discuss the reports of the Auditor-General dated six years ago, and you pretend that you are doing oversight. We must up our game. I am actually very happy so far.

If we do our work in committees, our debates will be more lively, punchy and more qualitative; instead of coming here and we spent three hours discussing small things, which would have been handled by the committees. We are supposed to leave the plenary with the big things that captivate the imagination of the nation. This is a serious House that anything we spent 10 or 15 minutes on in the plenary should be so massive that it must capture the imagination of the nation. I needed to make that clarification about committees; that I respect the input you are putting there; but we can do better.

On this Petition, when we heard Sen. Wambua and the other Senators who spoke as if they wanted to say; “Now, form another joint committee on this one; or that one.” No, no; we will be inefficient if we proceed that way. I hope you will agree with me.

(An hon. Senator stood up in his place)

Order! I have not finished on this matter. I will give you an opportunity if there is something urgent to intervene, but let us not open debate again on the matter.

The only thing I wanted to clarify further is on a point of order that was raised by the Senator for Makueni yesterday with the support of the Senator for Siaya. The House

requested the Speaker to give a detailed ruling on two things; one on what constitutes matters concerning counties; and two, on the application of Standing Order 1. For those Senators who may have an interest in making observations along that ruling; I will issue that ruling at 4.00 p.m. on the request of Sen. Mutula Kilonzo Jnr. He is held up somewhere on House related Business and, therefore, I accepted his request that I give the ruling at 4.00 p.m. However, I will give it, whether he is present or not. I kindly request you to indulge me until that time.

Regarding this petition, I want to make the following remarks very briefly. As we all know, devolution is the crown jewel upon which the 2010 Constitution is built. Devolution is the single most important innovation of the 2010 Constitution. In my view, were it not for the dispersal of power and resources to the grassroots through the Chapter on Devolution, this country would be in a total mess. Consequently, the peace and harmony that you are seeing now would not be there. This is because where we had reached before we brought in the new Constitution; the anger, desperation and the division in this country because of centralization of power and resources was so grave that we were almost losing our country.

The grievances are still there today, but at least there is some level of comfort in every part of this country at the local level. There is at least a bit of resources and dispersal of power and responsibilities; and public participation that makes people feel part of the big project, which is Kenya.

This House has been tasked with the momentous responsibility of making sure that the most important subjects in the governance of our country; and the constitutional application of our country – which is devolution – survives. When some people discuss the role of the Senate, I keep on wondering and asking myself whether there is a greater responsibility in this country today - talking of structures of governance - than a role being played by an institution to make sure that devolution survives. In my view, this role is not only sacred, but holds the key to the future stability, prosperity and unity of our country.

(Applause)

I also want to make the following remarks. The Senate is a House of few Members compared to the National Assembly, with a huge responsibility of oversight, representation, legislation and everything to do with counties, *et cetera*. The architecture of our Constitution shares the responsibility of the Senate with another very critical institution called the county assemblies. In fact, it is my belief that the drafters of the Constitution anticipated that the primary routine oversight of counties will be done by county assemblies. The Senate provides the secondary back-up protective role to make sure that, that oversight is respected and implemented. Instead, every small thing is bypassing county assemblies, by default or design, and coming to the Senate. If we continue this way, we will bog down this House.

I hope the time will come, perhaps in a *Kamukuji*, when we will discuss this. But, maybe the Speaker of the Senate needs to send a message to the 47 county assemblies of Kenya requesting them to do something. The Standing Orders allow the Speaker of the

Senate to send, on behalf of the Senate, messages not just to the National Assembly, but also to the county assemblies.

I am calling upon the county assemblies to implement the following provision, not just about this Petition, but on all many other issues. I want to read Article 185 (3) of the Constitution, and I wish county assemblies could read this. It says:

“A county assembly, while respecting the principle of separation of powers, may exercise oversight over the county executive committee and any other county executive organs.”

That is the primary institution of oversight.

Hon. Members, I do not want to repeat what you have said. The issue of unpaid contractors is just suffocating, and if we are not careful, we may lose devolution. This is because what it was trying to achieve is being defeated by corrupt people in the counties, who are stealing money left, right and centre. Whenever they are asked, they flag all manner of things, including how big and untouchable they are. This phenomenon is in every county. In fact, if I had given an opportunity to every Senator, they would say the same thing.

For that reason, I will be directing the Committee on Finance and Budget, on its own without the help of anybody, before we suspend the work of Committees for the Christmas recess, to visit Kitui County in the company of the Senator for Kitui. They should spend some time in Kitui; not just a hit and run visit. It must be a proper visit to meet all the stakeholders. The Committee should listen to the executive, the county assembly and perhaps, representatives of contractors, and generate a response to the Senator for Kitui before 17th December, 2018.

(Applause)

The Standing Orders say that you have to respond to the Petitioner within 60 days. You do not have to wait for the 60 days to be over; you can do it even in the following day. It also says that you respond to the petitioner and table a report in the Senate. The tabling of the report can be done later, but share it with the Senator for Kitui County, so that at least he can get some interim relief that something is being done by your Committee on behalf of the Senate. The tabling of your report must be done without failure on 13th February, 2019.

Finally, before you table the report in the Senate, which you will have shared with the Senator for Kitui County, so that we do not have a repetitive process, between when the work of Committees is reopened on 31st January, 2019 and 13th February, 2019, I direct that your Committee organises a meeting as suggested by some of the Senators who spoke - I think it was Sen. Wetangula. You will meet the finance executives from counties across the country, so that they tell you why they are not paying poor people who have taken loans from shylocks, SACCOs, *chamas* and all manner of organisations.

(Applause)

Two, that meeting can be roundtable or done separately. You also need to hear from the National Treasury, which is increasingly violating the law. The Division of Revenue Act says that when there is a shortfall in the collection of revenue, the level that should bear that shortfall is not county governments, but the National Government. So, we cannot delay development expenditure to counties in the pretext that we collected less tax.

Therefore, these are some of the things the Committee should start thinking about and pre-emptively try to deal with them before they come here. That way, you will have helped this House to assert its authority and earn the respect that it deserves from the people of our country.

Hon. Senators, pursuant to Standing Order 232(1), the Petition stands Committed to the Standing Committee on Finance and Budget. In terms of Standing Order 232(2), the Committee is required in not more than 60 days from the time of reading the prayer to respond to the Petitioner by way of report addressed to the Petitioner and laid on the Table of this Senate.

That paragraph should be read *mutatis mutandis*, with necessary amendments and modifications because of what I have said. In future, I want to encourage Committees not to wait for the 60 days. Some of these things have been done in a week, and that is how Kenyans will start seeing an active House.

Thank you. God bless.

(Applause)

I will only allow Sen. Mwangi who seems to have had a burning point of order for a long time.

Sen. Mwangi, what is it?

Sen. Mwangi: Thank you, Mr. Speaker, Sir. I have listened to you and must say that I stand guided, like many other people. I actually think you must have been a very good lecturer at one time.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): My students will be able to judge me, but thank you for the kind remarks.

Sen. Mwangi: Mr. Deputy Speaker, Sir, you have talked deeply about devolution and it appears to be very dear to your heart. However, I kept wondering whether it is this House that may not be effectively conducting its work or the powers that should have been vested in this House were diluted at some stage of making the Constitution. This House was supposed to be the 'Upper' House. It should be the House that carries the precedence of overseeing finance and other important matters; both at the national and at the county level. That is something that your office could pick up at the material time. This could be done, probably, during the referendum, if it will ever happen.

Mr. Deputy Speaker Sir, you have gone very deeply saying how effective committees should be. How well is the Senate secretariat equipped to support

committees? Committees would be more effective and do much better work if there was a well-equipped secretariat, capable of doing research, providing the necessary information and evidence. Currently, Committees work with skeleton staff. Hon. Members do research for themselves. I wish we could have research officers attached to all Committees. We need the staff that can support and guide us properly.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Maina, make it short.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, you talked very fondly about devolution. From my point of view, devolution could be more effective in this country if services were felt by *wanjiku* at the grassroots level. Instead of services being rendered, we are witnessing some kind of gluttony displayed by a few county officials who believe that they should not be questioned. Until that is sorted out, we will continue to witness more gluttony and less delivery of the services to the people of this great nation. It should be more services to the people, with less gluttony. However, now it has become more gluttony---

The Deputy Speaker (Sen. (Prof.) Kindiki): With less greed.

Sen. (Eng.) Maina: It is greed. I was only avoiding the word “greed” because greed is condemned in the Bible. But that is the truth---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! It is not just in the Bible, but it is also condemned in the Senate.

Sen. Maina: Exactly, Mr. Deputy Speaker, Sir.

I wish I could see every dispensary in this country with medicines and other simple medical equipment. I would like to see every school well equipped with some---

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Sen. Maina. Well said.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): There is nothing out of order. Are you sure there something out of order, Senator for Nairobi County? What is it?

Sen. Sakaja: Mr. Deputy Speaker Sir, when the Senator for Nyeri County was contributing and he spoke about gluttony, you corrected him to talk about greed. Is there an insinuation that there is an acceptable ratio of greed to service delivery? He said we are seeing more gluttony and less service, while it should be more service and less gluttony.” When you corrected him, you did not say that there should be no greed at all.

The Deputy Speaker (Sen. (Prof.) Kindiki): There should be neither greed nor what he referred to as gluttony. I am using his words.

Sen. Sakaja: Exactly. That should be on record because what is wrong was that, your only issue with him was the ratio and the word he used.

The Deputy Speaker (Sen. (Prof.) Kindiki): He meant greed, but he talked about gluttony.

Sen. Wetangula: One is a pronoun and the other is an adjective.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely. We are saying whatever it is, whether the pronoun or an adjective, it should not be there.

Sen. Sakaja: There should be none at all. So, it is not less greed, but zero greed.

The Deputy Speaker (Sen. (Prof.) Kindiki): None. Zero greed. Not little or a bit. It should be zero greed.

What is it, Sen. Maina?

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I do not think there was any need for that point of order. Once a point is understood, let us not belabour it. I think you understood me. When you understand me, do not let that other lesser person interpret---

(Laughter)

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

Allow me to say the following. There has been a bit of lamentations about the powers of the Senate. Article 125 (1) of the Constitution states and I quote:-

“Either House of parliament” and that includes the Senate “and any of its committees” including the Committee, you chair, Sen. Maina - you are the one who said how powers were eroded I do not know where - has the power to summon any person” - any person means any person any is any and there are no exemptions - not to write or telephone, but to appear “before it”. It does not mean to appear elsewhere before the Committee or the House of Parliament concerned “for the purpose of giving evidence and providing information.”

For those hon. Members who were here in the last Parliament, you saw how that can be taken. The law even allows criminal consequences for violation of Article 125 of the Constitution. There is one governor who survived narrowly because of a technicality. The law allows any defiant person to be subjected to the organs of State, produced in court and charged with a crime and jailed. He was actually arraigned in court and there were some injunctions this way or that way.

Hon. Members, the point is that we cannot spend time with people who feel that this House cannot do this or that. There are no two laws in this country. There is only one Constitution. Let us use it and let us do what the law has allowed us to do.

COMMUNICATION FROM THE CHAIR

LAPSING OF STATEMENTS FROM COMMITTEES

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, you may recall that at the end of the last session, statements that were pending before committees lapsed. Indeed, that was the practice during the last Parliament.

Hon. Senators, as you are also aware, on the 9th August 2018, this House amended its Standing Orders relating to the manner of processing statements as provided for in the Standing Orders No. 46 to 53. In a nutshell, the Committee which a statement has been sought from, may invite the Senator who requested the statement, relevant Cabinet Secretary or any other person it may consider necessary during deliberations on the statement, and may prepare and table a report on the matter. Once the report is tabled, the Speaker may allow comments or observations in relation to the matter. This calls for a change in how statements are handled at the end of the session.

Hon. Senators, you may also be aware that petitions, although they have timelines within which they should be reported back to the House, they do not lapse at the end of the session. This is to allow committees to finalize any petitions that are before them.

Hon. Senators, Statements now form part of the core business of the committees. Borrowing from the practice of dealing with petitions, at the end of the session, and given the new provisions in the standing orders on statements, I hereby wish to guide that, statements that are referred to Committees shall not lapse at the end of every session as has been the practice. Referral of a statement to a committee, is a delegation of duty, which must be done to the logical conclusion and in a timely manner. As I have said, you do not have to wait for 60 days, so that the House does not act in vain.

Thank you.

Very well. Next Order!

PAPERS LAID

REPORT OF THE 139TH ASSEMBLY OF THE IPU AND RELATED MEETINGS

Sen. Kihika: Mr. Deputy Speaker Sir, I beg to lay the following Report on the table of the Senate, today, Thursday, 6th December, 2018:

Report of the 139th Assembly of the Interparliamentary Union (IPU) and related meetings held in Geneva Switzerland from 14th to 8th October, 2018.

(Sen. Kihika laid the document on the Table)

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

REPORT OF THE DELEGATION TO MAURITIUS FOR THE 2ND ANNUAL CONFERENCE OF ICPS

Sen. Nyamunga: Mr. Deputy Speaker Sir, I beg to lay the following report on the table of the Senate today, Thursday 6th December, 2018:

Report of the delegation to Mauritius to attend the Second Annual Conference of the Institute of Certified Public Secretaries (ICPS)

(Sen. Nyamunga laid the document on the Table)

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

REPORT OF THE COMMONWEALTH WOMEN PARLIAMENTARIANS SENSITIZATION WORKSHOP

Sen. Farhiya: Mr. Deputy Speaker Sir, I beg to lay the following report on the table of the Senate today, Thursday 6th December, 2018-

The Report of the Commonwealth Women Parliamentarians East Africa Sub-region sensitization workshop.

