

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 5th 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

COMMUNICATION FROM THE CHAIR

SUSPENSION OF COMMITTEE SITTINGS TO ALLOW MEMBERS TO PROCEED ON RECESS

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

As you are aware, on Friday, 7th December 2018, the Senate will proceed on recess until Monday, 11th February 2019, so as to commence the Third Session on Tuesday, 12th February 2019 as per the Senate Calendar.

Hon. Senators, it has been a long and busy year for all of us and I am very sure every one of us is looking forward to take a well-deserved break during the festive season. The recess at the end of the Session provides an opportunity for us to reflect on our achievements and challenges throughout the year and to re-energize and plan for the new session.

Hon. Senators, the recess will also avail us an opportunity to be with our families, friends and constituents. I, therefore, direct all Senate Committees to suspend their sittings from 17th December 2018 to 31st January 2019.

This will enable the Senators to take a break from the heavy business of the Senate and to be with their families and constituents. In the same breath, it will provide an opportunity for officers to take their annual leave and join their families and friends during the Christmas season and to reinvigorate and recharge in readiness for the next session in 2019.

Hon. Senators, it is with great pleasure that I wish you all a merry Christmas and a prosperous New Year 2019.

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Thank you.
Next Order.

PAPER LAID

(Sen. Kihika approached the Dispatch Box)

The Deputy Speaker (Sen. (Prof.) Kindiki): By now, Majority Whip, you should have learnt that the Senate waits for no man or woman.

(Laughter)

REPORT ON 12TH MEETING OF SPEAKERS OF NATIONAL LEGISLATURES OF EAC PARTNER STATES AND EALA

Sen. Kihika: Mr Speaker, Sir, I beg to lay the following report on the table of the Senate today, Wednesday, 5th December 2018-

The 12th Meeting of the Speakers of National Legislatures of the East African Community Partner States and the East African Legislative Assembly held on Friday, 21st September 2018, at the Pyramid Continental Hotel in Juba, South Sudan.

(Sen. Kihika laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Any other paper?
Next order.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senators, we have a number of statements today. If you look at your Order Paper, we have statements pursuant to Standing Order No.48(1); six of them, as per the Order Paper on page 989.

*(Sen. Wetangula approached the Deputy Speaker
and handed him a document)*

There is an additional request here by Sen. Wetangula which the Chair will process because I had already approved it earlier. Besides that, there are also statements under Standing Order No.51 (1)(b). We have four of them.

You all know and may have seen from yesterday's proceedings, especially, the Statements by the Chairpersons under Standing Order No.51 (1) (b) are a bit more engaging and we might spend more time because these are periodic reporting on the work

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of committees at the end of session. Some of the things that we were not able to accommodate ordinarily during Statements Hour are accommodated through this.

So, in a nut shell, Hon. Senators, I am drawing your attention to the fact that we have a lot of business under Statements, and, for that reason I will exercise a lot of discretion on the Statement Hour to allow a bit of time to accommodate that. In fact, there is, within today's Order Paper, under Standing Order No.48(1)--- I do not see it here.

Where is the interim Report that is due as a result of the Statement that was sought by the Senator of Isiolo County?

(A Senator spoke off record)

Thank you. Under Statements, if you look at part two, the first item under Standing Order No. 51(1)(b) is the Statement by the Chairperson, Standing Committee on Health, who is to issue a Statement on the Universal Health Care (UHC) Programme and the Managed Equipment Service.

I have two things to address. First, as I have said, I will exercise a bit of discretion because this is already heavy; if you look at the items under Statements. Secondly, following the rulings that I made twice on the UHC and the Managed Equipment Service, I will give more time and the first priority to that Statement before we interrogate other Statements. This is done in consideration of the fact that we shall be proceeding for the Christmas recess as I had communicated.

Therefore, this interim Report, if I may use Sen. Mutula Kilonzo Jnr.'s words, will hopefully have interim solutions that will help us manage the country's interest and anxiety, which is justified on this important matter. I will now give the Floor pronto, to the Chairperson of the Committee on Health.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, in view of the importance of this Report, am I in order to suggest and propose that you direct that the copies be availed to the Senators for us to follow what the Chairperson will be saying?

The Deputy Speaker (Sen. (Prof.) Kindiki): We can start with another Statement and give a maximum of 20 minutes, during which time, the Clerks will organise for the circulation of the Report. It may not be possible to have the entire Report. I can see that the Chairperson is under the weight of documents but I direct that only the main Report be reproduced because the annexures can take a lot of time. It is so ordered.

What is it, Senator of Nairobi County?

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. As you are aware, Statements that are pursuant to Standing Order No. 47(1) are presented two hours to the sitting. This means that they do not ordinarily appear on the Order Paper. I have one that was presented today at midday on an urgent matter; the matter of the public service vehicles

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ban and the transport crisis in Nairobi County. I seek guidance to know if we can also proceed with that Statement.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will request you at some point to approach the Chair.

(Sen. Sakaja approached the Chair)

Not now. Meanwhile, can we have Sen. Kihika present her Statement which is pursuant to Standing Order No. 48(1)?

STATUS OF IMPLEMENTATION OF THE NEW
SCHOOL CURRICULUM IN THE COUNTRY

Sen. Kihika: Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Committee on Education on the status of implementation of the new school curriculum in the country.

In the Statement, the Committee should-

(1) Give a general overview of the new school curriculum, stating its implementation status.

(2) Explain the extent to which the teachers have been trained to handle the new curriculum.

(3) Elaborate the extent to which study materials have been availed in schools for the new curriculum.

The Deputy Speaker (Sen. (Prof.) Kindiki): Could we hear from the Chairperson of the Committee on Education, the Vice Chairperson or a Member?

*(Sen. Seneta spoke to the Deputy Speaker
while standing at the Dispatch Box)*

Order Sen. Seneta. You are a second term parliamentarian and you know what not to do. When can you give a response to the Senator of Nakuru County?

Sen. Seneta: Mr. Deputy Speaker, Sir, if we are to sit before 17th, we shall look at the Statement and then communicate.

The Deputy Speaker (Sen. (Prof.) Kindiki): 17th of?

Sen. Seneta: It is 17th of December, 2018, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that before the suspension of Committees?

Sen. Seneta: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Are you happy with that Senator of Nakuru County?

(Sen. Kihika spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): You are not on the radar.

Sen. Kihika: Yes, Mr. Deputy Speaker, Sir. That is okay.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. It is so ordered.
The next one is a Statement from the Senator of Nakuru County, again.

USE OF ASBESTOS IN CONSTRUCTION OF BUILDINGS

Sen. Kihika: Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on Roads and Transportation on the use of asbestos, which is a material that contains some human carcinogen, a substance that causes cancer in roofing.

In the Statement, the Committee should---

(Sen. Wetangula spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wetangula. What is carcinogenic? Is it the Statement or the Senator of Nakuru County or both?

(Laughter)

Sen. Kihika: May be both, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Senator of Nakuru County.

Sen. Kihika: Mr. Deputy Speaker, Sir, the Committee should:-

1. Explain the steps, if any, that the Government is taking to replace asbestos roofing tiles in Government buildings with other material that are not health hazards.
2. Outline the plans that the Government has put in place to sensitise Kenyans against the use of asbestos material for roofing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Could we hear from the Chairperson of the Committee, the Vice Chairperson or a Member?

Sen. (Eng.) Hargura: Thank you, Mr. Deputy Speaker, Sir. Taking into account the fact that we are going into recess and the direction that you gave, we will endeavour to see if we can have something before 17th December, 2018.

Sen. Kihika: Mr. Deputy Speaker, Sir, 17th December, 2018 is okay.

The Deputy Speaker (Sen. (Prof.) Kindiki): So ordered.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I raised a similar Statement in the last term. Sen. Sakaja had a similar issue about asbestos. I am wondering loudly, because this is a World Health Organisation (WHO) concern about the use of asbestos, whether the Committee on Roads and Transportation is the right Committee or should it be referred to the Committee on Health. It is just a wild concern that I have.

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The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kihika, what do you have to say?

Sen. Kihika: Thank you, Mr. Deputy Speaker, Sir. I did not know that this Statement had been raised before but this does show that we have not had a solution and we would not want this to continue.

I do agree with Sen. Mutula Kilonzo Jnr. that it might be a good idea to have both the Committee on Health and the Committee on Lands, Environment and Natural Resources handle the issue.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is an environmental issue with health implications. I direct that the Statement be handled by the Committee on Lands, Environment and Natural Resources. Could we hear from the Chairperson, the Vice Chairperson or a Member?

Sen. Halake: Mr. Deputy Speaker, Sir, is that Statement for the Committee on Land, Environment and Natural Resources?

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

Sen. Halake: Mr. Deputy Speaker, Sir, I do not want to say that we will do it before the 17th of this month but if we could be given time---

The Deputy Speaker (Sen. (Prof.) Kindiki): How much time?

Sen. Halake: Mr. Deputy Speaker, Sir, about two weeks for us to pursue this.

Sen. Kihika: Mr. Deputy Speaker, Sir, I understand what the Senator is saying. However, in your Communication, you stated that Committees will no longer be meeting from 17th December 2018 to 31st January, 2019 which makes it even worse. Therefore, given---

The Deputy Speaker (Sen. (Prof.) Kindiki): It is worse for you but not for the Senators.

Sen. Kihika: Mr. Deputy Speaker, Sir, it is worse for me. Therefore, I would appreciate if they would, at least, try and get it before the 17th December, 2018. However, I will also understand if they do not. This Statement needs attention because it is a serious hazardous issue.

Sen. Halake: Mr. Deputy Speaker, Sir, we will try our best to deliver it by 17th December, 2018.

The Deputy Speaker (Sen. (Prof.) Kindiki): This is not a place for trying. The Senate of this country is such a serious institution. You should have at the back of your mind that you are not doing these things for the Speaker or the Senator for Nakuru County; you are doing it for the people of Kenya. It might be a matter raised by the representative for Nakuru County but it is a matter that is affecting so many people in this country. Therefore, there is no guess work or trial.

I direct that you handle that Statement and have a response to the Senator by 17th December, 2018 in accordance with our Standing Orders.

Sen. Halake: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Colleagues, there was another matter which was raised privately by the Senator for Narok County when he approached the Chair and he requested me to clarify. Under the new Standing Orders that we are using at the moment, unlike in the past, Statements do not lapse with the Session because they are handled by Committees. So, you can pursue Statements with the Committees.

The only gap which will be there in terms of time is when Committees are not able to meet on the dates which I have given for obvious reasons. People need to have Christmas, including our very hardworking staff who have supported these Committees all this time. They need to be with their families and take their annual leave. Otherwise, Statements do not lapse with the Session, they continue with the Committees in perpetuity.

Before we go to the interim report of the Chairperson of the Committee on Health, under Standing Order No. 47(1) and given the urgency of the matter, I will ask Sen. Wetangula to make his Statement.

Sen. Sakaja, please approach the Chair.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. Sen. Susan Kihika talked of carcinogenic and we know anti-carcinogenic wheelbarrows of Bungoma County.

(Laughter)

POWER PURCHASE AGREEMENT BETWEEN LAKE TURKANA
WIND POWER COMPANY LTD AND THE
GOVERNMENT OF KENYA

Mr. Deputy Speaker, Sir, I wish to make a Statement on a matter of national importance and general topical concern under Standing Order No. 47(1).

This matter relates to a company called Lake Turkana Wind Power Company Ltd (LTWP) which entered a Power Purchase Agreement (PPA) through Kenya Power and Lighting Company (KPLC).

On the 29th September, 2011, KPLC entered a PPA with a company known as LTWP. The company was to finance, design, procure, construct, install, test, commission, operate and maintain the generation plant in accordance with the terms and conditions set out in the PPA. Other scope of works included the supply and installation of the main metering equipment and back-up metering equipment, transfer the back-up metering equipment to KPLC and sell the net electrical output to KPLC. The power plant is in Loyangalani, Marsabit County.

Mr. Deputy Speaker, Sir, the contracting company, LTWP was contracted to generate 300 mega watts of wind power and supply the same to the national grid.

According to records available, the cost of the project was 640 million Euros or Kshs74.2 billion. The construction period was estimated at 26 to 36 months when the company would supply the generated power to the national grid.

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Mr. Deputy Speaker, Sir, this project was right from the start faced with several questions from many quarters, among them, the decline by the World Bank to offer partial risk guarantees. The World Bank, through the International Development Association (IDA) withdrew its support for the project with a clear explanation that the project was too big and that the KPLC lacked the necessary and proven expertise in managing such a huge volume of wind energy.

This notwithstanding, the Government of Kenya (GoK) went ahead and launched the project in 2015. The completion date was set for January 2017, and Turkana Wind Power says they have, in fact, completed the project.

Mr. Deputy Speaker, Sir, the Ministry of Energy has a policy document known as feed-in-tariffs policy on wind, biomass, small-hydro, geothermal, biogas and solar resource generated electricity. This policy document was issued in March 2008 and revised in 2010 and further revised in 2012. This policy document sets out connection obligations as follows-

(1) The feed-in-tariffs values set in this policy include a standard allowance for interconnection costs. The cost of interconnection, including the costs of construction, upgrading of transmission and distribution lines, substations, and associated equipment, are to be borne by the developer.