(Sen. Farhiya laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Next Order! Sen. Kihika.

NOTICES OF MOTIONS

FACILITATION OF BOARDING SCHOOL EDUCATION FOR CHILDREN WITH DISABILITIES

Sen. Kihika: Mr. Deputy Speaker, Sir, I beg to give the following Notice of Motion-

AWARE THAT, learners with special needs and disabilities in Kenya experience many challenges in accessing affordable, and inclusive education;

COGNIZANT THAT, Article 54(1) (b) of the Constitution stipulates that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

MINDFUL THAT, Article 24 (2) of the Convention on the Rights of Persons with Disabilities (CRPD) states that parties shall ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

UNDERSTANDING THAT, challenges to obtain an education are even bigger to children with disabilities as they struggle to not only to get a quality education, but to gain access to educational facilities as the cost of commuting to and from school is high, while the cost of boarding schools remains one of the greatest barriers;

NOTING THAT, the distance to and from school can be prohibitive, and the cost of using public transport is often beyond the means of many families, coupled with concerns over the safety of children with disabilities travelling alone to school;

CONCERNED THAT, poor physical environment of most schools combined with the teachers having little knowledge of disability issues, results in many disabled children not attending school at all, and those who are enrolled in school are far more likely than their nondisabled peers to drop out mainly due to the fact that disabled children do not receive the amount and type of attention that they need in order to be able to successfully complete their education;

NOW THEREFORE, the Senate resolves to compel the Ministry of Education in collaboration with the national Treasury and stakeholders to implement the National Special Needs Education Policy framework, and the Education Sector Policy for Learners and Trainees with Disabilities within the scope of the Convention on the Rights of Persons with Disabilities (CRPD) with an aim of:

(a) developing a blueprint to ensure adequate resource allocation and infrastructural planning, expansion and implementation for the provision of

free, quality, inclusive education and accommodation for children with disabilities in mainstream schools that can be replicated in all 47 counties;

(b) employing more technical disability-related staff such as sign language interpreters, physiotherapists and braille transcribers to provide support in and out of the classroom to learners with disabilities;

(c) developing curricula to train and empower teachers and school staff to cope with the specific needs for learners with disability who are boarders; and,

(d) creating community led peer to peer groups such as parent associations, father to father groups, and child to child clubs with the aim of breaking down misconceptions and myths surrounding disability issues, and

reversing the associated stigma.

Thank you.

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

NOTING OF REPORT ON COMMONWEALTH WOMEN
PARLIAMENTARIANS SENSITIZATION WORKSHOP

Sen. Farhiya: Mr. Deputy Speaker Sir, I beg to give notice of the following Motion-

THAT, this House notes the Report of the Commonwealth Women Parliamentarians (CWP) East African, Sub-region Sensitization Workshop.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Iman, please proceed!

(Sen. Iman walked towards the Dispatch Box)

Sen. Iman, you should walk with the speed of the Senate.

ESTABLISHMENT OF COMPREHENSIVE CARE UNITS FOR
VICTIMS OF SEXUAL AND GENDER BASED VIOLENCE

Sen. Iman: Sorry, Mr. Deputy Speaker, Sir. I beg to give notice of the following Motion-

THAT, AWARE THAT Article 29 of the Constitution guarantees every person the right to freedom and security, including the right not to be subjected to any form of violence or torture,

AND AWARE THAT, Article 43 guarantees every person economic and social rights, such as the right to the highest attainable standards of health, including the right to health care services, and reproductive health care;

FURTHER AWARE that, the country has enacted various legislative and policy measures to address sexual and gender-based violence, including the Sexual Offences Act, No. 3 of 2006, the Children's Act, No. 8 of 2001, the Protection Against Domestic Violence Act, No. 2 of 2015, and the National Health Sector Standard Operating Procedures on the Management of Sexual Violence in Kenya of 2014;

COGNIZANT THAT, in addition to various pieces of legislation Kenya has ratified and domesticated various conventions, treaties and other international instruments addressing sexual and gender-based violence;

CONCERNED THAT, despite the existence of an extensive legal framework, many of the victims of sexual and gender-based violence do not report these cases, leading to a low conviction rate and lack of co-ordination between health facilities and other agencies involved in mitigating sexual and gender-based violence;

DEEPLY CONCERNED THAT, there are no designated care units in public health facilities to deal with sexual and gender-based violence victims;

NOTING THAT, sexual and gender-based violence is mostly perpetrated against women of all ages and across the social strata impacting their self-respect, dignity, privacy and health, and resulting in unwanted pregnancies, unsafe abortion, sexually transmitted infections, genital injuries, infertility, pelvic inflammatory diseases and even loss of life;

FURTHER NOTING THAT with appropriate medical attention, the undesirable consequences of sexual and gender-based violence can be mitigated in addition to assisting in collection and preservation of evidence for purposes of prosecuting the perpetrators;

NOW THEREFORE, the Senate calls upon the Ministry of Health, in collaboration with the county governments, to:

1. Establish and adequately equip sexual and gender-based violence care units in all public health facilities;

2. Provide treatment and counseling services to victims of sexual and gender-based violence free of charge in all public health facilities;

3. Put in place co-ordination mechanisms between health facilities and other agencies involved in addressing sexual and gender-based violence.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Iman Falhada. However, your Notice of Motion is too long. The rule in this business is (a), (b) and (c), that is accurate, brief and clear. You almost took the time it will take to present a report. Let us be quick. We are not doing very well in terms of time.

Proceed, Sen. Kihika.

NOTING OF REPORT OF THE 139TH ASSEMBLY
OF THE IPU AND RELATED MEETINGS

Sen. Kihika: Mr. Deputy Speaker, Sir, I will be very brief. I beg to give notice of the following Motion-

THAT, this House notes the Report of the 139th Assembly of the Inter-Parliamentary Union (IPU) and related meetings held in Geneva, Switzerland from 14th - 18th October 2018 laid on the Table of the Senate, today, 5th December, 2018.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you! Last but not least is Sen. Nyamunga.

NOTING OF THE REPORT OF THE SECOND ANNUAL
CONFERENCE OF ICS

Sen. Nyamunga: Thank you, Mr. Deputy Speaker, Sir. I beg to give notice of the following Motion-

THAT, this House notes the Report of the delegation of the second Annual Conference of the Institute of Certified Secretaries (ICS) held in Mauritius.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. We move on to the next Order.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, we are behind schedule. Therefore, I will allow all the Senators who have Statements under part one on one condition; that they present their Statements in less than five minutes, no observations and comments. This is because I have to give my ruling on the two issues and we have to discuss the very important report which was withdrawn yesterday. I ordered it to be circulated at 2.30 p.m and gave you two hours to interact with it.

It is so ordered. Therefore, we will quickly start with Statements as they appear on the Order Paper.

Proceed, Sen. Seneta on behalf of Sen. Judith Pareno. If you can use two or three minutes the better. When you finish Statement (a), proceed to (b).

VANDALISM OF ELECTRICITY TRANSFORMERS SERVING SCHOOLS AND
COMMUNITY PROJECTS IN KAJIADO COUNTY

Sen. Seneta: Mr. Deputy Speaker, Sir, I am reading this Statement on behalf of Sen. Judith Pareno.

Pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Energy on vandalism of electricity transformers serving schools in community projects in Kajiado County.

In the Statement, the Committee should:-

(1) Explain the circumstances under which electricity transformers serving six community boreholes at Ngatu area of Mashuuru/ Maroro Ward, community borehole in Imatoi, Synohydros China Camp, a borehole in Olgos Primary School, Olmanie Primary School and a community borehole in Kilo Area in Kajiado County were all vandalized and stolen;

(2) State when the electricity transformers in the said areas will be replaced and electricity connected;

(3) Explain the steps taken to bring the perpetrators to book; and,

(4) Outline the measures being undertaken by the County Government of Kajiado and the national Government to come up with sustainable operations and heightened surveillance to curb vandalism of electricity transformers.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, pause there. That Statement---

Sen. Seneta: Mr. Deputy Speaker, Sir, I also seek this other Statement on behalf of---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! The first Statement is to which Committee?

Sen. Seneta: Mr. Deputy Speaker, Sir, it is to the Committee on Energy.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Seneta, when do you need some feedback?

Sen. Seneta: Mr. Deputy Speaker, Sir, this being an urgent issue, the Committee should look at it before next year because the boreholes and the schools are not connected.

The Deputy Speaker (Sen. (Prof.) Kindiki): When is before next year? Is it before we resume?

Sen. Seneta: Mr. Deputy Speaker, Sir, before the Committees break for the Christmas holiday.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Eng.) Maina, is that possible? Also, we should not overburden our Committees with so many things. We are so few and the country is big. Is this an urgent or life threatening matter?

Sen. (Eng.) Maina: Thank you, Mr. Deputy Speaker, Sir. The issue of vandalism is all over the country.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator. When will you process this Statement?

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I urge that I be given time to do this on the second week after recess.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Seneta, the new Standing Orders do not permit what I am allowing. You should liaise with the Committee. If they consider the need for a report, they will report. You should discuss that with the Chairperson of the Committee on Energy and if you need the help of the House you will come back later.

Proceed to the second Statement.

Sen. Seneta: Thank you, Mr. Deputy Speaker, Sir. I shall interact with the Chair and give---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Proceed to the second Statement. We are pressed for time.

THE STATUS OF KAJIADO-MASHUURU-ISARA ROAD IN KAJIADO COUNTY

Sen. Seneta: Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Roads and Transport on the status of Kajiado Mashuur-Isara Road in Kajiado County.

In the Statement, the Committee should:-

(1) Elaborate the scope of the Kajiado-Mashuuru-Isara Road construction project, indicating the current status, the anticipated time of completion and the budget allocated for the project;

(2) Explain the quality and class of the road and whether the same is sustainable, considering the traffic volume on the road;

3. State the maintenance techniques that will be put in place by the national Government and the County Government of Kajiado after the road construction is completed.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. The same, like the first one.

Hon. Senators, just for your information, we also have the Adjournment Motion later today. We are, therefore, pressed for time.

Proceed, Sen. (Prof.) Imana, in two minutes.

THE INVASION AND TAKE-OVER OF KAPTEDIYE DAM BY PASTORALISTS FROM NEIGHBOURING COUNTY

Sen. (Prof.) Ekal: Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Statement pursuant to Standing Order 48(1) from the standing Committee on National Security, Defence and Foreign Relations on the invasion and take-over of the National

Government Constituency Development Fund(NG-CDF) project, namely the Kapetadiye Dam by pastoralists from a neighbouring country.

In the Statement the Committee should-

(1) Explain why the government has not taken any action against pastoralists from a neighbouring country, who have invaded and taken over the Kapetadiye Dam, which is located on the east of Mogila Mountains in Turkana West sub-county, thereby denying the people of Turkana access to their source of livelihood.

(2) Explain the measures that the Government has put in place to end the skirmishes between the pastoralists from the neighbouring country and the Turkana people; ensure that the dam is restored to the people of Turkana and provide a timeframe for the same; and,

(3) Explain the measures that the Government is taking to ensure Kenya's territorial integrity is secured generally.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senator, interact with the Chairperson of the Committee. If you need help from the House, you will come back to us and you will be advised on what to do. However, under the Standing Orders, the Chairperson does not need to respond on the Floor of the House.

Go to the next one.

ALLEGED THEFT OF LIVESTOCK BY SUSPECTED
BANDITS IN KAAKONGU, TURKANA COUNTY

Sen. (Prof.) Ekal: Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Statement pursuant to Standing Order 48(1) from the standing Committee on Committee on National Security, Defence and Foreign Relations on the raid by suspected bandits in Kaakongu, Turkana county, on 30th November, 2018, that resulted in over 2,000 goats being stolen and the killing of two boys who were herding the goats.

In the Statement the Committee should-

(1) Explain the circumstances under which suspected bandits from West Pokot County raided villages in Turkana County on 30th November, 2018, and stole over 2,000 goats; and killed two boys who were herding the goats in the process.

(2) State the steps the Government has put in place to recover the stolen livestock and bring the perpetrators to book.

(3) Explain the long term measures undertaken by the Government to curb the unending insecurity in the borders between West Pokot and Turkana counties; Baringo and Turkana counties; and,

(4) State when the government will compensate the families of the young boys who lost their lives during the raid and other victims of previous raids.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senator. Look for the Chairperson of the relevant Committee and agree. If you need further help from the House, you will be advised on what to do.

Thank you, Senators. I want to make---

(Sen. Wetangula waved a document at the Chair)

Order, Sen. Wetangula! Order! I want to make the following further clarification. In part two of the Statements, Statement under paragraphs (b),(c),(d) and (e) will be deferred. We will, therefore, only go to the Statements in paragraph (a), which will be the one on the Universal Health Care and Managed Equipment Service. However, before that, I will allow Sen. Wetangula and, similarly, he should be as brief as possible.

ACTIVITIES OF THE COMMITTEE ON POWERS AND PRIVILEGES

ACTIVITIES OF THE COMMITTEE ON PROCEDURE AND RULES

ACTIVITIES OF THE LIAISON COMMITTEE

ACTIVITIES OF THE SENATE BUSINESS COMMITTEE

(Statements deferred)

Sen. Wetangula: I will be very brief, Mr. Deputy Speaker, Sir.

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

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

BOUNDARY DISPUTE BETWEEN GARISSA
AND ISIOLO COUNTIES

Sen. Dullo: Mr. Deputy Speaker, Sir, I do not want to go into the ruling that you have made in terms of the Committees' responsibility, especially on Statements. However, I remember that I had requested for a Statement from the Committee on National Security, Defence and Foreign Relations about three or four weeks ago, but up to date, I do not have a response and the situation remains the same---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Dullo! I am not sure if you sit in the Senate Business Committee, but by virtue of being the Deputy Senate Majority Leader, you are aware that we have new Standing Orders. These new Standing Orders do not oblige Committees to report back here. In case you want to bring out the same issue to be supported by the House, you can be advised on what to do. Therefore, the House has noted that there is a Statement which was raised by the Senator for Isiolo to the Committee on National Security, Defence and Foreign Relations. What was it about?

Sen. Dullo: Mr. Deputy Speaker, Sir, it is an issue about insecurity between Isiolo and Garissa---

The Deputy Speaker (Sen. (Prof.) Kindiki): I thought you sit in that Committee?

Sen. Dullo: I do, Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. (Prof.) Kindiki): If you sit in that Committee---

Sen. Dullo: I remember ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! I am going to be ruthless. If you sit in that Committee, we cannot choose the plenary to process Committee business! If you do not sit in that Committee, I would have been very sympathetic. However, we are now engaging in every little thing that the Committees are supposed to do. Therefore, what we were trying to cure is being returned to the Plenary.

Where is the Chairperson of the Committee on National Security, Defence and Foreign Relations?

Sen. Dullo: Mr. Deputy Speaker, I request you to bear with us.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is the Chairperson of that Committee?

Sen. Wetangula: Sen. Yusuf Haji.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is the Vice-Chairperson of that Committee?

Sen. Wetangula: Sen. Sakaja.

The Deputy Speaker (Sen. (Prof.) Kindiki): Do you see? Chairpersons of Committees are actually equivalent to the Front Bench of the other Constitution; where the Ministers were. You cannot leave the Chamber unless you have delegated the Committee leadership responsibility to a Member. We are not going to have this walk-in, walk-out, and then you submit the Chair to managing every little thing. We have a shortage of time!

Sen. Dullo, since you sit in that Committee, just look for your boss, the Chairperson and the Deputy Chairperson of that Committee and tell them that I have been very rough with them.

(Sen. Sakaja walked into the Chamber)

Tell them that the Speaker has said that a Chair of a Committee----

I can see one Deputy Chairperson walking in; I do not know whether he is the right one. You cannot walk out of this Chamber if you are a Majority or Minority Leader, a Whip of either the Majority or the Minority sides and you do not delegate somebody to do your responsibilities in the House!

Sen. Sakaja, where is Sen. Dullo's Statement, which she requested over a month ago? I am told and I have confirmed that you are the Deputy Chair of the Senate Committee on National Security, Defence and Foreign Relations.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. Indeed, I am the Vice Chairperson of the Committee. In fact, as we speak our Chairperson has officially sought leave of absence for a while because of other initiatives. I am, therefore, currently acting in his capacity.

The Deputy Speaker (Sen. (Prof.) Kindiki): After giving yourself accolades, where is the response for Sen. Dullo?

The Deputy Speaker (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, it is not accolades, but an introduction, and Sen. Dullo is very much aware of that issue. We had planned a visit, as a Committee, but unfortunately we could not raise the numbers. We

were to agree on a different date to go there, together with the Garissa and Isiolo sides. That is still within the Committee to agree on.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Dullo, what help do you want from the Chair?

Sen. Dullo: Mr. Deputy Speaker, Sir, the concern I raised is that there are 250 families who are currently Internally Displaced Persons (IDPs) in an area. Up to now, we have cried to the Government to intervene; but they have not been returned to their homes or assisted. Can the Ministry do something; or can the Chairperson and the Vice Chairperson of the Committee intervene and rescue those people?

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What can you do, Vice Chairperson in the interim, because you wanted us to know that you are the one in charge at the moment?

Sen. Sakaja: Yes, completely.

Mr. Deputy Speaker, Sir, I am at a loss, because Sen. Dullo is a ranking Member of the same Committee. These are discussions that we have been having and, in fact, the request she is making---

The Deputy Speaker (Sen. (Prof.) Kindiki): What help and rapid intervention can you give, because the Senator has already given the gravity of the matter?

Sen. Sakaja: Mr. Deputy Speaker, Sir, apart from the visit, we will also appeal to the Government---

The Deputy Speaker (Sen. (Prof.) Kindiki): When are you visiting?

Sen. Sakaja: Mr. Deputy Speaker, Sir, we will have to agree. We had actually set a date and she is aware of the hitches that we got.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Can you go and have a Committee meeting? Mr. Acting Chairperson, go and have a Committee meeting, make a decision then give feedback to Sen. Dullo.

So ordered.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I ask that she attends the Committee meetings.

TRANSFER OF THE MANAGEMENT AND OPERATIONS
OF THE JKIA TO THE KENYA AIRWAYS LIMITED

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir, for the opportunity.

Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation regarding the transfer of the management of operations of the Jomo Kenyatta International Airport to the Kenya Airways Limited.

In the statement the Committee should-

(1) Explain why the Government has contracted Kenya Airways Limited to manage the operations at the Jomo Kenyatta International Airport, Kenya Airways being a public enterprise listed in the Nairobi Stock Exchange in place of the Kenya Airways Authority, a wholly Government owned public enterprise/parastatal;

(2) Explain what informed the management contract between Kenya Airports Authority and Kenya Airways considering the financial difficulties the carrier has continued to experience and the losses it has made over the years;

(3) Table the contract between the Kenya Airports Authority and the Kenya Airways on the management of Jomo Kenyatta International Airport; and,

(4) Explain the role of the Kenya Airports Authority in the management and operations of Jomo Kenyatta International Airport during the period that Kenya Airways is in control.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you, Sen. Wetangula. Pursue with the relevant Chairperson.

Order Senators.

(Sen. Kihika and Sen. (Eng.) Maina stood in their places.)

Order means that you resume your seat or you go somewhere because we cannot be standing up at the same time. You can organise yourselves.

I regret that we have to rush so I beg your indulgence. I want to do two things now. I will give the two communications on the request that was made yesterday by Sen. Mutula Kilonzo Jnr. who had pleaded with me to hold on up to 4.00 p.m. and it is now 4.20 p.m. I see a number of lawyers who can assist and hold brief for him if he wanted to make some observations in future.

COMMUNICATION FROM THE CHAIR

THE SCOPE OF APPLICATION OF STANDING ORDER NO. 1 OF THE SENATE

The Deputy Speaker (Sen. (Prof.) Kindiki): I will start with my communication on the scope and application of Standing Order No. 1 because it is shorter and because of time, I will summarise.

Hon. Senators, as you will recall, during yesterday's deliberations on the interim Report by the Chairperson of the Standing Committee on Health on Universal Health Care (UHC) and the Managed Equipment Services (MES) program, a question arose on the scope and extent of application of Standing Order No. 1. Owing to the fact that it is a matter that is raised in the House from time to time, the Chair undertook to issue guidance to elaborate on the principle and purpose of the Standing Order and its application.

For the benefit of the House, Standing Order No. 1(1) and (2) states as follows-

“1. In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.

2. The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and

traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

Hon. Senators, the quoted Standing Order is very important and it is at the core of the performance of our constitutional and statutory duty as a Senate and it is no wonder that it is a standard or common feature in Standing Orders of many jurisdictions especially in the Commonwealth. The essence of Standing Order No. 1, is to provide a legitimate procedural window not only for the convenience of the House and interest of justice but also to ensure that the supervening responsibility of the Senate, as a House of Parliament, is not handicapped or constrained by its own rules.

I think that some of the interveners yesterday did raise this aspect. In other words, Standing Order No. 1 is intended to unshackle the House or set it free from processes that are not alive to unforeseen circumstances or realities. The net effect is to ensure that the House does not become a prisoner or captive of its own rules. Indeed, it is a safety valve providing an escape route for the Senate from a mechanical application of detailed rules in the Standing Orders to accomplish its mandate or greater good.

It is my considered view that there is a hierarchy of norms within the Standing Orders whereby Standing Order No. 1 occupies a primary position and it empowers the House to wriggle out of specific Standing Orders for the purpose of ensuring that the greater or fundamental objective of justice, representation of the will of the people and other aspirations are achieved even if there could be other Standing Orders that either provide or inadequately allow such application. It is hence no wonder that the Standing Order appears at the beginning rather than at the end.

Hon. Senators, the generic application or main thrust of the Standing Order is to cater for matters ‘not expressly provided for by these Standing Orders or by other Orders of the Senate.’

The phrase that I have just quoted brings to mind a number of elements:-

1. There is a recognition that the Standing Orders that we use have not provided for everything and that is why Standing Order No. 1 says that:-

“1. In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.”

2. The gaps in the Standing Orders require supplementing by other Orders of the Senate. If you read that Standing Orders, it says:-

“1. In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.”

This means that the Standing Orders are not the only source of procedural law for the House. There are what we call “other Orders of the Senate”. I may not have the time to explain this in detail but in future, we may have to reflect as a House on what are these other Orders of the Senate. In my view, these include orders that are routinely made in the routine work of Senate which we call in parliamentary parlance “sessional orders” as well as practices that we have developed over the years and any other Order pursuant to the Standing Orders made by a person, whether the Speaker or the Committee

Chairperson empowered by the Standing Orders to make such orders. Those will be Orders of the Senate.

The procedural law, therefore, comes from the Standing Orders and the other Orders of the Senate. Even the Standing Orders are saying that we are not adequate. There will be matters that we have either not addressed or we have not addressed them expressly.

Arising from the foregoing, the Standing Order in question - Standing Order No. 1 - therefore places a very heavy responsibility on the Speaker of the House. This is because it is the Speaker who has to decide any procedural question without exception so long as it is a question that falls within the application of this Standing Order.

This quasi-judicial power, therefore, must be exercised by the Speaker with patience and retrospection. That is why, for example, we have cases where a Senator comes and has such a burning issue and wants a decision made there and then. As some of my learned friends who contributed yesterday said, when the Speaker makes that decision, it forms precedent; it creates new procedural law. Therefore, sometimes the Speaker may want, in the same way courts of law do, to retreat and have some retrospection with a lot of patience. That patience is both on the side of the Speaker and the Senators.

Hon. Senators, you have also realised from time to time that even when there is a matter that is controversial, the Speaker would allow alternative views and observations. Sometimes it appears like a time-wasting exercise in some way, but this patience is similar to the patience of a Judge in a judicial function. The Speaker is placed with the onerous responsibility of creating law, precedent and binding decisions. Without this patience, the Speaker will have missed something within the Standing Orders. Therefore, this should be exercised carefully, with retrospection and a lot of patience, because of the significance in the performance of the role of the Senate and the precedent-setting nature of the determination to be made.

Consequently, by tradition, once the Speaker makes a determination, it is binding. In accordance with Paragraph Two of the same Standing Order, it will be relied on in future; it is binding. I have seen a number of colleagues disagreeing with a decision made by the Speaker. First, disagreeing with a ruling is allowed; just like you can disagree with the ruling of a court of law. What is not allowed is to try to demean or impute impropriety. In fact, it is my argument that when a determination is made under this or any other Standing Order, there are ways---

You can approach the Clerk's office, which supports the Speaker's office and be guided on how the same matter can be opened up. This is because even courts of law review and revise their own decisions. Once the Speaker makes a ruling, it is binding and must be respected and honoured. You can disagree with it, but cannot go out there and call the Press to say that, that is a useless ruling or the Speaker did not understand. You can open that matter for review by the same person, because even courts of law review their own decisions. That is my view.

Finally, there are many things we can say about this, because I have majored on the first paragraph. The elaboration of the second paragraph requires more time, which we do not have today. Therefore, I want to ask for full cooperation from Senators. This

Standing Order and others should be applied judiciously, noting that it has far-reaching consequences, not only of enhancing the confidence of the office of the Speaker, but also the efficient and effective performance of functions bestowed on the institution of the Senate, in exercise of the sovereign power delegated by the people of Kenya.

In short, this Standing Order allows this House to escape from its own rules, not just where the subject matter has not been addressed, but even where the supervening superior objectives of this House demand. That is why, in my view, it appears as the first Standing Order; to show that it is a trump card that the House can use to escape from the rigours of the specifics of Standing Orders. More important issues that touch on the soul of the nation and devolution cannot be tied to our rules, which we have made for our convenience. Therefore, if you like, it is like the trump card that the House can use to avoid procedure and technicalities defeating the core purpose of the existence of this House.

I so rule.

I will invite one or two observations, and this is work in progress that can be improved in future.

Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate you. I did not expect anything less from you. That elucidation of the import and meaning; the length and breadth of Standing Order No.1 is important for the dynamic operations of this House.