(2) The interconnection costs will be paid by the developer upfront. Where the off-taker constructs or upgrades its grid, the costs shall be recovered from the seller through the feed-in-tariff”.

Mr. Deputy Speaker, Sir, in this particular case of Lake Turkana Wind Power Limited, the Government abandoned its policy that I have quoted and syndicated a loan from the Spanish Government of Kshs17 billion and further contributed a Government of Kenya kitty of Kshs3 billion for its parastatal known as Kenya Electricity Transmission Company (KETRACO) to construct the line which is a construction that ought to have been done by LTWP.

Mr. Deputy Speaker, Sir, there is no evidence that any arrangement is in place to recover this construction cost from LTWP.

Mr. Deputy Speaker, Sir, as I make this important statement, it has been established that a trial run has shown that the company at its most optimum production will manage to produce between 40 to 50 per cent of its capacity. Yet, because of the delayed commissioning of the facility, LTWP has laid a claim to the GoK for payment of what they call “deemed generated power at 100 per cent capacity”.

Mr. Deputy Speaker, Sir, already a staggering sum of Kshs5.7 billion has been paid to the LTWP for no delivery of power at all. The company is demanding a further payment of Kshs9.6 billion for the same “deemed generated power”.

Mr. Deputy Speaker, Sir, on what basis is the Government of the Republic of Kenya making the astronomical payments to the LTWP without the supply of a single megawatt of electricity, when, in fact, the same GoK should be demanding reimbursement and

recovery costs in relation to the Spanish loan and its contribution amounting to Kshs20 billion for the construction of the transmission line?

Mr. Deputy Speaker, Sir, the Government of Kenya should explain to the Kenyan taxpayer the total amount of money it intends to pay to Lake Turkana Wind Power Company Limited for the so-called deemed generated electricity and how much power will be fed into the grid by this company and how it will impact on the cost of electricity to the consumer.

The Government should equally explain to Kenyans why it abandoned its own policy on connectivity construction and burdened Kenyans with yet another loan from Spain for constructing the connectivity line.

The Standing Committee on Energy, in my view, should investigate this case of Lake Turkana Wind Power Company Limited and all the contracts and costs and obligations created therein and recommend the recovery of any taxpayers' money that may have been erroneously and unjustifiably paid to the company and hold those responsible for the unjustified payment that has occasioned financial loss to the country to account.

Mr. Deputy Speaker, Sir, this is one of the many fraudulent transactions through which this country stands to lose huge sums of money; while the Government policy, the law, the contractual obligations are very clear as to who does what in a situation of this nature.

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

(Sen. (Eng.) Maina up stood in his place)

Mr. Chairman you will be the last one. You are the Chairperson to the Senate Committee on Energy. Is that not so? Senator Kirinyaga you will be the last one so that you take the glory and the flak at the same time.

Proceed Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Thank you, very much, Mr. Deputy Speaker, Sir. I thank Sen. Wetangula for requesting this important Statement. It is important that the Committee on Energy clarifies the issues raised by Sen. Wetangula. One issue is very clear; with regard to the Turkana Wind Energy, we will need to also look at the separation of roles on transmission and generation and see whether transmission was part of the work of the Lake Turkana Wind Energy or whether their job was only to generate the power from the wind field.

There was also the issue of feeding tariff; whether it relates to a big project like that or only small mini hydros and others on a small scale. I say this because I worked in the Ministry of Energy and I happen to have some information. However, I would not want to prejudice what the Committee will do, but it is important that this project which was supposed to generate 300 megawatts to the grid - far more than a quarter of what we have today - is clarified to the people of Kenya so that they know the truth.

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Mr. Deputy Speaker, Sir, it is good that Sen. Wetangula has sought this Statement here so that we can get it right and see where we can apportion blame as stated by the Senator or whether the wind energy was supposed to be generated and Kenya Electricity Transmission Company (KETRACO) through other funding was supposed to transmit it to the grid where it is supposed to be.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, keep the comments brief. Proceed Sen. Olekina.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I am a Member of the Committee on Energy and I wish to state that we have been looking at this matter. In fact, we had the Minister appearing before us where we interrogated the matter of the Lake Turkana Wind Project. Some of the challenges which were expressed by the Minister had to do with the completion of the transmission line.

I think with the Statement now having been requested, we will then further have a sitting and meet with the Minister because we expect him to come to us and give us feedback. This is because we had challenges with the issue of land compensation.

I am also aware that there are challenges with the issue of financing; that one of the companies that had won the tender had gone belly-up and there is another company that the tender was given to. So, it is a matter that now as a Committee we are waiting in order to come up with a report because this is a matter that we took over as a Committee and I am sure the Chairperson and the Vice-Chairperson of the Committee will bear me witness that we have been actively investigating this matter.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): We will have two minutes each for the rest of the speakers, except the Chairperson whom I will give three minutes.

Proceed, Sen. (Eng.) Hargura.

Sen. (Eng.) Hargura: Thank you, Mr. Deputy Speaker, Sir. I thank Sen. Wetangula for bringing up this issue because the Lake Turkana Wind Power project is in my county. There are issues which communities have with it and I do not think this is the right place to bring it up because they are in court. However, what he said is not in any court. It is a concern for Kenyans.

The issue of the transmission line which he said was done at Kshs20 billion was actually done at Kshs28 billion because of the Isolux Wind Power Company going bankrupt and introducing a Chinese company and the rest had to be borne by the Kenyan Government. We still have extra cost on that project.

However, the issue is; when the World Bank (WB) raised issues, I think Kenya should have considered it because right now, we have issues with regard to what we are actually getting. During the day, it is about 30 to 40 per cent while at night it is 60 per cent. Since we do not operate a 24-hour economy, where does the extra power go?

The other day somebody wondered why we do not sell the extra power to Uganda at night and buy it from Uganda in the morning? There is a lot of inconvenience and we

need to be careful so that we do not lose funds. Taxpayers do not have to pay for unused power because that is what we are going to do. We need to make sure there is due diligence and that any power generation is for the interest of Kenyans.

Thank you.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. I would also like to add my voice in congratulating Sen. Wetangula for bringing this Statement. As always, he does point out some very key issues that are affecting the country, especially issues around mega projects; how they are handled. The design and the potential for them to be instruments of fraud and corruption is something that this House must make sure that we hold people accountable.

Mr. Deputy Speaker, Sir, some of the mega projects have been touted as Vision 2030 projects. Vision 2030 has all these projects lined up; the ones that are going to take us to the next level of development of 10 per cent growth. They are supposed to give us return on investments. However, so far, what we have seen is that there is no return on investment from these projects and they seem to have been designed with corruption in mind.

I am glad that this House is going to take care of this issue and that the Energy Committee is going to look into it. However, not just this issue, I wish that this House would take stock and audit all mega projects in this country with a view to determining whether they are achieving the objectives for which they were designed or they are just part of a major scheme to defraud this country and enslave our children and grandchildren to debt.

Mr. Deputy Speaker, Sir, a few weeks ago, I brought up a similar issue around Isiolo Airport where, after Kshs2.5billion has been used, only 1.4 kilometres of runway was constructed.

Recently, Nyeri Airstrip was launched and it is exactly the same length as the Isiolo International Airport. Why a 1.4-kilometre runway would cost Kshs2.7 billion after many revisions of the initial budget from Kshs600million initially and then Kshs900million---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator. You should bring another Statement about Isiolo.

Sen. Halake: Mr. Deputy Speaker, Sir, I have already done that.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator. Just make good use of the time you have.

Sen. Halake: Yes, Mr. Deputy Speaker, Sir.

Sen. Halake: Yes, Mr. Deputy Speaker, Sir. What I was trying to say is that this points to a lot of similarities to other mega projects---

(The microphone went off)

The Deputy Speaker (Sen. (Prof.) Kindiki): That is how you spent your time.

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Proceed, Chairperson of the Senate Committee on Energy. You have three minutes.

(Loud consultations)

Order, Chairperson! Order, Sen. Kirinyaga! Let us hear Sen. Mutula Kilonzo Jnr. first.

(Loud consultations)

Sen. Mutula Kilonzo Jnr: Mr. Deputy Speaker Sir, this is just one amongst many of the mega corruptions in this country. It must have become fashionable to steal and it is about who steals more. However, on the Senate Committee on Energy, I must say this. This morning, the Managing Director (MD) for Kenya Pipeline Company (KPC) was suspended or he has resigned. He took the option of not being arrested and resigned. We live in a country where you offer a person the option of telling him, ‘Please, just go home before we arrest you.’

The question of Zakhem International Construction Company – which is part of the suspension of the MD of the KPC – was in the Senate Committee on Energy. I am, therefore, urging the Chairperson of the Committee to get to the bottom of this issue before they deal with the issue of the Kshs9.6 billion that Senator Wetangula was talking about. I saw this story on Citizen Television; that there has been a delay and that we are paying for the delay.

It is only in Kenya where you construct a wind power farm where there is no wind, and the wind is generated at night and you cannot store it. This is a scandal in every sense of the word. How did we construct this farm if we knew that there was no wind? We should have taken it to the mountains in Makueni County, where there is wind permanently.

Thank you, Mr. Deputy Speaker Sir.

(Laughter)

The Deputy Speaker (Sen (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr.; you can also make a statement about Makueni separately.

(Laughter)

Very well, proceed, Chairman.

Sen. (Eng.) Maina: Thank you, Mr. Deputy Speaker, Sir. First of all, we appreciate when sentiments are expressed and we get the truth. However, in doing so, let us not pre-judge anything; and my Committee will get into the matter and give facts. I do not want to speak too much about this project, but Kenya has been trying to come out of thermal generation of energy. Our rivers have not been providing as much capacity as

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they were originally providing because of the weather patterns. Kenya has been paying close to about \$500 million every year to thermal generation.

The other thing, Mr. Deputy Speaker Sir, is in keeping in pursuit with the policy that is there for greener energy---

The Deputy Speaker (Sen (Prof.) Kindiki): Order, Chairperson! This is about the Lake Turkana Wind Power Project, and you have 3 minutes.

Sen. Maina: Mr. Deputy Speaker Sir, I am coming there; I am only trying to lay the genesis of where the project came from. The country is moving to greener energy and just yesterday, the President commissioned another green power energy at Olkaria. Therefore---

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

Sen. Wetangula: Mr. Deputy Speaker Sir, with the greatest respect to my distinguished colleague, the Chairman, he has missed the point. At no time did the statement question the rationale or philosophy of alternative energy. The issue raised is just about the apparent fraudulent transaction in the process; the construction of the transmission line and the payments for deemed generated power when there is no power.

Mr. Deputy Speaker Sir, I am a firm believer in alternative, green energy and I never raised any question. Therefore, my distinguished colleague is off the point by trying to invoke the name of the President about green energy. That is not an issue here.

The Deputy Speaker (Sen (Prof.) Kindiki): Chairperson, tell us about the Lake Turkana Wind Power Project. Also, tell us whether the statement made by Sen. Wetangula is correct or not; what the Committee will do and by when.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I am coming to his three major points; and I intended to conclude with them. However, as the Bible starts, I have to lay a basis for my story---

(Laughter)

Mr. Deputy Speaker Sir, I have listened to Sen. Wetangula on the issue of the transmission line. We will check and, indeed, if it was not in the contract for these people who will be given a power line for generation I will consequently report.

Secondly, Mr. Deputy Speaker Sir, we will also report regarding how this project went to this particular contractor. We will get into the tendering process and we will report on that too, as you have raised it.

Thirdly, we will look at the value for money for the 300 megawatts. However, I was only appealing to this House that my distinguished Committee will go into the issues without any negatives or any positives. We will go into it absolutely neutral and we will come back to---

The Deputy Speaker (Sen (Prof.) Kindiki): Order, Chairperson! Are you and your Committee expected to do anything different from that?

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(Laughter)

You are obviously supposed to be impartial. Therefore, when you emphasize it, it is as if there is a suggestion that there is anything else that would happen.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, my dear friend, Sen. Wetangula, if you heard the adjectives he used in description of things, you cannot take him for granted; and that is why I am going into that.

(Laughter)

Thank you very much, Mr. Deputy Speaker Sir.

The Deputy Speaker (Sen (Prof.) Kindiki): Thank you Mr. Chairperson Sir.

Order, Senators! Order! Thank you, Sen. Wetangula; when I looked at this statement being made, it convinced me that it is an important matter because the sums involved are huge. The commitment of the Government to provide cheap, affordable energy is noble; and this House must assist the Government in ensuring that the citizens of this country get value for money.

Number, two, these are the things that this House should be dealing with. In fact, I am increasingly convinced that this House is doing what it should be doing – not that I had a different view.

(Applause)

Colleagues I assure you that if we continue this way, we will not have to make our case anywhere about why we need to be here, and what we do. This is because we have had people sometimes asking about what we do, not because they do not know, but they just want to irritate devolution.

Hon. Senators: Yes.