The Constitution is a living document and so are our Standing Orders. They must be dynamic and in constant positive movement, to help things work better. In fact, the most important point you have made is the misguided view that we have always held that you cannot disagree with the Speaker's ruling. You have made it very clear that we can disagree with the Speaker's ruling, like we disagree with the courts, but with decorum and within the framework of the law, so that we can ask the Speaker to revise or change the ruling made.

If you have had time to look at Patrick Gichohi's book, in the Seventh Parliament, I was on the Chair and made a ruling that was, in my view and reflection, erroneous. Sen. Orengo, Hon. (Prof.) Anyang'-Nyong'o and Hon. (Dr.) Mukhisa Kituyi bombarded the Chair very voraciously. I reflected on the matter, and the next day, delivered a ruling to revise and review what I had ruled, and put what I thought was the correct position in law.

Mr. Deputy Speaker, Sir, you have set a great precedence for this House; that we will, as a House, continue using the operation of Standing Order No.1 to grow the parameters of the law and the framework within which this House can work. From what we heard yesterday from all the contributors, this House has no shortage of powers. We feel constrained and like we are overwhelmed by our colleagues in the other House because of the loud statements they make against this House. If this House was to focus on what we are supposed to do within the Constitution, the law and Standing Orders, the sky is the limit.

Mr. Deputy Speaker, Sir, I agree with you and congratulate you for making such a profound ruling that will change the landscape of the operations of the Standing Orders of this House.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you for the kind remarks.

Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Deputy Speaker, Sir. I also want to join my friend, Sen. Wetangula, to really applaud your ruling. Being lawyers, we know that there is the Oxygen Principle, which is in Section 3 of our Civil Procedure Rule. That is a rule that always gives discretion to our Judges to find a way of being innovative, where the law has not made a specific provision on how to deal with an issue.

As you have rightly ruled this afternoon, the framers of our Standing Orders, put that particular provision, so we give discretion to the Speaker; that where a matter comes before him that is not expressly provided in our Standing Orders, we can revert to the wisdom of the Speaker of the day.

Mr. Deputy Speaker, Sir, remember that the Supreme Court made an important decision that is of benefit to the Senate. They said with a good Speaker, you can find almost anything and everything that affects devolution. They made reference to security issues. They said that if you are enacting laws on security, it is an issue that touches on devolution.

Mr. Deputy Speaker, Sir, your ruling this afternoon is a statement that reaffirms that Standing Order No.1 should not be a toothless bulldog. It is an order that we should revert to when we have an issue that is not expressly provided for, but can be used to transact good business for the House.

Mr. Deputy Speaker, Sir, I applaud you and hope that this opens a new chapter to enable Senators be innovative and ensure that we are defenders of devolution as is expected of us in the 2010 Constitution.

The Deputy Speaker(Sen.(Prof.)Kindiki: Thank you, Senior Counsel, Sen. Omogeni.

Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I want to commend your decision and ruling, particularly on the reasons you have given. It may escape our minds that previously - and even presently - decisions made by Speakers in various Parliaments, including our own jurisdiction, have been referred to by the court whenever they are confronted with a decision on a matter a House of Parliament has put into consideration. For this, I remember the former Speaker Hon. Marende's definition of what constitutes consultation. Although, he did refer to several legal texts and the decisions of Speakers of other Parliaments, his own decision has been referred to, not only by our courts here, but also in other courts.

Secondly, traditionally in the United Kingdom, Parliament was known as the House of Parliament. The House of Lords sat as a judicial body and consisted of members of the House of Lords who had experience. However, that has now been changed to the Supreme Court of England. So, the fact that even when Parliament was known traditionally as House of Parliament, it was referred basically as the House of

Lords. To that extent, you can see the significance of the Senate as the ‘upper’ House. It is us who can perform the best functions of Parliament as a legislative and judicial body.

Historically in England, election petitions were decided by Parliament itself. It sat and determined whether there had been proper elections and their decisions to that effect. That changed later on.

Mr. Deputy Speaker, Sir, going to the body of the decision you have made, it is not only the decision, but also the arguments you have made in support of that decision. It will be used, not only here, but in other Parliaments.

I would propose that every year, we should compile a booklet containing the decisions of the Speaker. Those decisions can be circulated to the county assemblies. They can be proper guidance to the way our county assemblies operate. I congratulate you. This is a good decision and should go to the annals of our history.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senior Counsel, Sen. Orenge. Those are very good observations.

I am happy with the suggestion of compiling and supporting county assemblies and so on and so forth.

Hon. Senators, I know you would have wanted to say more, but time is not allowing. I will give the second ruling. We will then have the Committee on Health file their report. We are constrained of time because by 5.30 p.m., we should be debating the Adjournment Motion. Do not go away because today is when you can say all the things that the Speaker has denied you an opportunity to say. The Adjournment Motion allows you to say anything. If you had a matter which was not properly prosecuted, a Petition or a Statement; it gives you freedom to do so. That session will be presided over by the hon. Speaker Lusaka who will be coming later.

Hon. Senators, the second issue-- I see Sen. Orenge leaving and he was the one who delayed me.

The Senate Minority Leader (Sen. Orenge): Mr. Deputy Speaker, Sir, I am not leaving.

COMMUNICATION FROM THE CHAIR

INTERPRETATION OF THE CONSTITUTION AS TO WHAT CONCERNS COUNTIES

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, this Communication is on matters affecting counties.

Hon. Senators, I will not do the introductions because this is something that is in the Constitution. As you are aware, this issue on what constitutes a matter concerning counties has implications on how we vote on it.

Second, the interpretation of what constitutes matters concerning counties is what has been used to try and frustrate this House by mechanically, simplistically and parochially looking at the law and Constitution. Those are my opening remarks.

Third is with regard to what Sen. Omogeni, who is a Senior Counsel, said on a second advisory opinion. It says with a good Speaker anything concerns counties. That is my view. I agree entirely with learned justices.

Fourth, the advisory opinion was not addressed to Article 103 of the Constitution. This is because the issue of what constitutes matters affecting counties appears in two places; in Article 123 of the Constitution for all the business of the Senate other than Bills. It also appears in Article 109 of the Constitution for Bills. The Supreme Court was addressing itself to Bills. It said that any Bill about anything can be a Bill concerning counties, including a Bill on functions which appear to be national Government functions. I share the same view.

My ruling today is on Article 123 of the Constitution. On another occasion, if I am moved because the Speaker does not move unless he is moved, he cannot bring business. I can unpack the second advisory opinion of the Supreme Court on Bills concerning counties. Today, time will not allow me to canvass that. However, I will canvass on Article 123 of the Constitution which is: What matters concern counties and, therefore, influence voting by delegations? What jurisprudence do we have? What parliamentary precedent do we have from this Senate because this is our sixth year? I have looked at what has been decided and the guidance that is available and I entirely agree with the determination made by the former Speaker Hon. Ekwee Ethuro in the Eleventh Parliament. Allow me to quote him. It reads-

“The established precedence says that the issue of what constitutes matters concerning counties under Article 123 of the Constitution and Standing Order No.78 of the Senate Standing Orders, is a matter whereby-

--

Please, allow me to get that because it is important. I want to ignore the procedural issues.

In short, he said it is a matter that touches on the Fourth Schedule. If anything touches on the Fourth Schedule, then it is a matter concerning counties. That is what the Speaker has said before and I agree with him, entirely. However, I agree that matters that concern counties are a much broader and deeper concept.

For me, these are the instances that constitute matters concerning counties. They are eleven of them-

(1) Any matter which has implications on any of the functions that are listed in Part 2 of the Fourth Schedule as read together with Article 186(1) of the Constitution, which talks about matters under the exclusive jurisdiction of county governments.

(2) Anything that is exclusively a county function, without sharing with the national Government, in the Fourth Schedule, Part 2 read together with Article 186(2), that is a matter concerning counties.

So far, this is the only jurisprudence that we have. Our interpretation had stopped there but I have ten other instances. These are-

(3) Any matter, which constitutes what is known as concurrent jurisdiction. Under the law, in Article 186, there is exclusive jurisdiction where some matters are in the national Government and others are in counties. However, there are also other matters, which have concurrent jurisdiction. For example, you will find that health policy is in

national Government and health facilities and services are in the county government. That is a concurrent jurisdiction. Any matter, which involves concurrent jurisdiction, is a matter concerning counties.

(4) Any matter which constitutes what is referred to as residue jurisdiction. Residue jurisdiction is provided for in Article 186(3). It says that any matter that is not in the Fourth Schedule, it is not for the national Government or the county government, something that would have been omitted, becomes a function of the national Government automatically.

However, my argument is; even so, it will still be a matter concerning counties if it is a residue jurisdiction and, therefore, belonging to county governments or the national Government. It will be a matter concerning counties, if its application or interpretation or operation of that function, has a bearing of any kind whatsoever with what counties do and the structures in the counties.

(5) Any matter which has implications on working operations of the county executive or the sub-structures thereof or county assemblies or sub-structures thereof – the County Assembly Service Board (CASB), the County Public Service Boards (CPSBs), the County Executive Committee (CEC) and the County Assembly itself. Anything that could have any implication of any kind to how they work and how they perform their duties is a matter concerning counties.

(6) Any matter that has a bearing of any kind whatsoever, on this Senate, as a House of Parliament, when it is performing its shared parliamentary role with the National Assembly, which is in Article 94.

Article 94 is rarely cited. Many people who want to box the Senate use Article 96 to say: “Look at Article 96.” They forget that there is Article 94 that talks about the shared responsibility of both Houses of Parliament.

Under Article 94 there are three instances-

(i) Whenever the Senate as a House of Parliament is engaged in any matter which touches on the exercise of legislative authority on behalf of the people of Kenya under Article 94(1).

Tell me colleagues, which matter does not involve the Senate exercising this authority? Very few matters.

(ii) When the Senate under Article 94(2) is representing the will of the people of Kenya.

Tell me which single matter this Senate will engage in or any Parliament or even the National Assembly would engage itself in that does not touch on the will of the people of Kenya under Article 94(2).

(iii) When the Senate as a House of Parliament, under Article 94(4) is engaged in protecting the Constitution and promoting the democratic governance of the Republic.

There is no single matter that can be taken by a House of Parliament, which does not involve promoting good governance of the Republic and protecting the Constitution. Very few matters, I would argue.

(7) Any matter that has implication or connection with the Senate. I know Sen. Orenge would like this. I have heard him use this in court elsewhere.

(8) Any matter the Senate is engaged in, where the Senate is exercising its delegated sovereign power of the people under Article 1(2) of the Constitution as democratically elected representative of the people. Anything that is of relevance to the Senate asserting the delegated sovereign power on behalf of the people, that is a matter concerning counties.

(9) Any matter that concerns or affects the operations or internal workings of the Senate.

I recently heard some arguments about the Parliamentary Service Commission Bill. The question is: Is there anything in that Bill that touches on the operations or that has any implication on how this Senate operates, may be, the members of staff of the Senate or whatsoever or even the welfare of Members of the Senate? If so, that is a matter concerning counties.

This is any matter concerning or affecting the operations or internal workings. I have read that out. The same for county assemblies, and I have also read that out.

(10) Any matter that has any connection whatsoever with any single county or more counties in this country. Is there anything under the sun that does not relate to some county either one or more counties in this country? The answer is, no, unless it is happening in the outer space or in the high seas.

(11) Any matter affecting Nairobi City County is a matter concerning counties in the plural and not in the singular.

I have argued, if it is a matter affecting a single county then it is a matter affecting counties, but if it is affecting many counties, it is also a matter affecting counties.

However, for Nairobi, it is unique. Nairobi is what lawyers call “*sui generis* counties,” which means a special county, because of the reasons I gave yesterday. You paralyze transport in Nairobi, you are paralyzing travelers from Kitui, Garrisa, Western Kenya, Namanga, *et cetera*, who want to come to Nairobi and go back, and do business.

For those reasons, I want to say; under Article 123, matters affecting counties, these are 11 grounds. One which has been established before and ten which, in my view, should be included in this jurisprudence and there is room for more. At a future date, we can look at Article 109 on Bills. I so rule.

Any quick observation? Do you want to say something Sen. Orengo? Proceed, please.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, thank you for this very comprehensive Statement on matters which concern counties.

The issue I am very happy about is that whenever we want to determine this matter, we read the Constitution selectively more so by looking at the general provisions that relate to the powers and functions of the Senate as is contained in the Chapter dealing with Parliament. However, you have gone through the Constitution as a whole, and as you know, normally the law of interpretation requires that you look at the Constitution as a whole.

Looking at that Constitution as a whole, beginning from Article One, which you rightly pointed out that I like referring to, you have travelled the journey and looked at the various provisions of the Constitution, including its Schedules and left no doubt that,

indeed, it is very difficult to conceive on any matter that would require articulation in Parliament that does not concern counties.

In any case the provisions of the Constitution and relevant legislation in the United States of America (USA) are very similar to our provisions here. Yet, in the USA, you will find that the Senate there wields not only effective legislative power and oversight, but for all intents and purposes, is regarded as the senior House, although the House of the Representatives and the Senate are co-equal. To that extent, I am also persuaded – and I am giving a personal opinion – that the National Assembly and the Senate are co-equals. They are co-equal in the sense that there is no law in this country which can be characterised as an Act of the National Assembly or as an Act of the Senate; it is always an Act of Parliament. Therefore, the authority and stamp of the Senate is always necessary in every legislation.

Thank you, Mr. Deputy Speaker, Sir, for travelling the journey and looking at the Constitution as a whole; and, more particularly, on elucidating. If you had more time, we would have had the privilege of learning from your wisdom. That statement, once again, including the previous one, should go into a booklet which will not only guide this Senate, the National Assembly and the county assemblies, but the country as a whole.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you very much, Sen. Orengo. We truly appreciate your sentiments. You have added a new dimension for the future, which is that any law in this country is known as an Act of Parliament. That has an implication, that the Senate must be involved because Parliament is defined. Therefore, that is a wonderful addition.

I am afraid because I have seen that the Senator who brought the point of Order has come. What I am going to do now is this; because the Adjournment Motion allows you to talk about anything, let us dispose of this in the next 30 minutes. We have up to 5.30 p.m. to proceed on the Adjournment Motion, as provided for in the Standing Orders. Therefore, the other businesses will have to wait.

Chairman, Committee on Health, quickly read your Report. That will be the last disposal, but during the Adjournment Motion, Sen. Mutula Kilonzo Jr., Sen. Olekina; Sen. Dullo, who is also another lawyer, and all those who wanted to talk can use the Adjournment Motion to focus on any other matter. This is because there is no restriction on what you can say.

Let me I also clarify, because I prepared this ruling. I am not sure whether Article 96 has been captured, because I spent a lot of time on Articles 94 and 96 as well. Therefore, anything touching on Article 96 should be there.

Unfortunately, Senators, we have to move to the next Order; and it will be the last one before we go to the Adjournment Motion. Sen. (Dr.) Mbitio, do not put us through what you put us through yesterday. You have less than 10 minutes to summarise. I will give the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, who was involved, a few more minutes to support. I will then open the Floor, but at 5.30 p.m. without fail, we might dispose of this matter.

Order, Senators! As you know, this matter was not even supposed to take so much time because it came by way of a Statement. Therefore, let us not also---

(Laughter)

Yes, we need to consult. So, can you sit down, Sen. (Dr.) Mbito?

(The Speaker (Hon. Lusaka) entered the Chamber and Consulted the Deputy Speaker (Sen. (Prof.) Kindiki)

(The Speaker (Hon. Lusaka) withdrew from the Chamber)

Very well; we are constrained with time. Sen. (Dr.) Mbito, you can take the Floor.

IMPLEMENTATION OF UHC IN COUNTIES/
MANAGED EQUIPMENT SERVICES

Sen. (Dr.) Mbito: Thank you, Mr. Deputy Speaker, Sir. I wish to present an interim report on the acquisition of medical equipment for counties by the Standing Committee on Health, the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights.

Mr. Speaker, Sir, the Managed Equipment Service (MES) Programme is a very important project which was based on needs assessment of our counties. Unfortunately, many concerns have been raised by various stakeholders, and that is the reason the Senate has been called upon to look into this project.

Allow me to make a quick summary of this report. The tender sum of the MES was US\$432 million. To date, over US\$200 million has already been paid and the contract balance is over US\$230 million. Five contracts were awarded in this Programme; one went to Shenzhen Mindray Biomedical Electronics Company Limited of China, which provided theatre equipment at a total cost of almost US\$46 million. They have so far been paid over US\$22 million and are owed over US\$23 million. The second contract went to Esteem Industries India to provide SSD equipment. This is actually sterilisation equipment and it refers to auto claves. This was done at a cost of US\$88 million. A total of US\$42million has already been paid, and they are owed US\$45million.

Bolco SRL of Italy were to provide renal equipment---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! What are your recommendations?

Sen. (Dr.) Mbito: Let me rush to the recommendations---

The Deputy Speaker (Sen. (Prof.) Kindiki): Go straight to the recommendations because we have read this Report for the last two hours.

Sen. (Dr.) Mbito: Thank you, Mr. Deputy Speaker, Sir. The recommendations of the Committee were as follows.

(1) There will be need to urgently visit all the 94 health facilities being serviced by the MES or alternatively, a significant representative sample to verify the type of equipment supplied, the date they were installed and whether they are operational.

I would request my colleagues, the Senators, to help in ensuring that this equipment exists. I will table a list of equipment that went to every county.

(2) We recommend that a special audit be conducted on the Managed Equipment Services (MES) by the Auditor-General and a report tabled in the Senate within 60 days.

(3) We also recommend that all the five contracts be isolated, so that we go through each of them individually, case by case, and establish the value for money or lack thereof, for each contract, rather than generalized conclusions on all contracts.

(4) We recommend that an in-depth investigation on this matter by the relevant authorities be conducted to-

(a) Establish a legal basis of the MES contracts, in particular, whether the legal requirements of Articles 186 and 189, as read together with Article 6 (2) of the Constitution of Kenya, were respected, and whether the county governments were coerced or entered into the MES arrangement under duress. If so, the legal implications thereof on the MES contracts and the consequential activities should be established.

(b) Recommend legal and/or administrative actions that should be taken against any person who may have been directly or indirectly involved, in any impropriety in MES contracting or the implementation processes.

(c) Interrogate all Cabinet Secretaries and Principal Secretaries who served in the Ministry of Health from February 2015 to date, in order to properly assign responsibility for the gaps or impropriety.

(d) The county governors and county assemblies, directly or indirectly, through their respective umbrella bodies, the Council of Governors (CoG) and the County Assemblies Forum (CAF), should be invited to make written observations, comments on MES and Universal Health Care (UHC) programmes. Their observations or comments should be inputted in the final report.

I wish to thank all Senators, for showing a great interest in this matter---

The Deputy Speaker (Sen. (Prof.) Kindiki): That is okay, Chairperson.

Sen. (Dr.) Mbiti: I beg to lay the Report.

(Sen. (Dr.) Mbiti laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): That is okay. We do not have much time. As I said, I deliberately allowed this process out of a Statement because of the gravity of the issue. If I have heard you, Chairman, you say that you did not have enough time to verify many things. You needed to interview more people, like former Principal Secretaries and Cabinet Secretaries who had the dealings themselves. If I have heard you correctly, you want to be allowed to verify whether this equipment exists, through the support of the county Senators involved, and you have tabled the list of what the Ministry supplied. In addition, you are asking for more time, because other than through the Senators, you also want to visit and see whether it is there.

Finally, I have heard you say that you need more time, so that you can engage other stakeholders than the Cabinet Secretary. Standing Order No.48 says that the Committee may invite the Senator for the county, Cabinet Secretary or any other person. So, I heard you say that you need time to interrogate other stakeholders than the Cabinet

Secretary. How much time do you need, before I give Sen. Cherargei time, because we have to finish this in the next 19 minutes?

Sen. (Dr.) Mbiti: Sixty days will be okay, Mr. Deputy Speaker, Sir.

(Loud Consultations)

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

Sen. Cherargei.

Sen. Cherargei: Thank you Mr. Deputy Speaker, Sir. Following your directions that you gave on this matter and the Statement that was requested, we looked into this issue of medical equipment and supplies and noted that these are seven-year contracts worth more than US\$400 million.

We noticed in the---

The Deputy Speaker (Sen. (Prof.) Kindiki): We know the history. What is it that you established? Are there problems legally? Are there people who have committed offences? Are there people you want to investigate? Are there documents that you do not have? What do you need?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I was coming to that. We noticed that the needs assessment conducted by counties was never established. There were so many gaps and missing contractual documents between the Government and the county governments in the country. We also realized that there is a standard pricing of Kshs95 million at the inception of this process and it got to Kshs200 million, which is being deducted at the level of the National Treasury.

Mr. Deputy Speaker, Sir, we are looking at interrogating this matter further. If there is any person that did not do due diligence, especially in the Ministry or the county government, they must be held responsible and face the full force of the law. That is why we are looking at the aspect of a special audit, so that we can take stock of the entire process.

We established that in some instances, there were cases where some of the equipment that was leased could have been bought, because it is not sustainable. An example is the trolleys among other things. We have recommended the need for a representative sample or visit all some of the hospitals that are not using this equipment to ascertain their status.

Finally, we are looking into this matter with the seriousness it deserves and with a view to ensure that anybody who is found culpable and did not do due diligence is held accountable.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Dullo, you will speak last because you are the one who asked for this Statement.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to make some comments on the recommendations. I must say that I am completely dissatisfied with these recommendations, and I will give a reason.

As the Senator for Makueni County, I laid on the Table of this Senate all the equipment and their status on Makueni County. To propose that the Committee on Health or the Joint Committees can visit 94 facilities is not only impossible but wishful thinking. They will not manage, and there is a reason.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator Mutula Kilonzo Jnr.! The Chairman said “or a representative sample,” meaning that they can pick a county on the west, another in the east, one in the south and one in the center.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, let me read one of the recommendations to demonstrate that what they are saying is a contradiction. In their third recommendation they say: “Isolate the five contracts and establish on a case to case basis the value of the money or lack thereof, for each contract rather than generalized conclusion.”

You cannot go to Makindu Hospital and make a conclusion about Nakuru.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! I am not really trying to---

Sen. Mutula Kilonzo Jnr.: I am just interrogating what they have said.

The Deputy Speaker (Sen. (Prof.) Kindiki): Strict application of the Standing Orders do not even allow this, but my own understanding - and you could consider this - is that the Chairman and the Co-Chairman are saying that there were contracts for, for example, renal and dialysis services. That is one contract. There was another one for radiology. That is under one contract. I do not think they are saying that they can use one hospital to make a conclusion. If, for example, the radiology facility is working in Hospital “A” or three hospitals, it can lead you to make a generalized informed guess that, perhaps, in that area there is value for money.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, which of the Senators in this House wants their county to be skipped?

The Deputy Speaker (Sen. (Prof.) Kindiki): What do you suggest?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, that is what I was getting to. A better method is to ask each Senator, through their governors, to use the Standing Orders and cause to be tabled a list of all the equipment delivered, status of that equipment, like I did, plus training.

It is upon the tabling of those documents that we will establish where the gaps are. In the case of Makindu, we know where the gaps are. The equipment has not been installed and there is no training. That is the only way we can logically interrogate this matter.

Mr. Deputy Speaker, Sir, the second recommendation on a special audit is also misplaced. Why? The concern we, as a Senate, have is that there is no value for money. The Governor for Kirinyaga, Hon Anne Waiguru and Vice Chairperson of CoG said, they are being given equipment at an over price.

Mr. Deputy Speaker, Sir, once we get a list from every county like we did in Makueni County, we need to know the market price of that equipment *vis-a-vis* the price that was given to the national Government.

This document does not request and make an order to have a price list. Therefore, a special audit will not help.

The Deputy Speaker (Sen (Prof.) Kindiki): Mr. Chairman, I hope you are you noting those concerns by the hon. Senator?

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, as I said---

The Deputy Speaker (Sen (Prof.) Kindiki): Please, make it brief because we are running out of time.

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, Sir, there is a gentleman here who was assigned by the Cabinet Secretary, Hon. Kariuki to give us a report on the variation. I cannot remember his name, but he stated that the initial contract was Kshs3.8 billion varied to Kshs4.5 billion and then varied to Kshs6.1 billion and lastly, varied to Kshs9.4 billion.

The Deputy Speaker (Sen (Prof.) Kindiki): Please, conclude.

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, Sir, there is a violation of the law.

The Deputy Speaker (Sen (Prof.) Kindiki): What do you recommend?

Sen. Mutula Kilonzo Jnr: You cannot vary a contract up to more than a half---

The Deputy Speaker (Sen (Prof.) Kindiki): What do you recommend? We are not debating---

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, Sir, they should have interrogated the variation and called it unlawful.

Lastly, it is my submission by the time they do all these things, they are doing here, the recommendations of the Commission on Revenue Allocation (CRA) for purposes of the budget, the policy statement for the budget for next year will be here with us in February, 2019.

The Deputy Speaker (Sen (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.! Let me give Sen. Orengo some two minutes.

Hon. Speaker Lusaka will assume the Chair at 5.30 p.m., seven minutes from now. Sen. Orengo will speak and followed by Sen. Dullo. They can both share five minutes. Sen. Olekina and the other requests; when we debate the Motion for Adjournment, you can continue with the same matter.

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, Sir, let me finish that point. I was going to finish by saying this---

The Deputy Speaker (Sen (Prof.) Kindiki): Please, finish in 30 seconds.

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker, Sir, this Senate will be called upon in the month of February to pass the other tranche of the medical equipment.

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

Sen. Mutula Kilonzo Jnr: How are we going to do so, if---

The Deputy Speaker (Sen. (Prof.) Kindiki): We will try. The Speaker will guide on how we can try and do that---

Sen. Mutula Kilonzo Jnr: We should stop paying them!

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

Two minutes Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, to the extent that this is an interim report, I think they have tried to do what they could in the space they had. However, I want to urge the Committee that the way this report is written

and the way the recommendations have been made does not answer to the urgency that was required by Sen. Dullo and the Senate as a whole. The way it is crafted, this process can be endless.

Mr. Deputy Speaker, Sir, I propose that they must, first, have a report with findings because their observations are so general. The nature of the recommendations is that they still want various organs or Cabinet Secretaries to do something so that they can come back to it.

I think they already have enough material to make specific findings and not just make recommendations, but propose a line of action. The Constitution says that on a matter which is a matter of audit, we can take appropriate action.