The Deputy Speaker (Sen (Prof.) Kindiki): Having said that, I am a bit concerned about committees generally, especially after we adopted the new Standing Orders whereby we have minimized and diminished the role of requests for statements and accountability of committees to the House for statements. I am afraid that certain things like these, of a national niche, unless a Senator rises – like Sen. Wetangula rose under Standing Order 47(1) – the Committees need to up your game.

I am speaking generally; it is not just about the Senate Committee on Energy. This is because the new Standing Orders are not supposed to allow committee and Chairpersons to get away with things. They are actually meant to help you to save on time. This is because this role has actually been delegated to the committees such that what the plenary would be the one doing, it is the committees doing it on behalf of the Senate as a whole.

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I am, therefore, a bit concerned, because I have observed that since the new Standing Orders came into force, unless the Speaker intervenes – as the Speaker normally intervenes using the discretion in the Standing Orders – or unless an individual Senator rises under Standing Order 47(1), that area of statements, especially Standing Orders 48, and 51, we need to do something about that at the Committee level.

Under Standing Order 51, for example, Committee Chairs have a lot of powers to actually work on behalf of this Senate very efficiently. For example, Standing Order 51 states that:-

“(1) A Committee Chairperson-

(a) may make a Statement relating to a matter for which the Committee is responsible;”

The Chairperson of a Committee can make this statement on any day and at any time on any matter touching on the mandate of the Committee. These are a lot of powers; so, we do not have to wait for these things to happen. Similarly, I want to encourage individual Senators to make use of the new Standing Order 47, the same way Sen. Wetangula and Sen. Sakaja are doing.

Finally, the Chair also has a role to play; to make the House succeed. It is just not about the Chairpersons and individual Senators. Especially, there are discretionary powers vested on the Speaker under Standing Order 47, which I want to invoke. This is actually not a request for a Statement as I had said earlier on; the Senator is making a Statement.

Under Standing Order 47 (3) the Speaker has discretion to make a decision on what happens after a Statement has been made. The matter can end there or be referred to a Committee, and so on. Therefore, I will tie all that I have said together, namely, the importance of this matter, the need to make Committees help the Senate to deliver fast and, in my opinion, the improved workings of this House, which are commendable.

In total consideration of those factors and in exercise of the powers under Standing Order 47 (3), I direct as follows: One, that this matter be concluded expeditiously by the Committee on Energy. Two, I direct further that the report of the Committee on this issue of Lake Turkana Wind Project be tabled in this House on 11th February, 2019, promptly.

It is so ordered.

(Applause)

Sen. Sakaja, please, be brief. After Sen. Sakaja we will go straight to the Committee on Health.

Sen. Sakaja: Thank you Mr. Deputy Speaker, Sir. As a Chair, I concur with your directions. It seems that, indeed, the Senate is---

The Deputy Speaker (Sen. (Prof.) Kindiki): Do you have an alternative? Sen. Sakaja, although I know that you are complimenting me, you should have said: “I applaud you” or something like that. However, your concurrence---

Sen. Sakaja: Mr. Deputy Speaker, Sir, I applaud you, but want to suggest---

The Deputy Speaker (Sen. (Prof.) Kindiki): Do you agree with the reasoning?

Sen. Sakaja: Mr. Deputy Speaker, Sir, I agree and suggest that it looks like this new energy and verve in the Senate has been brought by the new Senators who were not in the former House.

(Laughter)

PUBLIC TRANSPORT IN NAIROBI AND
THE BAN OF PSVs FROM THE CBD

Sen. Sakaja: Mr. Deputy Speaker, Sir, pursuant to Standing Order 47 (1) I rise to make a Statement of great national and international importance, on the issue of public transport in Nairobi and the banning of Public Service Vehicles (PSVs) from entering the Central Business District (CBD) on the 3rd December, 2018.

The County Government of Nairobi on account of a Gazette Notice No.4479 of 12th May, 2017 directed that all PSVs will no longer be allowed to drop and pick passengers within the CBD and were redirected to the other omnibus termini as outlined in the Gazette Notice on the outskirts of the CBD.

According to the county government, that directive was meant to facilitate the decongestion of the CBD and improve the flow of traffic in and out of the City. The resultant effect of this ban was not only catastrophic, but also revealed lack of proper consultation with all stakeholders, public participation and poor planning on the part of the county government.

Citizens were subjected to unwarranted suffering, as many were forced to walk long distances from the various termini outside the City centre. The elderly, children, persons living with disability, the sick and pregnant women were most affected. In fact, I had to deal with a case of a pregnant woman who collapsed as she was walking to get the next vehicle.

The county government erred in operationalizing the Gazette Notice, without putting in place alternative mechanisms to facilitate the public to transit from one terminus to another. There were no proper pedestrian walkways and footpaths. Some of those footpaths were flooded with sewer and have dangerous open manholes with no warning signs. You can imagine what would have happened at night.

The street lighting system is non-existent, putting the security of residents in great jeopardy. The distance between different termini was also long, which led to wastage of precious man hours as residents tried to crisscross from one point to another. As it is, we already waste Kshs50 million worth of productive man hours in traffic. The county

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government should have provided intercity high capacity shuttles to ferry residents. In fact, this situation led me to personally provide 100 buses for pregnant women, the elderly, the sick and disabled throughout the day until the ban was lifted.

Mr. Deputy Speaker, Sir, in as much as we support and recognise the need to decongest Nairobi CBD, it must be done in a manner that the interest of all stakeholders is taken of, especially those of the common *mwananchi*. There has to be thorough public participation, proper planning and execution. You cannot implement policies that favour the well-to-do at the expense of the majority who are the ordinary persons, who cannot get any alternative means. In 2013 the Japan International Corporation Agency (JICA) and the County of Nairobi invested Kshs400 million. The JICA put in Kshs300 million and the County Government of Nairobi Kshs100 million to do a study on how to streamline public transport system in Nairobi City County under the Integrated Urban Development Plan for Nairobi.

The study came up with solid recommendations and plans that are yet to be implemented up to date. I have been asking about this on the Floor of this House repeatedly. In fact, recently when I raised the same question, you corrected me when I said we cannot have a capital of the world where the only thing public about public transport is the passenger. You reminded me that the road also is public. There is need for that transit system.

Mr. Deputy Speaker, Sir, I would like to request you, under Standing Order 47 (3), to direct the Standing Committee on Roads and Transportation to look further into the progress made in the implementation of these plans. We have the plan, but it is not being implemented, and Kshs400 million was already put in place to develop it.

It should also recommend the harmonisation of the different initiatives by the various Government agencies, including the Nairobi Metropolitan Area Transport Authority (NAMATA), the Ministry of Transport, Infrastructure, Housing and Urban Development and the County Government of Nairobi, so that, finally, the citizens of Nairobi and the world – because Nairobi is now a global City – can have the desired public transport system that is affordable and efficient, as it used to be.

As I conclude, this plan included light rail systems, bus rapid transport and rerouting plans. When I was growing up, if you took a No.42 bus, it would take you from Huruma to the other side of Kibera, without using Nairobi as a termination point to the CBD. For the information of this House, I am still in court seeking the revocation of the Gazette Notice and pursuing a constitutional Petition that will address the Bill of Rights issues and compel the national Government and the County Government of Nairobi to implement the Nairobi Integrated Urban Development Plan.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Thank you, Senator for Nairobi.

Senator for Nyeri County, you may proceed.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I rise to congratulate Sen. Sakaja for pointing out this matter. The issues in Nairobi do not concern just the county government. The chaos that we witnessed in the transport system was a national issue. Therefore, I want to call upon the national Government to be on top of such issues. It should not just leave them to the county governments, where one individual can sleep on the wrong side of the bed, wake up and make some directive. I have no words to describe what we have witnessed; I wish I had read more of Shakespeare.

The other issue is about planning in Nairobi City. Some of us have observed that Nairobi City does not seem to have a master plan that addresses its issues. Look at the road to the airport, for example. Today it is a bottleneck, yet it is the road leading to our international airport. It is a road of security concern.

Today, we have an unmanageable traffic jam in this city. All the way from Mlolongo Town and other surrounding towns of this city to the Central Business District (CBD), there is always traffic jam. As the hon. Senator said, it is high time Nairobi County was looked at wholesomely in terms of management traffic.

Some of these projects we are talking about were done about 20 years ago and they need to be upgraded. We have a city with no planning. Rivers and drainage systems are being blocked. We have a lot of construction going on in Kilimani and other estates because of the population. However, it is sad that these constructions are being done without addressing the issue of sewerage system, roads and power supply. We are turning Nairobi City into a big slum. Trams will not remove the slum.

Finally, when you go to London, you will see Oxford Street is open to buses and taxis. It is not open to private cars. However, we have opened Ronald Ngala and Tom Mboya streets for *mitumba* business. We have closed off those streets and many others for public transport. This does not make any logic at all because a private car carries only one person while *matatu* carries 14 people. Therefore, it makes sense to give *matatus* more priority.

Secondly, the *matatu* industry is a big industry. It employs many youth. It beats any logic that any leader could wake up one day and decide to bring it down. I wish this matter was referred to a bigger Committee than the Committee on Roads and Transportation because it is of national concern.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Order! Which Committee is bigger than the Committee on Roads and Transportation? There is only one which is bigger than other committees. That is the Committee of the Whole. You should have said so.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, that is what I meant.

The Deputy Speaker (Sen. (Prof.) Kindiki): If that is what you meant, then you are absolutely right, Senator for Nyeri County.

Hon. Senators, the level of interest on this matter is extremely high and I understand the reason. I appreciate and sympathize with those reasons. Unfortunately, we are short of time. We also have another urgent issue which is on the issues of leased

medical equipment and universal healthcare. It was brought to the attention of the House that the Government wants to launch this universal healthcare programme soon, perhaps, next week, or so. Therefore, it is important we transact it.

For that reason, I want to request colleagues who have not spoken to hold their horses because they can still comment on it tomorrow during the Motion for Adjournment, which allows Members to say anything on anything under the sun and above the earth.

Sen. Sakaja, I congratulate you for your Statement under Standing Order 47. I encourage more Senators to make use of this Standing Order. Hon. Senators, kindly note that the provisions of that Standing Order does not allow you to bring an item about a bridge somewhere or some corner road in your county. It is either a countywide matter or inter-county or national or international. This is because we do not want to do the work of the Members of the County Assembly (MCAs), who are doing a great job at the grassroots levels. We do not want to deal with the projects in the wards and constituencies. This is one of the Standing Orders that can increasingly make our House visible, active and seen to be doing the right thing.

Secondly, before I pronounce myself on the request by Sen. Sakaja, I want to agree that Nairobi County is unique as the Senator for Nyeri has said. However, this should not encourage the Senator for Nairobi County to start using the title he has unsuccessfully been trying to use here this afternoon.

Hon. Senators, the City of Nairobi is the capital city of our country and also a county. Technically, any matter touching on Nairobi County touches on almost every county in this country. This is because every day, there are people from all over the country coming to Nairobi and going back to their counties. Every day, there are people who work in Nairobi, but sleep outside of Nairobi. When transport is paralyzed as it was yesterday, it affects the people of the County of Garissa who may have come by bus to do business in Nairobi and go back the following day. It affected commuters from other counties such as Marsabit, Tharaka-Nithi, Nyeri, Mombasa, Kisumu, *et cetera*. For that reason, I accede to the request by the Senator for Nairobi County and direct as follows-

(1) The Committee on Roads and Transportation be seized of the matter immediately.

(2) The Committee on Roads and Transportation respond by way of a report to the Senator for Nairobi County before the 17th of December 2018. In that report, solutions to some of these challenges should be highlighted.

(3) When the Chairperson of the Committee on Roads and Transportation makes their next quarterly report, which under our new Standing Orders, is to be made every three months, I direct that the report they will have submitted to the Senator for Nairobi County on or by 17th December 2018, be part of the periodic report in the first quarter of 2019.

As I conclude, this House requires seeing more of the Committees' reports. In fact, if I were the Chairperson of the Committee on Roads and Transportation, I would

have been in town with the people in the morning, trying to establish with the authorities or doing something in solidarity with Kenyans to know what was happening. He should have been walking, trying to figure out the distances being covered by people from one corner to another. That is how the people in this country will feel that, indeed, the Senate of the Republic of Kenya is working for them.

I urge Committees not to wait until a matter is raised here; be proactive. That way, you will be helping yourself, your Committee, our House and also serving the people of Kenya, on behalf of whom we sit here every day.

It is so ordered.

Sen. (Eng.) Mahamud: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Eng.) Mahamud, are you on a point of order or would you want to make observations?

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I want to make an observation.

The Deputy Speaker (Sen. (Prof.) Kindiki): There are no more observations after the Chair has observed. What do you want to observe after the Chair has observed?

(Laughter)

(Sen. Cherargei stood up in his place)

Sorry, we do not have the time. What is it Sen. Cherargei?

(Loud consultations)

He is on a point of order

Sen. Cherargei: Mr. Deputy Speaker, Sir, I am seeking your indulgence on the Statement on behalf of Sen. (Dr.) Musuruve.