The idea of running to other organs of Government means that we are toothless. So, I would urge the Co-Chairman who is a lawyer, when something is illegal like this happens, say so because the Constitution allows you to say as much. When it comes to action, there are some actions that we can take even in terms of budgeting and so on. You can make these recommendations. To always run to the Director of Criminal Investigations (DCI), the Ethics and Anti-Corruption Commission (EACC) Headquarters, I think this kind of shows us, as a toothless bull dog.

The Deputy Speaker (Sen (Prof.) Kindiki): Thank you, Senate Minority Leader. Sen. Dullo, once the Motion for Adjournment is called, nothing prevents you from saying whatever else you want to say. I give you two minutes then the other one minute, I will give further directions and vacate the Chair.

Sen. Dullo: Mr. Deputy Speaker, Sir, thank you for allowing us to canvass this matter. Second, the report by this Committee does not answer my concerns. In a nutshell, there was a reason why I asked this question, specifically on Universal Health Care (UHC).

It is either the Committee or the Ministry of Health is locking out this Senate from getting involved in UHC. This is because the Senators involved in the four pilot counties do not know what is happening on the ground. This is another scam. I am not afraid to say so this because we do not know what is happening on the ground.

Third, I requested for the contract documents that were signed between the Ministry of Health and the three companies, which is not here. What we agreed with the Cabinet Secretary for the Ministry of Health the last time she was here, is not captured in this report. Let her give us proper answers based on our requests.

Finally, this is a matter that is really affecting most of the counties in this country--

The Deputy Speaker (Sen (Prof.) Kindiki): Please, conclude.

Sen. Dullo: Mr. Deputy Speaker, Sir, their observations and recommendations are too vague. I would request you, the 60 days that are given is too long. Can we have an urgent intervention with proper answers to most of the questions not answered?

The Deputy Speaker (Sen (Prof.) Kindiki): Chairperson Senate Committee on Health, you have heard the sentiments. There could be even further sentiments during the Motion for Adjournment. So, I advise you not to leave the Chamber. This matter is so grave and important as it touches on the core of the existence of the county system and even of your Committee. This is your mandate.

I had already ruled out, this matter of doing *harambees* every time a Committee has an issue you want to do *harambees* with many committees. You do one issue; Senate has few resources. Do your work.

This was an interim report you have presented to us. I direct that you table the final Committee Report in accordance to the Standing Orders of this House.

As I said, the *harambee* business is over. I only vary a little bit that with the advice and consultation with the Chairman that you co-opt three members of the Senate Committee on Justice Legal Affairs and Human Rights as friends to your Committee to assist you deal with the legal issues. This is because we cannot commit the entire Senate and the entire Senate Committee on Health. This is just one issue remaining because we dealt with others this afternoon. So, you consult and co-opt two members as friends of the Committee.

Hon. Senators, these concerns about our counties are very critical. This is a very serious matter. Counties feel something is not right. Therefore, this is the time for us to exert our authority.

(Applause)

I urge all Senators to take interest in this matter. Do not also sub-contract your challenges in the county as the Senator to the Committee. Provide information, solutions and engage the Committee. Do not wait to come to the Chamber here to try and shine and look important. This should concern you. The information you are providing here, please, provide it to the Committee. If the Committee defies to incorporate, then you can now bring the matter to the Floor. You can put your observations in writing.

Hon. Senators, let us use our plenary time well. I will not entertain this protracted business. We have good ways of transacting excellent business and quality work in little time and Kenyans will applaud each one of us, individually in our counties, and also collectively as a House. Therefore, I direct the Chairperson of the Committee on Health and not any other Committee, to table a comprehensive final report with detailed findings, conclusions and recommendations that are actionable so that we finalise this. When the report comes, it will be open to observations and comments without fail. He will do so through moving a Motion on 26th February, 2019. It is so ordered.

(Applause)

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

We will now move to the Motion of Adjournment which will be moved by the Deputy Senate Majority Leader. As she does that, she will dispense her Statement. We have a way to combine all that now.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 11TH DECEMBER, 2018

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. Pursuant to the Senate Calendar approved on 20th February, 2018, the House will be proceeding on recess at the rise of the House today, Thursday, 6th December, 2018 until Monday, 11th February, 2019. In this regard, the Senate Business Committee (SBC) has not scheduled any business for the Senate for next week.

STATUS OF BUSINESS IN THE SENATE
FOR THE SECOND SESSION

Mr. Deputy Speaker, Sir, with respect to the business of the Senate, allow me to give a summary of the same for the Second Session-

With regard to Senate Bills, I wish to state the following-

(1) A total of 47 Bills have been published as Senate Bills. Three of the Bills were passed and assented to. A total of 13 Bills have been referred to the National Assembly for consideration and are yet to be concluded. One Bill has been amended by the National Assembly and is before the Senate for consideration of the amendments. One Bill was withdrawn for re-publication and one other Bill was negatived at Second Reading.

(2) A total of 28 Bills are at various stages of consideration by the House while two (2) are undergoing concurrence.

With regard to National Assembly Bills, I wish to state the following-

(3) The National Assembly referred to the Senate a total of 11 Bills, all of which have been read a First Time. Two National Assembly Bills were passed by the Senate and referred to the National Assembly while nine Bills are at various stages of consideration in the Senate.

Mr. Deputy Speaker, Sir, a total of 90 Motions were filed in the Senate;

- (1) A total of 62 Motions were passed without amendments;
- (2) Five Motions were passed with Amendments;
- (3) Three Motions had debate concluded and are awaiting Division;
- (4) One Motion was withdrawn pursuant to Standing Order 56 (1); and
- (5) A total of 19 Motions are pending debate.

Mr. Deputy Speaker, Sir, on Statements, following the amendments to the Standing Orders relating to Statements, the House considered Statements as follows-

- (1) A total of 13 Statements were issued under Standing Order No. 47 (1);
- (2) A total of 33 Statements were requested under Standing Order No.48 (1);
- (3) Two Statements were issued under Standing Order No. 51 (1) (a);
- (4) A total of 17 Statements were issued under Standing Order No. 51 (1) (b); and,
- (5) Two Statements were issued under Standing Order No. 53.

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

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

On Petitions, Mr. Speaker, Sir, a total of 42 Petitions were filed in the Senate. A total of 12 Petitions were considered by the relevant Standing Committees, reports on them tabled in the House and copies of responses sent to the respective petitioners. A total of 30 Petitions are pending conclusion by respective Standing Committees.

Mr. Speaker, Sir, I take this opportunity to commend Standing Committees that have submitted reports on Bills and Petitions committed to them.

I urge Standing Committees that have yet to conclude consideration of Bills and Petitions to use the recess period to do so and table them immediately the House resumes its sittings to enable the House to effectively transact its business.

Mr. Deputy Speaker, Sir, I hereby lay the Statement on the Table of the House and wish Honourable Senators a Merry Christmas, a happy and prosperous 2019 and a good and blessed recess.

I thank you.

(Sen. Dullo laid the document on the Table)

The Speaker (Hon. Lusaka): Thank you, Senate Deputy Majority Leader. Hon. Senators, since we must move the Motion of Adjournment, I defer all Orders from No. 8 to Order No.14.

BILL

Second Reading

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

(Bill deferred)

MOTIONS

ADOPTION OF CPAIC REPORT ON FIDUCIARY RISK REGARDING ISSUES RAISED BY THE AUDITOR-GENERAL

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on fiduciary risk regarding issues raised by the Auditor-General on public financial management by County Governments for Financial Years 2013/14 -2015/16, laid on the Table of the House on Wednesday, 14th November,2018.

(Motion deferred)

ADOPTION OF REPORT ON COUNTY GOVERNMENTS
INFRASTRUCTURE PROJECTS

THAT, this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments' infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers' residences, laid on the Table of the Senate on Thursday, 29th November, 2018.

(Motion deferred)

ADOPTION OF REPORT OF THE 138TH ASSEMBLY OF
IPU AND RELATED MEETINGS

THAT, this House notes the Report of the 138th Assembly of the Inter-Parliamentary Union (IPU) and related meetings held in Geneva, Switzerland from 22nd– 28th March, 2018 laid on the Table of the Senate on Thursday, 21st June, 2018.

(Motion deferred)

NOTING OF REPORT ON ROLE OF PARLIAMENTARIANS IN
POPULATION AND THE 2030 AGENDA FOR
SUSTAINABLE DEVELOPMENT

THAT, this House notes the Report of the Senate Delegation to the Conference on Enhancing the Role of Parliamentarians in the inter-linkage between Population Issues And The 2030 Agenda For Sustainable Development, held in New Delhi, India from 13th-15th September, 2017, laid on the Table of the House on Thursday, 2nd August, 2018.

(Motion deferred)

NOTING OF THE REPORT ON THE 39TH ANNUAL
FORUM OF PARLIAMENTARIANS FOR GLOBAL ACTION

THAT, the Senate notes the Report of the Kenya delegation to the 39th Annual Forum of Parliamentarians for Global Action laid on the Table of the House on Thursday 11.10.2018.

(Motion deferred)

NOTING OF REPORT OF THE 62ND SESSION OF THE COMMISSION
ON THE STATUS OF WOMEN

THAT, this House notes the Report of the 62nd Session of the Commission on the status of women laid on the Table of the House on Tuesday, 17th July, 2018.

(Motion deferred)

Next Order!

MOTION FOR ADJOURNEMENT

ADJOURNMENT OF THE SENATE PURSUANT TO THE
APPROVED CALENDAR FOR THE 2018 SESSION

Sen. Dullo: Thank you, Mr. Speaker, Sir. I beg to move the following Motion- THAT, pursuant to Standing Order Nos. 28 and 29, the Senate do adjourn until Tuesday, 12th February, 2019.

Mr. Speaker, Sir, this is clearly guided by our Standing Orders. I believe that it is important for us to have this recess so that Members can constructively engage their constituents and counties and look at various issues that affect them.

Mr. Deputy Speaker, Sir, we have done well in this Session especially in terms of matters affecting our counties and devolution. Therefore, it is important for Members to go and see how these matters are being handled at the county level. We are also heading to the festivity season. Therefore, I believe that it is important for Members to celebrate with their families and constituents.

Mr. Speaker, Sir, as I have said earlier, committees are supposed to handle matters that are pending before the festivity season especially the ones that are really urgent.

This afternoon, the Deputy Speaker gave a good ruling in terms of what constitutes county matters. However, it is important to move that ruling further and unblock the issues we have with the National Assembly especially in terms of dismissing certain matters on the basis that they do not affect counties. We have been told that all matters affect counties. Therefore, I request your office to have proper engagement in terms of what affects this particular House so that we can have an amicable solution to have our matters dealt with at all levels.

I was supposed to give the brief of the SBC. Unfortunately, because of the timing we are unable to do that. One of the outstanding issues is the matter of monitoring and evaluation. Personally I feel that this is a matter that we have not dealt with properly. We have gone round and round in circles trying to come up with a solution. Of course, there is a Bill before the National Assembly. My personal opinion is that in as much as we wait for it to come to the Senate, this matter is very urgent and requires political intervention.

Mr. Speaker, Sir, I believe that the leadership of the House should engage the relevant principals. This is because the reason the Senate is regarded as toothless is because we have not been effectively facilitated. We are always regarded as a House that is lamenting; just debating and doing nothing on the ground. If we were given this facilitation, we can audit what is happening on the ground, especially the matter that we have just concluded on the medical equipment.

Mr. Speaker, Sir, if we are facilitated, I can confirm to you and to this House that the Senate can engage the relevant counties to give proper audit and even hire the services of independent auditors on matters that are affecting devolution.

I was in the last Senate in the Eleventh Parliament and we discussed this matter for almost four and a half years without a solution. We are back at it again. We are done almost one and half years without a solution. Where are we heading? If we do not take serious action, these five years will end without this Senate getting the facilitation that is required for us to deliver on our mandate.

The matter of medical equipment and Universal Healthcare(UHC)that we have just debated is a matter of devolution that is the core mandate of this Senate. I think it is important for us to handle it properly. I would want the relevant Committee to engage the Ministry of Health so that we are on top of things.

It is not a last minute matter that this Senate should be brought what has already been implemented on the ground. If I may give a very good example of the UHC, it was the only time that this Senate came to engage with UHC and yet this is a very important initiative by the President and the Government of this country. The UHC is very important and I believe it is something that can help our communities to get service delivery because health is an important aspect in devolution and also in the lives of our people.

Mr. Speaker, Sir, it is only when I started asking this question that the Ministry came out to give us an answer that they had engaged the Senate, yet as a Senate, we do not even know what UHC is and what it entails. We do not know the policy guidelines governing UHC.

We are going to spend Kshs300 billion according to information given to us by the Cabinet Secretary (CS). We do not know where that money is coming from. How are the counties going to contribute to that Kshs3.9 billion set aside for the four counties that are supposed to be pilot projects? If we do not intervene and be on top of things, this is a mess of equipment that we are going to be grappling with next year.

I urge the relevant Committee on Health to take up this matter and engage the Ministry seriously and advice the House properly in terms of what the Ministry is doing in healthcare services.

Mr. Speaker, Sir, I do not want to dwell on a matter that was discussed in this House three days ago. However, for me the matter of Petitions is a mechanism that has been put by Parliament for members of the public to engage Parliament. However, if these matters are not handled properly, members of the public are going to lose confidence. This is a matter that this House and even the House before, has been able to deal with properly so that members of the public get confidence in the Senate.

I am leaving it to the House and to you to make sure that the people of Isiolo County or the petitioners get justice in terms of the Petition before the Senate Committee. I do not want to dwell on that matter. I have heard what was discussed but I am not happy with what happened because matters *sub judice* are not matters of the Senate Committee or the House. They are matters of other independent entities to question the work of the Senate.

Mr. Speaker, Sir, we have not done very well in this area. We cannot indict ourselves as a House of Senate. We must deliver on our mandate. Committee Chairs and Members, if I may say, need to take this work seriously because we are also representing people. We should not be taken round in circles.

Three days ago, when I left, I made a submission to the Committee which I shared with almost each and every Senator regarding the Petition before the Senate. I gave you every Senator a copy. I also gave the Chairperson of the Committee a copy with documentary evidence in terms of the matter pertaining to this Petition.

Unfortunately, the answer I am getting is negative. I do not know whether this matter, if it is referred to the relevant Committee, we are going to get justice. However, it is a matter of days, if Isiolo people are not going to get justice on this Petition, then we are going to be in trouble because this is not my matter or the committees but the oversight role of the Senate that is under test.

Mr. Speaker, Sir, in conclusion, I wish everybody a Merry Christmas and happy new year. I hope when we come back, we will be vibrant to be able to deliver on our mandate as we are required to do.

I take this opportunity to invite Sen. Mutula Kilonzo Jnr., to second this Motion.

Thank you.

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

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to second the Motion for the adjournment of the House, for the holidays and other issues.

I think we have done well and put in a lot of work. Whether or not that work has borne fruit is something--- We as the people who trust you and gave you the mantle to hold on our behalf, I ask you this Christmas, to really think about how best we can make this Senate more successful and fruitful.

I saw a comment recently by a Member of the other House with what appears in my view to belittle the work that you do. You have the support of 67 adults, very mature and intelligent Kenyans called Senators. Do not be afraid. Do not be cowed. Do not be intimidated. You are not lower than any person even if you came after them. You are the Speaker of the Senate. Walk as such; talk as such. We are ready to defend you all the way to wherever it is going to be.

When Article 110 says that you must be consulted, you must be consulted. If you are not consulted, say so. Nobody can remove you from office except these Senators or the expiry of this House.

Mr. Speaker, Sir, we do not want you or we, to be belittled. This Mace here and the crown is your authority. Exercise authority. The ruling by the Deputy Speaker, Sen. (Prof.) Kindiki, should be carried like the Bible or the Quran or any other holy book that you believe in, as the Ten Commandments.

We have been taken for a ride for far too long. We have been nice for far too long. We are told: "I spoke to my Chair, so pass this Bill. We are going to offer you funds." At first it was Kshs2 billion, the next time it is Kshs1 billion and in the last one, it was Kshs0.5 billion. When I checked, the money had been moved somewhere else. Who gives people the authority to belittle us? The sort of mandate that Sen. Kihika enjoys from 11 constituencies cannot be belittled by anybody. She did not get here by mistake. She is here by a vote and even the ones who were nominated are here by the vote because they are elected to sit here.

When we come back in February, we want to bite. I actually want us to have a crisis of sorts in this country because without a crisis, we are not going to move forward. I was telling one of my colleagues that in the Australian Constitution, there is a default Article that if the House of Representatives and the Senate do not agree, the President and the Prime Minister can cause the dissolution of both Houses. We do not have such a default Article. As we go on recess, none of our Bills has been considered except one Bill that we started at the beginning. The Bills from the National Assembly have come here, although some are at the Third Reading and other levels, and we have bothered to be nice. Will we be asking too much Mr. Speaker, Sir, the Right Hon. Kenneth Lusaka, that we come back as a different House, so that the naysayers and the people who are doing opinion polls on this Senate do not come back with the same report; disband the Senate?

I want to echo the sentiments of Sen. Dullo. I do not know the reason why the Chairpersons are afraid. I do think that the Chairpersons of our Committees are afraid and I do not know what they are afraid of. Let us call these things the way they are. If the medical leasing equipment is a fraud to our counties, let us call it the way it is. None of you, Senators, is going to be elected for being nice to the Executive. If you do not defend your counties, you will be voted out. It is that simple. I have done the math and your county is paying a lot of money. If we do not check the medical leasing equipment, we are going to pay Kshs700 million for the equipment.

This morning, First Lady Margaret Kenyatta was in Makueni to open a 120 bed capacity mother and child maternal hospital with a facility for a mother to give birth in water and it cost us Kshs130 million. On the other hand, we have equipment for which we have so far paid Kshs450 million and counting. That is the reality of turning a blind eye to some of these things. One lady got a girl that she named Margaret Mumbua because it is raining in Makueni.

These are serious issues. The Universal Health Care (UHC) that Sen. Dullo was talking about is an imposition similar to the medical leasing equipment where your counties must pay. The claw back on devolution and its functions is real and the Executive is not going to vote for you. I trust and put faith in God first and the 320,611 Kenyans who voted me into this House. Those are the people that I will defend without fear or favour.

Lastly, the people of Solai are still suffering. The reality of Solai came to us last week when I met a man who lost his wife. He is living in a rented house with his children. The Kenya Red Cross Society (KRCS) is rebuilding their home but his children have told him that they will never go back to that house. A young man, who is a teacher, said that he lost his only child. Our recommendations have gone nowhere. We have put in

so much work and spent so much resources but it just comes to a naught. It makes me feel bad as a Kenyan and a legislator who takes pride in the fact that I have been elected to bring solutions to this country. This Senate must stand up.

I am happy that the President has said that he will not sign the Parliamentary Service Bill because my vote on this is no. It is this Bill that is going to send 75 per cent of parliamentarians home. When we come back, may we have a thoughtful session where we put Kenyans and our counties first because they are the people who will protect us when we need protection. If you do not protect Isiolo County, there will be nobody to protect you when it is your turn on 8th August, 2022.

I second.

(Question proposed)

Sen. Kihika: Thank you, Mr. Speaker, Sir. I also rise to support this Motion. It has been a rough year, Senate wise. When I came to this Senate sometime last year and got sworn in, I was sure that this Senate would have the teeth to bite and that it would follow up on what it has passed and make sure that it is implemented.

Regarding the Bills, Motions and the work that the Senate has carried out through the committees, we can say that the Senate has done its part. However, we seem to have so many roadblocks outside and beyond the Senate. I am not here to complain and whine about it in that sense but I want to say that when we come back in February, I am ready to make this Senate to stand up and be what it is supposed to be as per the Constitution and what the people of Kenya expect it to be.

We have heard a lot from Members of another House who have talked as though they have not read the Constitution. I am sure that most of them just talk without reading it. They have demeaned the Senate and seem to believe that they are superior to the Senate. Without bringing in the childish sibling rivalry that we see or that they want to bring into the issue, I want to state here that we are here by right and by the fact that we are in the Constitution. No matter how many times they shout in their public *barazas*, funerals or even on the Floor of their House, there is nothing they can do to abolish or do away with the Senate. We are here to stay. It is only the people of Kenya who can vote us out or abolish this Senate and I am sure that they are not about to do that.

There are many issues that we have dealt with through the session and one of my major issues, as Sen. Mutula Kilonzo Jnr. has mentioned, was the Solai issue which happened in May. I want to say a big thank to this Senate for it stood up to be counted when it was critical and important. However, as Sen. Mutula Kilonzo Jnr. has said, we have also been disappointed when we saw bodies that are mandated to enforce or implement what comes out of this House decide to do nothing and let the people of Solai continue to suffer. Sometimes last week, Sen. Mutula Kilonzo Jnr. and I met representatives of the victims and it was sad and horrible to hear of the suffering that they are still going through.

Unfortunately, there are leaders from another part of the country, that was not affected by that tragedy, who say that it is time to move on. It is not time to move on when they have nowhere to sleep. It is not time to move on when they have no food;

when they cannot even plant because the top soils on their lands were washed away, and nobody cares. It is not time to move on when they cannot afford the basics; they have lost their loved ones and nothing has happened.

I, therefore, want to tell this House that when we come back in February, we shall push forward in other ways that those agencies which were mandated to do their work have been unable to do it. Whether it means through the courts or through whichever way, we will do it. It will be done and those people will get their compensation.

Mr. Speaker, Sir, as we proceed on recess, I am also grateful for the time so that I can engage with my constituents back in Nakuru County. I am one of those people who really enjoy being back there, mingling with them and trying to figure out what the issues are and what I can do to assist and help, as a Senator. I am also sure that they have missed me some of the times I have been out here in the Senate, because I have seen some of them telling me: 'Come back home, come back home.' Half of the time, I tell them: "I am in the Senate in Nairobi and I can only come back during the weekend." Now, with this recess, I am available. I will be there with you.

Mr. Speaker, Sir, I want to make sure that, as the Senators have said, and which was pointed out very well by Sen. Dullo on the issues that we are having with the Universal Health Care (UHC), where the Senate was not involved--- This seems to be a continued way of demeaning the Senate and just acting, for the Ministry or whoever it is, without making sure that the input of the Senate is at the table. We know that the work of the Senate is to represent the counties, to take care and defend them.

Therefore, Mr. Speaker, Sir, as we come back in February, we urge the Committee on Health to do their work; to do it properly and bring recommendations here that will offer solutions. If ultimately the Senate needs to cancel those contracts, then so be it; if that needs to be the recommendation that comes out of it. However, we cannot watch as counties continue to pay a lot of money and not get value for it. As I sit---

(Sen. Cherargei spoke off mic)

The Speaker (Hon. Lusaka): Sen. Cherargei, what is your intervention?

Sen. Cherargei: Mr. Speaker, Sir, my good friend and Senate colleague is making very serious contributions. I do not why Sen. Olekina is mischievous; but my point is this; because we are adjourning in the next few minutes, of course it will not affect my good friend to at least limit the time so that all of us can contribute. That will be very prudent and I stand guided.

The Speaker (Hon. Lusaka): I was going to make that ruling after the Senate Majority Whip concludes making her contribution.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I was concluding, seeing that it is almost 6.30 p.m. We have about 30 minutes and I know that many of the Senators, like my friend here from Narok, want to contribute.

In finalising, Mr. Speaker, Sir, we want to assure the Kenyans, who are watching and listening to us, that when we come back in February, they will still see a very vibrant Senate. We have done a lot of work this Session, but we will continue to do more, more

so doing the work that nobody else but the Senate would do, which is to stand and defend the people of Kenya.

In conclusion, Mr. Speaker, Sir, I also support what the President of the Republic of Kenya said; that the Parliamentary Service Bill 2018 should not see daylight. We have not seen it and I am not anticipating debate, but if, indeed, they are asking for more salaries towards the Members of Parliament (MPs, it is uncouth and wrong because the country has no money. The people have no water, roads and no medicine in the hospitals. We, therefore, cannot sit here to debate about adding salaries or houses, yet we have mortgages, car grants and all that.

(Applause)

In conclusion, Mr. Speaker, Sir, I wish you a Merry Christmas. I also wish the staff of the Senate a restful holiday. I know that they have been extremely helpful through the time, and they have been great. I also wish them, as I wish Senators, a Merry Christmas.

The Speaker (Hon. Lusaka): Hon. Senators, as you realise, there are many requests and everybody would want to say something. I will, therefore, ask those who will be contributing to take three minutes.

(Loud consultations)

Three minutes are sufficient, because if I give five minutes, those who will talk now will have an advantage while the others will be locked out.

(Loud consultations)

Okay, you will have four minutes.

Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I rise to support the Motion that the Senate do adjourn.

When I came to this House, I believed that black is black and white is white. However, today, black is indeed white. It has been a tumultuous and confusing time for me, in terms of my expectations. Someone was right in saying that when you have expectations, you are setting yourself up for disappointment. I had so much expectation about this House, being the House of union. However, at the end of this Session, I am one of the most disappointed Senators of this Republic.

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

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

I thought that this was a House of union, where the Senator for Nyeri County, my good friend and Chairperson of my Committee - regardless of the number of people who

voted for him - my dear sister, Sen. Seneta, who was nominated, and all of us, would come here and fight for Kenyans. However, I am disappointed because corruption is in our bones, all of us. None of us here can stand and say they are saints; we are all rotten.

I want to apologize to Kenyans out there that we have failed them because when we had the opportunity to make sure that the children of Ruaraka get what is rightfully theirs, corruption penetrated deeply, and at the end of the day, we failed. People died in the Solai Dam tragedy and this House came up with serious recommendations. None of them has been implemented and, in fact, some people are bragging out there and saying: "Look at you. You fought so hard for the poor, yet you are toothless." That is wrong and it has to change.

Madam Temporary Speaker, we talk about the monitoring and evaluation kitty. If this House wants to make sure that we do our work of oversight, I have a Bill that I have introduced and is at the Second Reading stage; The County Oversight and Accountability Bill, 2018.

(The red timer went off)

Madam Temporary Speaker, I request for five minutes please, being the Motion for Adjournment.

The Temporary Speaker (Sen. Nyamunga): Senator, it is not possible to give you five minutes, because there is a lot of interest.

You have one minute, please.