The Deputy Speaker (Sen. (Prof.) Kindiki): After the Statement by the Chairperson, Standing Committee on Health. I direct as follows---

(Sen. Cherargei consulted loudly)

Order, Sen. Cherargei. You made a request or did you not?

I direct that after the Statement by the Chairperson, Standing Committee on Health is disposed of, the Statement by Sen. Cherargei on behalf of Sen. (Dr.) Musuruve be entertained.

Secondly, still under Statements, I direct as follows:-

The Statements under 2(1) (d) and (f) are deferred. The Statement by Sen. Seneta on behalf of Sen. Pareno who is away on official duty be deferred until tomorrow on technicality issues.

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

(Statement deferred)

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

(Statement deferred)

The Deputy Speaker (Sen. (Prof.) Kindiki): After the Statement by the Senator for Nandi, on behalf of Sen. (Dr.) Musuruve, that will be the end of Statements for today. All the other items are deferred to tomorrow.

I further give the following directions under Standing Order No.40(3) namely, that; in the Order Paper, Order No. 12 be deferred at the request by the Committee on Justice, Legal affairs and Human Rights.

BILL

First Reading

THE ELECTION LAWS (AMENDMENT) (NO.2) BILL
(SENATE BILLS NO.37 OF 2018)

(Bill deferred)

The Deputy Speaker (Sen. (Prof.) Kindiki): Further, Order Nos.13, 14, 15, 17 and 18 be deferred on the reason that the threshold for voting may not be achieved on the advice by the Senate Majority Leader and Minority Whips. I am advised already that we may not be able to carry out a Division.

BILLS

Second Reading

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

(Bill deferred)

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Second Reading

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

*(Bill deferred)**Second Reading*THE STATUTORY INSTRUMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 24 OF 2018)*(Bill deferred)**Second Reading*THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILLS NO. 26 OF 2018)*(Bill deferred)***COMMITTEE OF THE WHOLE**THE COUNTY GOVERNMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 13 OF 2018)*(Committee of the Whole deferred)*

The Deputy Speaker (Sen. (Prof.) Kindiki): The rest of the items in the Order Paper will depend on whether we will have time for them today. Otherwise, they will be moved to tomorrow. Without much ado, I direct that the Chairperson, Standing Committee on Health submits the interim reports pursuant to the ruling of the Speaker last week. After the report is tabled, I will give a bit of time for observations and comments before I give further directions.

Sen. (Dr.) Michael Mbiti, proceed.

STATEMENTS

IMPLEMENTATION OF UHC IN COUNTIES/
MANAGED EQUIPMENT SERVICES

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, Standing Order 51,1(b) provides that a Committee Chairperson shall, as so required by the Speaker, make a Statement relating to the activities of a Committee.

In fulfillment of that provision, I wish to make a Statement regarding the Managed Equipment Services (MES) as ordered by the Speaker on the 27th of November, 2018 and table an interim report on the same.

Mr. Deputy Speaker, Sir, at the Senate Sitting of 21st November, 2018; Sen. Fatuma Dullo, pursuant to Standing Order 48(1) sought a Statement from the Standing Committee on Health on the policy and implementation of the Universal Healthcare (UHC) in the counties. Following extensive debate on the matter, the Chair then, the Deputy Speaker, directed the Senate Majority Leader on behalf of the House---

The Deputy Speaker (Sen. (Prof.) Kindiki): What do you mean Sen. Mbito; “then the Deputy Speaker?” That time?

Sen. (Dr.) Mbito: I mean that the Chair was the Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kindiki): Better look at the English.

(Laughter)

Sen. (Dr.) Mbito: The Deputy Speaker directed the Senate Majority Leader on behalf of the House and the Standing Committee on Health to invite the Cabinet Secretary of Health on Tuesday, 27th November, 2018 to reply to the issues raised in the request for Statements by Senator, Isiolo County, Sen. Fatuma Dullo.

On Tuesday 27th November, 2018, the Senate Majority Leader appraised the House on the outcome of the meeting with the Cabinet Secretary, Health and various pertinent issues arose, including matters surrounding acquisition of health equipment for the counties.

The Senate Majority Leader informed the House that there was need to further interrogate the documents submitted to the Senate by the Ministry on the matter.

Following debate, you directed that under the coordination of the Senate Majority Leader, the Chairpersons, Standing Committee on Health, Standing Committee on Devolution and Standing Committee Justice, Legal Affairs and Human Rights to further interrogate the matter and table an interim report today, Wednesday, 5th December, 2018 at 2.30p.m.

Mr. Deputy Speaker, Sir, after a preliminary interrogation of the documents provided to us, the following were our observations-

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(1) The 2015 MOU between the national Government and the county governments was illegal. We observed that the 2015 MOU was illegal and it was not voluntarily procured. The counties were forced to sign this document---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Which part of the report are you reading?

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, I am just summarizing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is that summary coming from? Where is that illegality in this report?

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, there is a detailed report which I will be tabling.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mbito. Is this your report?

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

The Deputy Speaker (Sen. (Prof.) Kindiki): You have just said that your report finds that the contract was illegal. We want to find out from you where that is in the report so that we follow.

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, I have started with the observations.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mbito. What did you just say? What is your observation number one; that the contract was illegal. Where is that?

Sen. (Dr.) Mbito: Mr. Speaker, Sir, I think it was in the oral submissions that we got from the meeting on 27th November, 2018.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mbito. Resume your seat.

(Sen. (Dr.) Mbito consulted Sen. Cherargei)

Order, Sen. Mbito. I am the one who called you to order. It is not Sen. Cherargei, who called you to order. The reason I did so, is to assist you as follows:-

This is your Report. I know there were other parties involved in supporting you to generate the Report and these people are the Senate Majority Leader who I gave just the coordinating role, but your counterpart; the Chairman of the Committee on Justice, Legal Affairs and Human Rights and the Chairman of the Committee on Devolution and Intergovernmental Relations, but I made my directive very clear.

My memory is very fresh. I said that when the input of the two other Committees is made, the Report will be tabled and submitted by the Chairperson of the Committee on Health. It will, therefore, become your Report at that point. My assumption, in spite of any inputs that could have been made by your colleagues, is that this is your Report, you have read it; you agree with it and you know it.

Therefore, my advice is that if you are not sure of any parts of this Report, instead of engaging in guess work, I can give you time so that you go and organise yourself and resubmit it. The best way is to summarise your thoughts and you can write them down.

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The whole country, for your information, is today watching this House. We cannot, therefore, engage in substandard conduct.

Are you ready Sen. Mbito?

Sen. (Dr.) Mbito: Yes, I am ready, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Please proceed.

Sen. (Dr.) Mbito: Mr. Speaker, Sir. I will continue with the observations that the three Chairpersons---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Start afresh. We already know about what the Speaker said and what you did. Just start with the substance of the Report.

(Loud consultations)

What is it Sen. Sakaja?

Sen. Sakaja: Mr. Speaker, Sir. A quick flip through this Report reveals that a lot of the observations look like regurgitations of what we went through in the House when we were all here. Would I be in order to suggest that since the Report has been tabled, that the Chairperson goes straight to the recommendations so that we can then interrogate the recommendations? Otherwise, he will take us through the lengthy observations, which will be like repeating the meeting which we already had as a House.

The Deputy Speaker (Sen. (Prof.) Kindiki): We can have something in the middle. Sen. (Dr.) Mbito, summarise the observations; you do not have to read the report word for word. You can then go to the recommendations.

Sen. (Dr.) Mbito: Thank you, Mr. Speaker, Sir.

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wambua and Sen. Mutula Kilonzo Jnr! Are you engaging in a regional caucus or something?

(Laughter)

Sen. (Dr.) Mbito: Pursuant to the meeting held on 27th November, 2018, the Committee made the following general observations.

First, that the matter regarding the Universal Health Care (UHC) required continuous consultation between the Committee on Health and the Ministry of Health. However, the matter regarding the acquisition of health equipment was a recurring concern to the Senate, and the serious issues raised therein needed to be interrogated to its final conclusion.

Second, that the various documents relating to the acquisition of the health equipment were missing; and that the documents submitted to the Senate required further

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scrutiny as far as their authenticity was concerned. Specifically the documents that were missing were the following; a list of the equipment delivered to the counties; a detailed response to the reasons as to why there was a variation to the contracts from the time the programme began to the present time; a schedule of hospitals on board the Managed Equipment Services Programme (MESP); the initial contract signed for the equipment by manufactures in 2015; a feasibility report prepared for each county; the total sum of all contracts when the seven-year lease period for the equipment expires; and a detailed explanation of what will happen to the equipment once the lease expires.

Third, that while the Ministry of Health indicates that the annual payment was Kshs6.3 billion, the actual usual contract amount payment as per the Senate was Kshs4.5 billion and not Kshs6.3 billion.

Fourth, that while the Ministry indicates that there have been consultations with the Senate with reference to the UHC, there have only been four engagements with the Ministry of Health and the Senate Committee on Health. The first meeting was on 24th March, 2018, at the induction of the Committee, while the other three engagements of the UHC were on 9th, 14th and 15th October, 2018. During the meeting of 14th October, 2018, the Committee did not attend the meeting because of the short notice.

Fifth; that there is need to further interrogate the legal structure that governs the agreements under the MES Project.

Mr. Deputy Speaker, Sir, there are also specific observations on the MES project. The first one is the concept development of the project. The Committee observed, based on the submission and the basis of the project, that the project belongs to medium term two – that is 2013 to 2017 – of the Vision 2030. The Committee was informed that the flashy project for the health sector enumerated in medium term plan 2 was aimed at accelerating the progress towards attaining healthcare goals for provision of equitable, affordable and quality healthcare to the highest standards. Additionally, the Kenya Healthcare Sector Strategic and Investment Plan (KHSSIP), July 2013 to June 2017, identified critical infrastructure required to improve this service delivery.

In summary, Mr. Deputy Speaker, Sir, the Ministry actually submitted on 20th September, 2013--- I am sorry; the Cabinet Secretary (CS) wrote to the Council of Governors (CoG) on the financing structure and requested the Governors to facilitate assessment of the capacity of the respective health facilities in their counties. From the letter, the CS informed the Governor that the Ministry of Health---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Order, Chairman! When you say that you are giving the observations of the Committee, it is actually like conclusions. You are supposed to tell us that you concluded that, one, there was a gap here and there. Two, that somebody is responsible or somebody is not responsible. You are then supposed to give us the committee's recommendations and tell us, "For this gap, this is the recommendation;" and something like that. You are, however, now back to giving us historical things about who wrote what and who wrote to who; those are factual issues.

After analysing all the factual issues, what are the conclusions and what are the recommendations?

I sympathise with you because, as I said earlier, this was input from many quarters – more than your own quarter – but you should have internalised the input of the Committee on Justice, Legal Affairs and Human Rights; and the Committee on Devolution and Intergovernmental Relations and build some coherence. Otherwise, we might be here until the chicken come home to roost.

Sen. (Dr.) Mbiti: I have the summary, Mr. Speaker, Sir.

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

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

Sen. Wambua: Mr. Deputy Speaker, Sir, what I find out of order is the fact that when you look at the recommendations being read out by the Chairman of the Committee on Health, it is a history of the entire programme. Some issues here are even factually wrong.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Wambua, there is nothing out of order. Let us give the Chairman a hearing. I have already given him the sympathy from the fact that more than one source of information or conclusions was involved. But that does not---

(Sen. Wambua spoke off record)

Is it another point of order?

Sen. Wambua: I had not concluded, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What are you concluding?

Sen. Wambua: Mr. Deputy Speaker, Sir, I was saying that some of the observations are actually factually wrong.

The Deputy Speaker (Sen. (Prof.) Kindiki): Why are you anticipating the Report?

Sen. Wambua: He has already read it, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Chairman, I give you no more than 15 minutes to organize yourself and finish your presentation.

Sen. (Dr.) Mbiti: Mr. Deputy Speaker, Sir, the following were the observations made by the Committee on Health. I will start with observations---

(Sen. Orenge spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Minority Leader.

Sen. (Dr.) Mbiti: There was a single-sourcing of the initial five foreign firms that won the contract. These were General Electric, Philips of Netherlands, Bellco of Italy, Esteem Industries of India and *Shenzhen Mindray* of China.

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(Sen. Wetangula spoke off record)

These are just observations---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wetangula! You cannot “converse” business like you are doing.

(Sen. Wetangula spoke off record)

Order! Sen. Wetangula, you are a very experienced parliamentarian of nearly 30 years. What you are engaged in is not parliamentary.

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

Sen. Wetangula: On a point of order, Mr. Deputy Speaker, Sir. Thank you for that observation; I ought not to have spoken from where I was sitting. However, if you are listening carefully, this is a very serious matter. We listened to the Cabinet Secretary (CS) for Health here. When the Chairman tells us that initially there was single-sourcing, was there subsequent tendering? I have read the Report, and there is absolutely nothing.

We want to deal with this matter and get to the bottom of it. If you have seen in today’s media, the Council of Governors (CoG) have also taken up this matter, but they want to engage differently. We are the protectors of the counties and the money we allocate to the counties must be accounted for to the cent. With the greatest respect to my distinguished colleague from Trans Nzoia County, we cannot have such a lackluster approach to issues.

The report that I have quickly scanned through, is not a report.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! It is a Report until it is found as not one. Why do we not hear the Chairperson and let him make his presentation? As I have said, I will give opportunity for observations and comments, including what you are saying now. You can still say it.

Chairman, please, make your report and relax.

Sen. (Dr.) Mbito: Thank you, Mr. Deputy Speaker, Sir. I request my colleagues to allow me go through the Report and then make comments after it. I am making observations after which I will give the recommendations of the Committee.

On the Memoranda of Understanding (MoUs), our observation was that the documents supplied by the Ministry of Health, that is, the contracts with contractors did not bear the public seal, while MoUs between the Ministry of Health and county governments did not have the Government of Kenya (GoK) public seal or county seals. Some MoUs were also a product of cut and paste and referred to counties other than the counties in question. Some MoUs were not executed at all.

There was a standard MoU for all counties, with all the lists of equipment, without a prior need assessment, raising a possibility of dumping of equipment. The equipment was overpriced. The lease price for seven years is almost equal to the price if it was an outright purchase.

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The deduction of monies done by the National Treasury at source is contrary to the law, that is, the Public Finance Management (PFM) Act and Chapter 12 of the Constitution regarding public finance.

Bomet County did not sign, yet it is among the counties that are paying.

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Deputy Speaker, Sir. If what the Chairman is giving to us is not contained in the Report--- I am trying to go through the Report and what he is saying is at variance with what is in the Report. Can he present to us the document which he is reading? What he is reading is not the same ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. We have heard you, Senate Minority Leader.

Chairperson, Committee on Health, approach the Chair.

(Sen. (Dr.) Mbito approached the Chair)

Order, Everyone! Chairperson, Committee on Health, can you withdraw these papers before this House and resubmit a report with a coherent presentation of your Report tomorrow at 2.30 p.m., promptly. That is the business we will start with.

We cannot sit here in the afternoon just to be in ping-pong game. We do not understand what you are saying. Actually, I share the sentiments of the Senate Minority Leader. I do not see what you are showing me in the Report. So, how do you expect the Senators--- Can you withdraw the documents, including the ones already circulated? They should all be returned.

Please, consult your colleagues; the Chairman of the Committee on Justice, Legal Affairs and Human Rights and the Chairman of the Committee on Devolution and Intergovernmental Relations. Work in the same way I had directed. Table and present the Report tomorrow. I will give further directions tomorrow, because this is an interim report.

It is so ordered.

(Sen. (Dr.) Mbito withdrew the documents from the Table)

(Sen. Orengo spoke off record)

Order, Senate Minority Leader! The job of the Chair of Plenary is extremely difficult. So, you must bear with me. For that reason and the sake of the integrity and dignity of this House, I will not allow any comment on a document that I have already ordered to be withdrawn.

So, it will be done tomorrow at 2.30 p.m.

(Sen. Mutula Kilonzo Jnr. spoke off record)

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Order, Minority Whip! What is the problem?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, what we have read is in our minds and in our hearts and I can tell you that the Report of this Committee does not have a solution. It is lamentations even on recommendations. If you do not order them to have a solution tomorrow, they will come and say; ‘investigate further, we did not find this, there has been this and that,’ what are the solutions? We must provide a resolution.

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

Sen. M. Kajwang’: On a point of order Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order Sen. M. Kajwang’?

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, while I sympathise with the Chairperson and the Co-Chairperson, Sen. Cherargei, who has been very quiet while the Chairperson of the Committee on Health has been going through all the anguish---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. M. Kajwang’. Sen. Cherargei had no role to play today.

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, he is a signatory to the Report.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. Sen. Cherargei had no role in the presentation of the Report. He would have been entitled, as one of the first interveners, on this Report. Colleagues, let us maintain the decorum of this House and the respect that it should get from every person in this country.

Sen. M. Kajwang’, I am saying that because there are some remarks that you can make here in jest and make a point but injure the dignity of the Senate in the process. I hope that you are guided accordingly.

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, if you listened to the last part of my point of order, I just wanted you to guide us. Is there precedence where you can do a minority report on an interim report?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. The work of the Speaker is not to run the Committees. That is not the work of the Chair. This is collective responsibility for the whole House. It is only that it falls under the docket of the Committee on Health.

(Sen. (Eng.) Mahamud spoke off record)

Order, Sen. (Eng.) Mahamud. How can you interrupt the Chair?

(Laughter)

The more you show agitation, the more you feed into a narrative that perhaps we are doing things in a manner that we should not be doing it.

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(Sen. Wetangula spoke off record)

Order, Sen. Wetangula. This is a collective responsibility for the House. There could be individual Senators who would want to suggest certain things to the Committee as they go back to reorganise their Report to Table tomorrow. I direct that those Senators approach the Committee. Instead of processing their thoughts here, in Plenary, they should deal with the Committee for us to have fewer interruptions tomorrow and a coherent Report. That includes supporting the Chairperson of the Committee on Health for him to present the Report in a manner that you think that it should be presented.

(A number of Senators spoke off record)

Order!

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

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

Sen. Cherargei: Mr. Deputy Speaker, Sir, as the Co-Chairperson of this Committee, I want to give assurance to my colleagues. I do not know the reason as to why my colleagues have been looking at me suspiciously.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cherargei. Who was looking at you suspiciously?

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir, for protecting me. I did not have any role---

The Deputy Speaker (Sen. (Prof.) Kindiki): Which Senator is looking at you suspiciously?

Sen. Cherargei: Mr. Deputy Speaker, Sir, Sen. M. Kajwang', the Chairperson of the Committee on County Public Accounts and Investments, Sen. Orengo and Sen. Mutula Kilonzo Jnr. have always insisted on hearing my voice. I know that my voice is of solomonic wisdom but it would have come at an opportune time.

I want to assure them that the Report that we have is concrete and it has mind changing solutions. I want to request the House to give us more time for us to finalise it.

The Deputy Speaker (Sen. (Prof.) Kindiki): Nobody is allowed to discuss this Report until tomorrow. I have already ruled that the Report be withdrawn. Therefore, you cannot be discussing the same Report unless it is a procedural issue. If it is procedural, I will hear Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir, for carrying our collective concerns in this matter and ordering the withdrawal of the Report. We agree with you.

Secondly, I want to request the Chair that you direct that the Report that will be dealt with at 2.30p.m. tomorrow, be circulated among Members by 12.00 p.m.; for us to

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have the opportunity to read and look at the other attendant factors, including but not limited to consulting our counties, that are the theatre of this monstrous theft of public funds.

The Deputy Speaker (Sen. (Prof.) Kindiki): So ordered. I will only allow you to speak if you are going to comment on the procedure. Could we hear from the Senate Minority Leader?

(Sen. Orengo spoke off record)

Thank you. On procedural issues; Sen. (Eng.) Mahamud. Next time you interject the Chair, you will be left to your own devices.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I do agree with the ruling that you have made though I was worried by the statement made by Sen. M. Kajwang' as to whether we can have a minority report. I do not understand why that statement came up.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. That is a dangerous suggestion.

(The Senators consulted loudly)

Order, Senators! It is very easy to get publicity and the emotional part of it and even create news but every time, before you speak on a point of order or on anything, you should think about the institution. Think about our House. I am not gagging anybody but there are things that you can do which might look okay but the net effect is what you see in the newspapers about our House. On that one, I will not apologise. You can do your politics and bring humour but, please, think about the dignity of the House. That is my plea.

On that basis, I will only allow one further point of order from the Senate Minority Whip, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, my comment is on procedure. Instead of the Committee displaying all the documents that they have received which they will not read, there should be an index of all those documents plus the dates of the contracts. This is because we have noted that some of the dates are in 2017. That will help us relate the dates of those contracts to the payments which were done prior to 2017.

The Deputy Speaker (Sen. (Prof.) Kindiki): So ordered.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I know that you are aware of this. At this moment, you have set precedence by ordering the circulation of the Report before it is Tabled. I had a similar concern because Standing Order No. 213(7) is clear about circulation. It states that:-

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“Within forty eight hours after the report has been laid on the Table of the Senate, the Clerk shall publish the report in the parliamentary website and circulate copies to all Senators.”

In terms of the tradition of the House, a Report can only be availed, even within a Committee, once it is Tabled on the Floor of the House. I just want to note that precedence. Because of the convenience, you have used Standing Order No. 1. I wanted to ask that before Sen. Wetangula raised it.

I note that Sen. (Dr.) Mbito said very important things which were not in the report. I am also glad that before we come to the House, we will have this report available to us.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. Sakaja. Colleagues, if you listened to the Chairperson, he had glimpses moments of logic. However, all of a sudden, he got lost in useless narratives that are not very critical. I could be wrong but my suspicion was that, perhaps because the Committee on Justice, Legal Affairs and Human Rights was doing something on devolution, he may not have internalized the coherence part. So, thank you, Sen. Sakaja.

Based on the intervention by Sen. Sakaja, once the report is tabled and presented, I will give room for observations and make further directions. As I do that, I will elaborate, not as part of the main ruling or decision, what lawyers led by Sen. James Orengo call *obiter dictum*, I will make some comments about Standing Order No. 1 which Sen. Sakaja alluded to as part of my thinking.

I strongly believe that we need a bit of parliamentary jurisprudence on the role of Standing Order No. 1 because it tries to tell this House that it is a House of rules but it is not a prisoner of its own rules. If there can be justification, we can apply that Standing Order to overrun the others for the convenience of the Senate and the work which this House does. I am making some observations there.

I will also make some extensive observations tomorrow on an issue that I discussed with the Senator for Makueni. Yesterday, he made some comments off the record but the Chair could hear from where he sits. Increasingly, it has come to my attention that the issue of matters concerning counties is one of the areas which have been used for the last six years, to try and shun the Senate from doing its work. Therefore, I will make some observation *obiter dictum* on what, in my view, should constitute matters concerning counties so that in future, we can develop some parliamentary jurisprudence which can be used to help this Senate discharge its duties without being limited by the letter of the Standing Orders or the Constitution. My school of thought is that the spirit of the Constitution is superior to the letter of the Constitution.

Having said, I see an intervention from Sen. James Orengo and by virtue of him being a senior counsel, I will allow him to make a few remarks then we end there.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, I will speak from here. I request that the commentary from the Speaker’s Chair on the last point that you made of creation of jurisprudence that may guide us especially on making a

determination whether a matter concerns counties or not, not to be made *obiter dictum*. I want to find a mechanism for generating a request from the Chair so that if the point arises again, the excuse will not be given that it was *obiter dictum* and therefore not binding. Without generation of such a request, somebody can also come with the argument that the decision was made *per incuriam*.

I see the significance of what you are saying. However, we need to make your decision a lasting one. Therefore, would I be in order, from the position I am speaking from, to ask that the Senate Minority Whip is allowed to raise, at an appropriate time, a request like the one he made?

The Chair always has an ear and an eye on what is happening in the Chamber and what he does not hear or see is nullity and of no consequence. Therefore, without saying much, what you have just said is so significant that there should be a proper request for a decision or statement to be made by the Chair.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, Sen. Orengo. Proceed, Sen. Mutula Kilonzo Jnr.

POINT OF ORDER

INTERPRETATION OF THE CONSTITUTION AS TO WHAT CONCERNS COUNTIES

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I do not know whether this is the time to make a request but I will proceed to make it anyway.

The matter of the interpretation of the Constitution as to what concerns counties has become a matter of concern both on this Floor and in other jurisdictions. In fact, Sen. Sakaja circulated a video of a very prominent Member of Parliament (MP) interpreting Article 109(3) of the Constitution. He said that if the Public Service Commission (PSC), the Judicial Service Commission (JSC) and matters attendant thereto do not come to the Senate, matters concerning the Parliamentary Service Commission (PSC) should not come to the Senate.

This is a complete misinterpretation, in my view, of what concerns counties. He even went further to the extent of talking about determination of matters or Bills that come to the Senate or National Assembly, pursuant to Article 110 (3), and suggested, quite wrongly, that there is a procedure in the Constitution about how the two Speakers can determine a matter concerning counties. That is not in the Constitution.

The drafters of this Constitution for some reason envisioned that the people who would sit at the Chair, where you are, would be a man or woman who would not need step by step guidelines as to what concerns counties. Therefore, it has come to the fore that this matter has become very urgent for purposes of guiding this House. This is because all of us are drafting Bills and we have a legal team which is paid by the PSC. At the end of drafting a Bill we state whether a matter concerns counties or not. We spend a

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lot of time drafting these Bills. However, for some reasons, at the tail end of these Bills and after a lot of work has been put in by these Senators who are not idle, when it goes to the National Assembly, they become money Bills under Article 114.

Mr. Deputy Speaker, Sir, lastly, this matter was also interrogated by the Supreme Court. As you go ahead and issue that direction, allow me for avoidance of doubt to read the Supreme Court Advisory Opinion Reference 2 of 2013, paragraph 102 which states as follows-

“This is a very broad definition which creates room for the Senate to participate in the passing of Bills---

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Minority Whip, what are you reading?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I am reading the Advisory Opinion Reference 2 of 2013; paragraph 102. I am only reading three sentences.