Sen. Olekina: Madam Temporary Speaker, one minute is not enough, but I will try my best. I want to point out one important thing in the Constitution, which is our "bible." Members of the National Assembly misunderstand the Constitution. It is about time that each of the 67 Senators in this House buys a beautiful copy of the Constitution and gifts it to these Members. Parliament is not the National Assembly; it is the Senate and the National Assembly. That is the first thing they ought to know.

The Constitution is clear, and I want to go to the powers given to Parliament. I have heard many people ask whether it is the business of the Senate to call Cabinet Secretaries. Article 125 (1) of the Constitution on the power to call for evidence says-

"Either House of Parliament, and any of its committees, has the power to summon any person to appear before it for the purpose of giving evidence or providing information."

That power is not given to the National Assembly or the Senate alone. It is given to either House.

The Cabinet Secretaries ought to know that this House has powers to summon anybody to appear before them. Today, we were disappointed because we waited for the Cabinet Secretary for Petroleum and Mining, but he did not show up. Again, yesterday he kept us waiting. It is embarrassing because he called to give us all manner of excuses for not showing up. He told us that he was in Ole Sereni and, later on, he said he was in Kisumu. They need to understand that the Constitution is very clear when they are summoned here. Article 125(2) of the Constitution says-

“For the purposes of clause (1), a House of a Parliament and any of its committees has the same powers as the High Court.”

Madam Temporary Speaker, I appeal to the national Government and all Members of the Senate to know that our water catchment areas are vital for our survival. It is a pity that the Mau Forest is being depleted. I want to appeal to my good friend who God is blessed so much and he is now a big tycoon, to join hands with me to save the Mau Forest. Let us fence it. We do not inherit this earth from our ancestors, but we are borrowing it from our children. Martin Luther King, Jr said, “Our lives begin to end the day we become silent about things that matter.” What matters now is our environment. We need to defend the poor people who are languishing in poverty. The gap between the rich and the poor is so wide.

Let me address myself to the Medical Equipment Services (MES). It is sad that county governors do not understand why they should pay for the equipment. From the ruling made by the Deputy Speaker this afternoon, it behooves each one of us to perform our mandate as stipulated in the Article 96 of our Constitution. We must defend and protect the interests of our counties and their governments.

The list that the CS Health, Sicily Kariuki presented here showed that over 60 medical equipment had been supplied to Narok County. However, they are not working in some dispensaries because there is no electricity. This is ridiculous.

It is time the President cemented his legacy. The other day, I was happy to hear him say that he will not assent the Parliamentary Service Commission (Amendment) Bill, 2018. This Bill had been crafted in way to kill the institution of the Senate. The role of the Chairperson of the Parliamentary Service Commission (PSC) is clearly defined in this Constitution. It says the Speaker of the National Assembly shall be the Chairperson of the PSC and the Clerk of the House---

The Temporary Speaker (Sen. Nyamunga): Hon. Senator, please, be mindful of others also.

Sen. Olekina: Madam Temporary Speaker, I am winding up. The Clerk of this House shall be the Secretary. That is not something we can debate here because it is well captured in the Constitution. That was something well designed because our Speaker does not sit in the PSC. He is represented there by the Clerk. We must defend our House and the interests of Kenyans who brought us here.

Madam Temporary Speaker, with all those many emotional remarks, I want to thank you because you have been gracious to me. You have given me enough time to speak to Kenyans. As we go on recess, it is time for us to meet with our electorates and eat some *nyama choma* with them.

Madam Temporary Speaker, the other day, I was in Kisumu and I ate some really good fish. However, I am afraid the Chinese might end up destroying our fish. I read from the newspapers that they are introducing some viruses into our lakes. It is a scheme to ensure that we consume more of their fish. I urge our brothers and sisters from that region to jealously guard their lake.

(Sen. Olekina's Microphone went off)

The Temporary Speaker (Sen. Nyamunga): Hon Senators, we are only remaining with five minutes to the time. However, I can see we have five Members who want to contribute to this Motion. I will give them a minute each just to wish Kenyans a Merry Christmas and a happy new year. Otherwise, some of them will not get time to contribute.

Sen. Mahamud Mohammed, proceed. Please, make sure that the microphone works.

Sen. (Eng.) Mahamud: Madam Temporary Speaker, let me also contribute to this Motion for Adjournment. I want to thank the Senate for the good work we have been doing during this session. As we go on recess to meet with our people, let us keep in mind that we still have a lot of work to do in February when we resume.

Madam Temporary Speaker, the issue of health equipment has been discussed at length by many Senators. This is a matter which in the face of it appears simple, but the most complicated contract that I have ever seen in my life; a very complicated contract whose contents you read and re-read, but you cannot understand. Unless we understand it, we should delete this from our coming Budget.

With regard to the Petition brought by Sen. Sakaja yesterday about transport in Nairobi, I would like to observe that Nairobi requires everybody to sit together; the national Government and the County Government of Nairobi City, to deal with the transport nightmare. It cannot be handled by the County of Nairobi alone. The Nairobi City County must be helped to deal with Nairobi urban transport, which has been talked about since 1987 and nothing is happening. So, it is a crisis we are facing and which must be solved.

Madam Temporary Speaker the issue of pending bills is a nightmare. My Committee on Finance and Budget is actually very worried about this, because it is increasing and unless we reign on this, it is going to be a monster that will be very difficult to deal with. So, we must, as Senate, rein in the counties so that they pay bills for services rendered by the community.

As we approach the budget making process, we must make sure that the coming budget is friendly to the counties. We must as much as possible try to devolve functions that are meant for the counties. There is no reason why ministries are growing in numbers and budget than the headquarters.

Madam Temporary Speaker, finally, the National Assembly where I was for the last two terms should understand that Parliament of Kenya is made up of two Houses. People should not portray their ignorance by talking the way they talk.

The Parliamentary Service Commission Bill is meant to regulate the functions of Parliament. If the National Assembly thinks that, that is their Bill, we do not want it. I agree with my colleagues that let the Bill come to the Senate and we will deal with it. Their intention is to demean the Senate and try to exploit the Kenyan population. Unless we get the Monitoring and Evaluation Fund for the Senate, people come to their senses and this Parliament works together, in the spirit of the Constitution, we should, as the “upper house” play our role.

In the coming Constitution, we must be focused on strengthening this Senate whether we are going to be here in the next Parliament or not. That should be our

intention because the Senate is going to be the defender of the counties and devolution. Devolution is the best thing that has ever happened in this country.

With those few remarks I beg to support and wish everybody happy *Jamhuri* Day and happy holidays.

The Temporary Speaker (Sen. Nyamunga): Thank you.

Sen. Cherargei.

Sen. Cherargei: Thank you Madam Temporary Speaker for this opportunity. Mine is to say that as the Chairman of Committee on Justice, Legal Affairs and Human Rights, we have worked very hard during this Session and when we come back, there are so many issues that need to be dealt with.

There is the issue of the multi-agency committee on the fight against on corruption. In the next Session, we will look at more proactive measures in terms of legislative and policy framework, to ensure that we bring our issues together.

My warning to the investigative agencies and agencies that are tasked with the fight against corruption is that, they should be careful so that they do not do persecution instead of prosecution. We have seen that there is ethnic profiling of some few individuals with the aim of deterring them from the 2022 succession politics. I want to tell them that I have seen they are targeting people from where I come from. However, we will not sit and allow them to do it in bad faith.

The fight against corruption should be done in good faith, within the law and should not be persecution but prosecution. I want to tell the Director of Public Prosecution (DPP), Director or Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) that they must be careful. They can be used but at the end of the day they will be kicked out of those offices when they have done more harm, the way it happened to the Judiciary in 2003 during the radical surgery.

Madam Temporary Speaker, we want them to carry out the fight against corruption even in our counties, in a more proactive way and within the rule of law, because nobody is above the law. Let them do their work as per the law. Let them not be used as the tools to determine the 2022 succession politics.

Secondly, Madam Temporary Speaker, is on the Building Bridges Initiative (BBI). I was one of the people who opposed the handshake; and when the BBI was brought, I thought it would cure all the issues that affect Kenyans. However, as I speak today, the BBI team has visited only two places, but they have a working draft. When we are saying no to increase of salaries to Members of Parliament (MPs), the BBI team is trying to expand the Executive! They are saying, "Let us have a Prime Minister and two Deputy Prime Ministers." They are saying, "Let us have a two or three-tier Government; let us expand the regional governments;" yet, at the same time, we are saying they should be careful. They should get the true opinion of Kenyans. They should not just visit Machakos and Makueni, and then come up with a working document.

Madam Temporary Speaker, we will not allow them to undermine the spirit and the letter of this Constitution. They need not visit some few individuals, because we know where they are getting the working document that they have from. We want to tell the BBI team that they should first get the information from Kenyans and then decide on the way forward.

Madam Temporary Speaker, I know the disbandment of the Independent Electoral and Boundaries Commission (IEBC) is inevitable, and my Committee will do the necessary. This is because we want to pursue what our brothers and sisters in the National Super Alliance (NASA) were pursuing; of electoral justice. We will ensure that we fix the IEBC and ensure that it is working so that Kenyans can get value for the elections that we have in this country.

Madam Temporary Speaker, can you add me just one minute? As I conclude, when we come back, we will ensure that we discuss the issue of the referendum as a House. My Committee will provide the necessary legal advice and wisdom to ensure that we succeed in that endeavour.

Madam Temporary Speaker, on the issue of respect from the National Assembly, I want to warn them that the issue of raising salaries in this country is not acceptable. From where I sit, I know that Parliament and parliamentarians already have the necessary terms and conditions of engagement in this country. We, therefore, say no to the issue of salary increment.

Finally, Madam Temporary Speaker, let us protect devolution for the sake of all Kenyans. I want to tell governors that the issues of commitment, transparency and corruption-free counties is not an option. We will not negotiate with governors on ensuring that we go forward.

I wish all Senators a Merry Christmas and a happy new year. We are looking forward to more fruitful discussions as we try to ensure that we protect devolution.

Thank you, Madam Temporary Speaker.

Sen. Omogeni: Thank you, Madam Temporary Speaker. I support this Motion that gives us an opportunity to retreat to our counties and have engagements with the people that we represent.

Madam Temporary Speaker, I am going back to my county disappointed that we have not dealt with this issue of medical equipment. Let us not beat around the bush; this is just looting by law. I am a lawyer and a Senior Counsel in this country. I have never seen a situation where you enter into a contract by compulsion and not by consent.

Madam Temporary Speaker, I have read the report that was tabled before the Senate this afternoon. In Bomet County, the Governor never signed any Memorandum of Understanding (MoU) with the national Government. However, their money has been deducted at source in subsequent years. The Constitution we enacted in 2010 was to protect us from thieves and looters. How can you have a person working for a Government, who behaves like a witch doctor? In Kakamega County, the medical equipment was delivered at night. Are we having a Government of witches or a Government of people who are reasonable?

Madam Temporary Speaker, when we come back in February, let us sharpen our teeth, as Senators. We must deal with this scandal conclusively. There are people who belong to jail.

An hon. Senator: Yes!

Sen. Omogeni: They should not even continue serving in Government. In my own County in Keroka, we have been paying for equipment that was dumped there, and the excuse being given for not using them is that the supply of electricity is not three

phase. How do you deliver equipment to a hospital, dump them by force and cheat us that you carried out a needs assessment? If you did that, you should have known that the power supply in Keroka cannot accommodate that kind of equipment. This issue has caused some people to lose their seats.

In Bomet there was propaganda that was peddled that the former governor, hon. Isaac Ruto, caused people to lose their lives because he refused to sign the Memorandum of Understanding (MoU). I dare say that among the 47 governors, that is the only man who remained standing, and we should applaud him. Those who signed these MoUs are not men enough. In my community men enough face the knife once. If they knew that this thing was not in accordance with the Constitution, they should have said “no”.

Madam Temporary Speaker, I want to applaud the ruling that was delivered by the Deputy Speaker this afternoon that we, as Senators, must reclaim our space in legislation in this country.

Finally, because of time, I wish my colleagues a Merry Christmas and a happy new year. As we retreat for Christmas may I wish them God’s speed and---

(Sen. Omogeni’s microphone went off)

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. Seneta Mary Yiane. You have exactly two minutes.

Sen. Seneta: Thank you Madam Temporary Speaker, for giving me a chance to also add my voice to this Motion for adjournment. From the outset, I wish to say that there are so many issues that came to the Senate in terms of Petitions, Statements and Committee reports. I urge my colleagues Senators, to make sure that all that has been discussed in this House is implemented by the ministries concerned.

I also urge the ministries to implement the resolutions of this House that have come out of Statements and Petitions that Kenyans have brought to this House. We have had many issues, including pending bills in our counties, statutory deductions of workers who have worked in many parastatals and have not been paid, maize farmers and livestock keepers who have not received their money even after delivering services to many of our parastatals. I urge the ministries to make sure that they honour the Petitions and Statements that have come before this House.

Madam Temporary Speaker, I wish my colleagues a Merry Christmas and a happy new year.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, on behalf of the Speaker of the Senate, the Rt. Hon. Kenneth Lusaka, and all Senators and members of staff, may I take this opportunity to wish all Kenyans, and in particular the people of Kisumu, a great Jamhuri Day, a Merry Christmas and a prosperous 2019. May all of us drive carefully and be mindful of many Kenyans who may not even have something to eat on Christmas Day.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday, 12th February, 2019 at 2.30 p.m.

The Senate rose at 6.30 p.m.