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

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, it states that-

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

I do not need to add anything to that statement. I agree with it in total. Therefore, you will only be reiterating what the Supreme Court said in this ruling.

Mr. Deputy Speaker, Sir, I am concerned that somebody in this country can dare say that cybercrime is not a matter concerning counties. I do not understand how the cybercrime law, which I sponsored in the last Senate, can be passed by one House and become an Act of Parliament and somebody says it does not concern counties when there is cybercrime everywhere in this country.

Mr. Deputy Speaker, Sir, please, offer directions. However, the Bill that we have proposed ought to offer us assistance in these guidelines. In every House, just like in every community in this country, there are people who are misled. There are people that, even if they open their eyes, cannot see. We should not concentrate on them. Let us stick to the law. It is the law whether one is blue, black or red; whether it is us, them or any other person.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): I am worried about the caveats given by my Lordships the Judges of the Supreme Court of Kenya when they said “with a good speaker.” This is because the opposite can be devastating.

(Laughter)

Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, that is why we think you are moving on the same direction even without prompting.

The Deputy Speaker (Sen. (Prof.) Kindiki): Towards goodness!

(Laughter)

The Senate Minority Leader (Sen. Orengo): Mr. Deputy Speaker, Sir, the decision of the Supreme Court of Kenya relates to the Bills. However, all matters that have been advanced on this question relate to Bills.

If you look at Article 123 of the Constitution which relates to the decisions of the Senate, it also distinguishes that there are two categories of matters which can come to the Senate other than by way of Bills. If it is a matter which is not by way of a Bill, the Speaker of the National Assembly would not be involved. This is because it is a matter which is exclusively in the jurisdiction of the Speaker of the Senate.

There are some people who believe that we should just confine our discussions and debate on matters which concern counties. However, Article 123 says that when we decide that there is a matter which concerns counties other than Bills, then we will vote in the manner articulated in Article 123(2). However, if it is any other matter that does not affect counties, then the vote will be in accordance with Article 123(3). This means that the Senate can discuss any business, even those matters which do not concern counties, or those that do not necessarily affect the nation as a whole.

From the point of view of what the Supreme Court of Kenya pronounced itself and what the Senate Minority Leader said and on account of Article 123, shows that our authority and power, including legislative power, is more extensive than people think. Our jurisdiction is laid out in Article 123. Were it not so, then it means that the Members of the Senate who are not elected through the ballot would have no decision making powers. We would be considering only matters affecting counties.

Mr. Deputy Speaker, Sir, I, therefore, urge that your pronouncement on this issue is critical. It is an issue that should not just be left to the courts. The Constitution itself in Article 2 states that anybody who is making any decision, or enforcing any decision, is obligated to follow it. To that extent, I anxiously await your decision or pronouncement on this matter.

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The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I will also offer guidance before we listen to the Senator for Nairobi. Tomorrow, when I make the determination, I will allow further comments because I believe in this House. It is true what the Senate Minority Leader and the Senator for Makueni County have said. The role of the plenary Chair is extremely important in pushing and entrenching our mandate.

I see that this House, unlike any other is, blessed with extremely good legal brains in pushing led by Snr. Counsel James Orendo. In fact, we have three senior counsel in this House. For your information, they are not many. We have the Chairman of the Committee of the Law Society of Kenya (LSK) that confers the honours of senior counsel. We also have Sen. Wako, who is a Member of this House; a long serving Attorney-General of our country. We also have the Senator for Nyamira County, who was the former chairman of LSK and Snr. Counsel. We have Sen. Moses Masika Wetangula a long serving lawyer, judicial officer and many other good things. We have everybody here.

Sen. Mutula Kilonzo Jnr.: You are a professor!

The Deputy Speaker (Sen. (Prof.) Kindiki): We have young Senators who may not be so experienced, but extremely vibrant on providing a lot of leadership in legal matters. Our chairman of the Senate Committee on Justice, Legal Affairs and Human Rights is here. We have the Senate Majority Leader, the Senator for Nakuru County who is a good lawyer *et cetera*.

The point I am making is as follows---

Sen. (Prof.) Ekal: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You cannot interrupt the Chair. You only interrupt your colleagues. Hon. Senator for Turkana County, I know you are a professor. However, you are not a professor of law. You are a professor of something else.

(Laughter)

The point is that I will allow some comments from all these good brains even after my ruling, so that in future another ruling which is even more enriched can emanate. That is how we create verve, especially intellectual vibrancy. What this House has suffered is as a result of mechanistic or pedestrian interpretation of the Constitution.

Proceed, Senator for Nairobi City County.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I realize that you are oblivious of my legal scholarship as well.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am not aware.

Sen. Sakaja: I am a student of law.

The Deputy Speaker (Sen. (Prof.) Kindiki): Ooh! You are potential then!

Sen. Sakaja: Mr. Deputy Speaker, Sir, you have listed the number of great lawyers that we have in the House. That is the reason you have been running afoul of the

Standing Orders because when we hear *obiter dictum* you have to say what it means. We know that it is “by the way.” We need to let other Members know that *opinio curialis* is used when you are talking about something without regard to the facts. This is because the only languages in this House are English and Kiswahili.

I was looking around and saw quite a number of Senators - I will not mention them by name - with looks of bewilderment of what language it was that we had gone into suddenly.

Secondly, let me reiterate that we are really looking forward for your determination. I hope that as the Senate Minority Leader has said, it is not a by the way determination, but needs to be substantive because of the position you hold and the knowledge that you possess.

On the issue of Bills and matters concerning counties, the reason Sen. Mutula Kilonzo Jnr. and I have published a Bill that is being debated in this House, is because for the last six years majority of the laws that have been passed in this country have not adhered to this provision of the Constitution.

It was very disheartening yesterday - I caught it by mistake in my office before I left to come to the Chamber - when I heard Members of the National Assembly questioning the intelligence or the wisdom of Sen. Mutula Kilonzo Jnr., and myself in publishing a Bill that gives effect to the constitutional provision. The pedestrian intervention was that, why would you publish a Bill when the Constitution already says what it is? Little do they know that actually Acts of Parliament give life to those provisions. It says that before either House considers any Bill, the Speakers of the National Assembly and the Senate must jointly resolve---

The Deputy Speaker (Sen (Prof) Kindiki): Which Article are you reading?

Sen. Sakaja: Mr. Deputy Speaker, Sir, I am reading Article 110(3) of the Constitution. It says that before either House considers a Bill, the Speakers of the National Assembly and the Senate must jointly resolve any question as to whether it is a Bill concerning counties and if it is, whether it is a special or ordinary Bill.

So, even a Bill that is published in the National Assembly, there must be a meeting with the Speaker of the Senate to determine where that Bill goes. If a Bill does not go through that process - of course, apart from the fact that if we pursue that line even in the courts, it will be injurious to a lot of good laws that have been passed in this country - then the legality of that Bill can be questioned.

So, if those two things were as straightforward as the Members of the National Assembly would like us to believe; one, the issues of concurrence between the two Speakers and secondly, the issue of determining whether a Bill concerns counties, the Constitution would then not have provided a requirement for that meeting to take place because it would have been a simple formula in the Constitution. You should consider if a Bill has one or two things, whether it concerns counties or not.

Mr. Deputy Speaker, Sir, we are worried because they almost went into pre-empting or anticipating debate because the Bill is not yet before the National Assembly.

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I would like to tell this House that if they do what we think they are going to do, then I think our recourse is clear and we shall go back to the place that pronounced itself earlier on what they believe is a Bill concerning counties.

The Deputy Speaker (Sen (Prof) Kindiki): Very well. Finally, before I make closing remarks on this issue, Sen. Orengo, how would you want this done; about the remarks I was to make tomorrow? I agree with you if they are *obiter dictum*, the legal weight is diminished because they are said by the way.

So, I agree with you; I can elevate them to the main cracks of my determination, but for the Members of the House who are not lawyers, you have to bear with the job you were asked to do because you are a lawmaker. You cannot avoid this.

If you are in another profession like my brother, whom I talked about, it is unfortunate, but you are a lawmaker, and so, you cannot escape this. Now, the question I have for Sen. Orengo is, if there are two ways of me being helpful in tomorrow's determination.

One, as you are aware, when this report, which was withdrawn is presented, I will have to make a determination on whether it is a matter concerning counties because initially it came as a Statement but it has mutated into a report. So, it is a matter before this House. It has been tabled or it will be tabled. So, I will make that determination. That determination is made before you announce how voting will take place.

The way we have been doing it, because there are so many determinations of this nature, is that the Speaker just pronounces himself in one or two sentences. For tomorrow, I can prepare a specific, well-reasoned and written down determination on my findings about this report after it is discussed. In other words, I will not just make an oral determination in one or two sentences; I will make a detailed determination that can actually cure the issue.

Alternatively, I can wait until I have requested for a clarification and we--- So, I can use this opportunity to prepare in advance. When I make that determination, I will make my decision and then allow the comments and then we will then proceed with whether we will vote by "noise" or by Division.

(Laughter)

Hon. Senators, the reason is that for every matter that comes here, that determination has to be made especially under Standing Order No.123. I thank the Senate Majority Leader, Sen. Orengo for bringing out the difference between Standing Order Nos.123 and 109. Standing Order No.109 is on Bills and Standing Order No.123 is on other matters other than Bills.

Proceed, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. I want to encourage you to shift your gear from that mild agony as to where you will start because Sen. Mutula

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Kilonzo Jnr., has already made a formal application on the Floor to the Chair to make a determination.

I want to refer you to Standing Order No.1 and the realm of jurisprudence that you are walking into because that Standing Order is rarely read in totality.

It says-

“1 (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”.

Mr. Deputy Speaker, Sir, I want to underline “precedents” because that is what you are about to set. Whatever you are going to determine is going to be part of the procedures of not only this House but also Commonwealth parliaments. Whatever you decide here - I have sat in the CPA for many years - decisions made in this House and any other House in the Commonwealth, resonate throughout the entire Commonwealth.

I came across decisions made by former Speaker, Hon. Marende, being used in making decisions in New Zealand and other parts. So, you are about to make profound pronouncements that will determine the future. I want to encourage you, because I do remember with my distinguished colleagues, Senior Counsel George Oraro, we went to court to represent Hon. Francis Ole Kaparo as Speaker in some matter where the Rt. Hon. Raila Odinga had taken him to court for allowing strangers to vote.

The court demanded to see the HANSARD to make a proper determination. So, every single business we transact here in law making can be summoned by court to determine what the thinking, speaking and the phraseology of Parliament was. I will also encourage you to look at Erskine May on parliamentary procedure. That will tell you that, what the Speaker says even casually - that is why we always like how matters are said here because there is nothing like a casual remark from the Chair - it goes into the realm of history.

Mr. Deputy Speaker, Sir, remember the distinguished great judgments from Lord Denning, Lord Deblock, our own C.B. Madan and so on. They had a lot of regard for what went on in Parliament in processing the law before it becomes law. So, whatever you are going to say, and we encourage you to give this country--- You sit in a unique position because you are the first Professor of Law in the history of this country to sit on that Chair. We had a Prof. Jonathan Ng'eno but I think he was a professor in Theology or something like that.

You are a professor of law sitting in a law-making House to set precedent that will determine not only how we conduct ourselves here but ten other parliaments to come will say: ‘What did Sen. (Prof.) Kindiki say on this matter?’ You may also look at the book written by Patrick Gichohi on parliamentary proceedings and procedures in Kenya where he elaborates very clearly and quotes other jurisdictions extensively, how Presidents inform the conduct, management and pronouncements of Speakers in comparative jurisdictions. This will really help this House.

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I am excited to see that we are going that direction and I am excited to see that the causation by the non-production of the Senate Committee on Health has led us this far.

Thank you.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well; congratulations to everyone, including Sen. Sakaja, who aspires to be a lawyer. Sen. Wetangula, I entirely agree with you that the HANSARD of a House of Parliament is actually law and it influences law. This is because it gives you the thinking of lawmakers when making the law. In fact, it is a superior source of understanding of Acts of Parliament and the law that emanates from here. It gives you the context; it gives you what Sen. Olekina, Sen. Sakaja and the Senator for Tana River said. Therefore, the thinking of lawmakers is understood through this. I do not want to use further Latin, but it is actually referred to as *travo propitious*. Documents like the HANSARD help you understand the context in which a document like a law, Bill or the Constitution have been made. So the HANSARD is *travo propitious*.

We have been on this for a long time and we will now go to requests. I want to request the Senator for Makueni to provide, through the Clerk-at-the-Table perhaps later this afternoon, that portion on the Advisory Opinion II of the Supreme Court which gave this House immense power. We do not have a lot of time; so the Clerk may not have a lot of time. Unfortunately, we have not used those powers, especially that paragraph. I had a discussion with one of the Justices and they said that, that paragraph on what the Speaker can do to give life to the mandate of the Senate is very important. The Speaker sits in a quasi-judicial capacity; so he or she is almost a judge of sorts. Therefore, whatever the Speaker does must be reasoned all the time.

Finally, I will endeavour to give an outline of the parameters of this tomorrow. However, going forward, we will continue adding more into this. I will set out not less than 12 reasons why I believe that matters concerning counties is much more than what we have been treated to by pedestrian interpretation of the law of our country.

(Applause)

This goes to Sen. (Dr.) Mbiti, the Chairperson of the Committee on Health and Sen. Cherargei, the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. When I leave the Chair, I would beg to have some consultation with you so that I clarify this issue, so that we do not have the kind of activity we had this afternoon here.

Very well, let us move on to the next Order.

An hon. Senator: The last one!

The Deputy Speaker (Sen. (Prof.) Kindiki): Sorry, we have the last Statement; make it very brief and no observations will be allowed.

Sen. Charargei, just make the Statement.

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STATEMENT

USE OF KENYA SIGN LANGUAGE IN SCHOOLS

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir, for that ruling, which is very incisive. When you get people who discuss the quality of food, they do not understand the quality Bills.

Mr. Deputy Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a Statement from the Standing Committee on Education on the use of Kenyan Sign Language in schools, on behalf of Sen.(Dr.) Gertrude Musuruve.

In the Statement the Committee should-

(1) Explain the steps that the Government is recommending in the review of the curriculum for the Kenyan Sign Language used for the deaf and hard of hearing learners;

(2) State whether the Ministry of Education has availed resources to support the programmes for purposes of developing instructional materials for the deaf and hard of hearing learners; and,

(3) Explain the progress made towards establishing mechanisms for provision of learners with resources that support acquisition of English language for all deaf and hard of hearing learners.

Thank you, Mr. Deputy Speaker, Sir.

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

BILLS*First Readings*

THE MENTAL HEALTH (AMENDMENT) BILL
(SENATE BILLS NO. 32 OF 2018)

THE ELECTION LAWS (AMENDMENT) BILL
(SENATE BILLS NO. 33 OF 2018)

THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL
(SENATE BILLS NO. 34 OF 2018)

THE TEA BILL (SENATE BILLS
NO. 36 OF 2018)

*(Orders for First Reading read – Read the First Time
and ordered to be referred to the relevant Senate Committees)*

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The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! I give further directions as follows with regard to the Order Paper. Once again, pursuant to Standing Order 40(3), I direct that Orders No.19, 20 and 21 be deferred.

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

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

(Committee of the Whole deferred)

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

(Committee of the Whole deferred)

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

BILL

Second Reading

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

(Sen. Murkomen on 29.11.2018)

(Resumption of debate interrupted on 4.12.2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): Who was on the Floor?

Sen. Wetangula: I was, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula, you have 12 minutes remaining.

Proceed.

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Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. At the rise of the House, I was on the Floor. I invited the Majority side to look at the Bill and see whether the creation of these four offices is necessary, that is, the office of the Chief Executive Officer (CEO), the Fund manager, the Custodian of the Scheme and the Administrator. That needs to be looked at.

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

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

At the rise of the House, Sen. Farhiya tried explaining to me the differences, but going through the Bill, all these offices are clearly individuals and not institutions. If they are individuals, we are creating a top-heavy Scheme, where the CEO, the Administrator, the Fund manager and the Custodian will all be earning a lot of money from the contributions of the workers, who will be expecting to earn their pension.

Mr. Deputy Speaker, Sir, once the Scheme is in place, we need to be very clear---

The Temporary Speaker (Sen. Halake): Order! Order!

Sen. Wetangula: I am sorry, Madam Temporary Speaker. I had not noticed the change of guard in the Chair.

Madam Temporary Speaker, once this Bill is passed, we will have the issue of how to manage the contributions of members. This Bill is quite unclear on the mode of investments. At one time, we had the madness of the National Social Security Fund (NSSF) buying land anywhere and everywhere. There was a managing trustee who was used as a conduit to buy land from the politically-correct. People would be allocated public land and the NSSF would buy it at three or four times the market value. In that regard, it is the contributors who suffer.

One would want a situation where any investments from the Fund must benefit the contributor. At the end of every financial year, we need to have an obligation in the law that the managers of the Scheme release the outcome and the results of the investments and how those investments and profits coming from them can benefit the contributor. At the end of the day, if you contributed money and the employer contributed about three or four times more, the contributor should not get pension on strictly what they contributed. This is because they have put money in a fund that has been traded with and invested. What are the returns on investment?

When you retire, the Scheme must give you a statement that, for example, for your 20 years of service, your contribution is Kshs200,000, Kshs1,000,000 or Kshs10,000,000, and the interest accrued and dividends is so much. The Scheme must tell you the much you will be earning monthly, until you depart from the face of the earth. That way, we will be protecting the contributor, because the money in most of the pension schemes are like play tools to the politically-correct and those who are in positions of influence. Yesterday, I talked about the leaders of trade unions who live like

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kings, when the people who contribute small monies that make them live like kings, live like paupers. This has to be dealt with.

Clause 31 of the Bill needs to be relooked at and recast. There are many Kenyan workers who are polygamous. You cannot say that when there is a dispute as to the nominated beneficiary, the board decides. We have members, like those who profess the Muslim faith, who are legally entitled to have four wives at any one time, as they wish. In the event that the contributor is conniving or connives with one of the spouses to exclude others, a proper determination through a legal process must be done. This will ensure that children and widows, for no fault of their own, are not excluded from benefitting from the sweat of the head of their family when such a head lived.

Madam Temporary Speaker, I go back to the point that the Senator for Siaya County talked on yesterday; the composition of the board. This is a fund from employees of the county governments; the devolved units. We should have a provision that the Chair of this fund shall always be a nominee from the devolved units. There will be absolutely no sense for money to come from workers of county units and have somebody sitting in Nairobi at the National Treasury or wherever, becoming the chair and determines how money is handled, the investments and so on. At the Committee stage, I would want the Government side to ensure that this protection is given to the contributors, who are employees of the county governments.

As I draw to a conclusion, I want this Senate to move on a path that veers away from what we have seen in the past. Today, the majority of the Kenya Railways Corporation (KRC) retirees--- One of my uncles worked for the KRC and died without ever getting his pension after retiring. Many of the employees of Kenya Power do not get their pension. Telekom has mutated through several changes, from the post office that it was with the massive employment portfolio to now in the hands of strangers. Nobody talks about the people who worked with the post office and telecommunications in the past. Many of them are languishing in poverty.

Madam Temporary Speaker, the Kenya Railways Corporation eventually transferred some of its assets to the Railways Pension Fund (RPF), but they were sold by the people who were managing those funds and appropriated the money. Some of the former employees of the KRC are still stuck in those small houses in Muthurwa, Land Mawe and other places, with nowhere to go. This is because they cannot get their pension. We need very strict penalties, and this is not for those who failed to remit - those who fail to remit the penalty should be made to pay a little more - but those who misappropriate the funds of the contributors---

Sen. Orenge talked about Robert Maxwell and how he stole the money of his pensioners and many other places. We have examples of how people have walked away with pensioners' money. Today, the NSSF cannot account for workers' money.

Every single representative and I am sure, including yourself, Madam Temporary Speaker and even if you are not a constituent-based representative; you meet people who are crying, looking for their pension. Their father worked, contributed and died. Their

mother who was the beneficiary died. The eldest children who were in order of reception also died. Their money is stuck. Their parents had bought shares in the National Bank of Kenya (NBK), they had land in Mavoko and Kajiado counties, land opposite the post office and son on. When you talk to them, they tell you they build a land bank. What is a land bank to a retiree who needs his Kshs60,000 to lead a different life? Those are the big questions that we must deal with.

Madam Temporary Speaker, more importantly, this Bill in consolidating the LAPTRUST and the LAPFUND is very important because we do not want a state of confusion in the industry. This idea of giving pensioners' funds to people to manage in the name of private companies should not be encouraged.

Madam Temporary Speaker, if you go to Canada, you will see huge buildings in Toronto. You are told these are buildings owned by railway pensioners. If you go to Tanzania, our next door neighbour, where theft of public resources is controlled and not tolerated, today, their Government and I speak with authority as former Foreign Affairs Minister, uses the National Social Security Fund (NSSF) to purchase houses and chanceries for their embassies abroad. When they remit money for payment of rents, the rents are paid back to the NSSF of Tanzania. This is something which is very important. Government Ministries should be housed in buildings owned by pensioners and then they generate money, so that people earn some money decently.

Madam Temporary Speaker, retirement in this country means you are leaping from the known to the unknown and eventual death. You have lived in Nairobi all your life working---

(Sen. Wetangula's Microphone went off)

Madam Temporary Speaker, kindly give me a minute so that I finish this point. You have lived in Nairobi all your life working and you retire, then it dawns on you that you are living in a railways house and you are told that you have to vacate, because somebody else must occupy it. You left your home 40 years ago to come and work for railways. If there was a proper pension scheme, you can leave railways because you have no affinity with the village where you come from, you can rent a property in Nairobi and live until the end of your life. However, you leave and when you walk into the office of those who are managing your pension; wearing gold chains and rings and everything, they tell you to go home and wait for them to process it.

The man is living like a king on your money and he tells you to go and wait. Next time when you come, the *askaris* at the gate cannot allow you to enter because you are a trespasser. You may end up prosecuted while looking for money. The man or woman who is sitting there, looking very successful and self-confident with your money is the one who is telling you that you are stranger. In fact, it is him or her who is a stranger to your money.

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Madam Temporary Speaker, this must change. This society will be remembered and so will be the Government remembered for streamlining pension funds management. I end by urging President Uhuru Kenyatta, that at some point in his presidency and building his legacy, he should set up an inquiry into the management of the funds of the NSSF from inception. The abuses may not have been in his term, but let him seize the moment today and ask: “where are pensioners’ funds?” Assets have been bought, appropriated and flared away by those who bought them because they are in office. This is wrong, immoral and unacceptable in any country.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Halake): Thank you, Senator. Sen. (Dr.) Agnes Zani Philomena, proceed.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. Let me congratulate you for sitting on that Chair. I was meant to do so yesterday, but I realized that I would not get a chance to contribute to this very important Bill. I am happy that I have got a chance.

Madam Temporary Speaker, I support this Bill. I want to start with some areas that, probably, have typographical errors. Clause 23(4) says; “The administrator that distribute to the credit of the members.” That sentence is incomplete. I think some words are missing and they may change the meaning of everything. That needs to be corrected. I suspect what they wanted to say is that the administrator will distribute maybe to the credit of members’ retirement savings. That is Clause 24(3) and from the HANSARD, they can pick on the particular correction that needs to be done.

Again, at Clause 26(1), there is another typographical error. It says that a member shall, so long as they remain in the employment of a Sponsor. This does not make sense. A member shall, for as long as they are, remain in the employment of sponsor. Those two typographical errors need to be addressed.

It is an important Bill that addresses conflict in the sector, with the LAPFUND and the LAPTRUST. I have listened to various arguments between these two organizations. There is a lot competition among them as well. This Bill needs also to build that into operation to ensure that it is very well streamlined.

I also found alarming clause. This is Clause 45. It says-

“Where there is a conflict between the provisions of this Act and the provision of the Retirements Benefits Act, the provision of the Retirements Benefit Act shall prevail.”

I find that strange in a Bill. This Bill has been brought to the Senate and it will go to the National Assembly. It says that in case there is conflict between this Bill and another Bill, let the other Bill takes precedence. It will be important to identify what areas of conflict might exist. I will try to address them, so that there is no need for sort of reference because I think this opens up a Pandora’s Box. This is because we might end up having two operational laws with two different provisions. This can create a problem.

Clause 13 gives a provision for an actuary appointed by the board as provided by the Retirement Benefits Act. That is important because the actuary, who is appointed and recommended, will be able to prepare public reports that will state their position of the Scheme and the amount of monies that they have. This is the new practice. It is very critical that actuarial scientists are part and parcel of this Bill.

This Bill is very good because it creates both the structure and the administration structure for the pronouncement in terms of what is meant to happen when retirement schemes are passed on. It establishes a board of trustees. It also establishes a position for Administrator and Chief Executive Officer (CEO). However, I found it a bit cluttered, especially when the various players at various levels are too many with various sort of qualifications that have been pointed out. This can create too many posts of hierarchy. Therefore, as we move to the amendment of this Bill, it should be important to, probably, try to simplify it, so that major decisions are made at one point, to avoid too many centres of power, which might create a level of competition.

As the Bill stands, the provisions in Clause 23 are very key and important. It says that the scheme shall be administered by an administrator appointed by the board. However, as stated in different clauses the administrators is referred to as CEO, administrators or a board member who is in charge. For all those titles, the functions have been spelt clearly. For example, in Clause 23, the responsibilities and the functions of the Administrator have been shown clearly. This is a very important. This include, opening and maintaining an account for each member, informing the board if a member's contribution details differ from expected *et cetera*. This is the day today running that will make this very critical.

The provision also provides for the distribution and the payment. It has been very clearly done in various clauses. In terms of the percentages that are expected to be contributed by the employee and employer is shown. For example, the employee may contribute 7.5 per cent and the employer's percentage contribution is also indicated in the Bill.

I have heard Sen. Wetangula say and even for other pension bodies in this country that have been there, the time members are meant to reap from these benefits, there is usually a problem. I recommend this Bill because it also brings in an actuary who should be able to also make a public report at any time to ensure that the funds for this particular Scheme are intact.

In Clause 21, there is the establishment of a Fund manager. This is what I was saying; that we have an administrator and many points of hierarchy. This Fund manager implements the investment policy. He also maintains the books of accounts for all investment transactions relating to the Scheme, provides regular information on investment strategy and performs any other functions that may be assigned in the instrument.

In Clause 22, we have a Custodian of the Scheme who shall be appointed by the Board. As much as the structures are good right from the onset because we have the

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establishment of the Board, we then later move on we have administration of the County Government Retirement Scheme and the Management of the County Retirement Scheme. If the levels are not well cascaded, it will bring a lot of confusion. I can see the Bill tries as much as possible to give the various levels of responsibility but where there is an overflow, it might create a problem considering that there are quite a lot of dynamics as far as the Local Authorities Pensions Trust (LAPTRUST), Defined Contributions Fund (DCF) and the Defined Benefits Fund (LAPFUND) are related as far as this Bill is concerned. The general provisions of the Bill are key. It applies to all eligible employees of county governments and associated organisations and ensures particularly, as specified in the object, for establishment of a County Government Retirement Scheme which is key.

The Bill also gives transitional clauses for those who are in other funds who can join this fund. It is a noble idea because it gives a beginning of understanding of saving for future and especially saving when somebody does not have work. It also provides for the payments in retirement benefits to the members and the provision for giving this is also given. It provides a framework to improve the social security for members of the Scheme by ensuring that they save for their retirement and that they are sure they are saving within a specific environment where that money can be used later on.

In Clause 4, there is established a County Governments Retirement Scheme. It also gives the various definitions. The Scheme shall be defined as contributory. It will also show the periodic payments through the purchase of annuities, lumpsum payments, income, downturn and such other benefits as approved by the Board. Specifically, this County Government Retirement Scheme will encompass the various components that are key in any sort of scheme of this nature that is to protect the money that is given by various people.

I want to touch a little bit about the penalty clause. That is towards the end of the Bill, in Clause 48, where, for example, it says that a person who – then it gives the various misdemeanours that might happen - commits an offence and is liable on conviction to a fine not exceeding Kshs5 million. Not exceeding Kshs5 million can be Kshs1. Not exceeding Kshs5 million or to imprisonment or a term not exceeding two years or both. This is too open. I think Kshs5 million on the upper end is what is intended, but the lower end needs to be clearly put because that fine can be Kshs1 because anything less than Kshs5 million can also be Kshs1.

In Clause 37 also, we establish the County Governments Retirement Scheme Fund and it talks about the money, the contributions for the sponsor; where the money will be coming from, money that may be invested or accrued, fees and charges authorised by the Board. The sources of the funds are also well discussed.

Clause 40 states-

“Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year”.

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I think this is key and important. At the end of the day, annual estimates have been given in advance and this will allow good planning for payment of salaries, allowances and other charges as is indicated in the following sub-clause. All in all, it is a functional Bill apart from one or two issues that have been pointed out.

I support this Bill.

The Temporary Speaker (Sen. Halake): Sen. Farhiya Ali

Sen. Farhiya: Thank you, Madam Temporary Speaker. Allow me to also congratulate you for being elevated to the Speakers' Panel.

From the onset, I support this Bill, because retirement is very important for everybody. I have an issue with the wording in the Bill, because some of the terms that have been used were already clearly articulated in the Retirement Benefits Act. We should first refer to the RBA Act.

I can see reference to "actuary" and among the things that board members are supposed to appoint, there is no mention of an actuary. That anomaly needs to be rectified the way Sen. (Dr.) Zani had suggested.

If a pension scheme does not have an actuary that means that the scheme can be taken for a ride by everybody. An actuary is able to assess what is there in terms of comparing players. For example, if this Fund manager is performing well but you need to fire or hire, depending on how the market is, the only person who can determine that is an actuary.

Even if the board appoints the actuary on a timeline basis, for example, to give feedback on a quarterly basis; bi-annually or annually, the element of an actuary must come out in this Bill.

I have a big problem with the constitution of this Board. This has already been said but why I am against it is because it is a defined contribution pension scheme. What that means is that the employer contributes and out of that money, it is prudently invested. Whatever comes out of that is what is used to pay sitting allowances, *et cetera*. For two Principal Secretaries (PSs) to be on board, I do not see the sense in that.

The problem is with regard to the Board Chairperson being appointed by the Cabinet Secretary (CS), Finance because this is how the powers of county governments are usurped as we watch while we are protectors of counties. I will bring an amendment to remove that.

Madam Temporary Speaker, we could allow the PS, National Treasury to be a member of this Board but we should not allow the Devolution PS to be a member. Depending on how this is reviewed, I am suggesting that one of these Principal Secretaries should be removed and the Board members should be increased to three instead of two people nominated by the trade union.

I am glad that this trade union is specified as the County Public Service Board (CPSB) and not any other trade union. We do not want the COTU or other trade unions to associate with them because they could easily sink this noble pension scheme.

Clause 4(2) states-

“The Council of Governors shall convene a meeting of the representatives of the respective nominating bodies for the purpose of nominating their representatives under 2(e) and 2(g).”

It is my recommendation that those who will be nominated, one should be either a certified auditor or an accountant. The reason being that these are people who understand numbers so that they can make a difference in terms of when they sit in that Board meeting. They can evaluate audit reports better. They can also become Chair of the audit committee which I expect this Board to have as one of the sub-committees that will be recommended. Under Clause 6(2), one of those ones that will be appointed should be from those professions.

Madam Temporary Speaker, I also have an issue with the provision of the Bill where trustees opt to re-appoint the Chief Executive Officer (CEO). We do not want this blanket provision; it is only fair to say that even if they do not leave for any other reason, they should be asked to leave at the expiry of six years. This is so that another person with different strategies and thinking can be appointed. That way, nobody becomes a dead wood within this organization.

Madam Temporary Speaker, the Bill provides that the trustees may be removed from office by the Cabinet Secretary (CS). In my view, we should change this provision because there are people who nominated these people. Therefore, when they are removed, the same people should replace them. The Retirements Benefit Authority Act pronounces itself on how even the board can be removed. Therefore, accordingly, once this person is removed, then the initial appointing authority should be allowed to replace him or her.

Madam Temporary Speaker, the other issue that I want to recommend in terms of the constitution of the board is that the six positions reserved for the county assemblies and other trade unions should be elective positions. This is because those board members need to know that these people can be elected and removed from office after the expiry of their term if they are not meeting the expectations of the people. This is because at the end of the day, we are talking about people's retirement. Therefore, the people concerned should be given an opportunity to make decisions on who sits in that board of trustees.

Madam Temporary Speaker, there is the other bit on appointing a custodian, fund manager and administrator in Clause 14(2)(b). For me, we should either keep an Administrator or a CEO, but you cannot combine the two. This is because you either have a CEO who appoints staff to monitor the distribution of the cost and all that and have an external administrator keeping the records and everything else. However, you cannot have an Administrator and a CEO who are staff members.

In terms of the Fund manager as a custodian, this is important because the custodian is usually like a bank that keeps the custody of the funds and does reconciliation. Therefore, that needs to be defined according to the Retirements Benefit Act so that there is no ambiguity of this being an individual person. It should be the same

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case with the Fund manager, which should also be defined accurately according to the Retirements Benefits Act. This is because these fund managers are supposed to trade in the stock exchange and all that. It, therefore, needs an institution that is registered to carry out that function appropriately. Consequently, we do not want an individual staff doing that function. It is also about the separation of powers in terms of having those who invest being separate from those who oversee the administration of this Fund.

Madam Temporary Speaker, the other thing that I want bring to the attention of this House is Clauses 15(2) and (3), which state-

“The Board may co-opt persons to committees established under subsection (1) for a particular reason, such a person shall hold office for such a period as the Board may determine.”

It goes further in subsection 3 to say-

“The persons co-opted in to a committee under subsection (2) shall not be more than three.”

Remember that if we co-opt three people, all these people will be earning sitting allowances every time there is a sitting. It is, therefore, my considered opinion that the people so co-opted should be those bringing in a specific skill that is required. Often, such co-opted people are sometimes either finance experts, auditors or lawyers. If that is what is required, then that should be provided for within the Act. However, at any given time, this Scheme should not co-opt more than one person.

Madam Temporary Speaker, Clause 16 states that-

“The trustees shall be paid such remuneration as the Board might from time to time determine in consultation with the Salaries and Remuneration Commission.”

As much as I agree that the remuneration could be just sitting allowances, I recommend that we be more specific. The way we know Kenyans, if you give them a window of remuneration, they will first of all remunerate everybody a salary on a monthly basis and then, besides that, they will also give themselves sitting allowances. This should, therefore, be amended to read “sitting allowance” so that it can be very specific.

Madam Temporary Speaker, Clause 18 states that-

“There shall be a chief executive officer of the Scheme who shall be appointed by the Board through competitive recruitment process on such terms as may be specified in the instructions of appointment.”

It is also my contribution that this person should not serve for more than six years for the reasons I stated earlier.

Madam Temporary Speaker, Clause 18(3)(c) states that-

“A person is qualified for appointment as the chief executive officer if that person-

(c) has at least ten years of experience of which five years should be at senior management level in a profession relevant to the functions of the Scheme as may be defined in the Regulations;”

I have not seen somewhere else where people have mentioned this in terms of regulations. When these regulations are being formulated, let the Retirement Benefits Act be consulted in this process. Otherwise, we might come up with regulations that are not for the benefit of these pensioners.

Similarly, Madam Temporary Speaker, once you say that it is maximum of six years, another extra subsection should be added to Clause 18(6). Subsection (6)(a) states that-

“Before the Chief Executive Officer is removed from office under subsection (5), the chief executive officer shall be given, sufficient notice of the allegations made against him or her;”

Subsection 6(b) goes on to state that-

“An opportunity to be heard either in person or by a legal representative.”

I am suggesting that because of the earlier comment, this clause should be included at the expiry of the term of office.

Madam Temporary Speaker, in terms of the role of the custodian, I am proposing that another sub-clause should be included, whereby one of their functions should be to reconcile the assets of the funds between their records and that of the Fund manager. Another clause should also be included that says that: “Any other obligations as defined by the Retirement Benefits Act.” This is because there is a lot of work that went into this Act that regulates pension schemes. This is so that if we have omitted this provision here and they do not perform, we will then still have recourse and say that they were supposed to go as per that.

In Clause 23, we have the Administrator and the Chief Executive Officer (CEO) and one of them should go. That Clause should be reviewed in totality.

(The amber light went off)

I still have a lot of issues to discuss. Could you give me more time? I would appreciate if you can give me five more minutes.

The Temporary Speaker (Sen. Halake): You still have five minutes.

Sen. Farhiya: Madam Temporary Speaker, I am requesting for more minutes.

The Temporary Speaker (Sen. Halake): Let us see that when you get there.

Sen. Farhiya: Thank you, Madam Temporary Speaker. Clause 24(1) says that-

“Every member shall, so long as he or she remains in employment of a sponsor, contribute not less than seven and a half per cent (7.5%) of his or her pensionable emoluments to the Scheme.”

However, in Clause 24(2), it says that-

“Every sponsor shall contribute to the Scheme fifteen per cent (15%) of the pensionable emoluments of every employee who is a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit.”

The same should apply. It should also be ‘not less than’. Otherwise, the county government will decide whether the 15 per cent is minimum or maximum. It should also state ‘not less than’ just as the previous Clause articulated.

Clause 24(6) states that-

“Upon commencement of this Act, contributions required to be made under subsections (1) and (3) shall be deducted by a sponsor from the salary of the contributor on each occasion on which the salary is paid and shall be paid into the Scheme together with the sponsor’s contribution before the 10th day of every calendar month or before any other day which may be notified in writing and approved by the Authority”

It is my humble opinion that, “shall be deducted by a sponsor from the salary of the contributor on each occasion” be replaced by every month. This is because ‘each occasion’ can be ambiguous.

Clause 24(7) states that-

“Any contribution not paid to the Scheme by a sponsor within ten days after the last day of the calendar month to which the contributions relate shall attract interest during the period they remain unpaid at a rate specified by the Board from time to time provided that such rate shall not be less than the rate specified in the Retirement Benefits Act and Regulations”

I am of the opinion that the rate should be indicated as ‘at least five per cent’ because the contributors lose value for money, in terms of what they would have earned had that money been contributed on time, when the money stays with the employers. The penalty in terms of interest that it should attract should read; ‘at least five per cent’ but the Board should have a leeway of setting it higher.

Clause 26(3)(a) states-

“Where a member leaves employment before one year of membership, the member may opt for payment of his own and the whole of the sponsor’s contributions, together with allocated investment income;”

This goes against the spirit of saving in a pension. I think that this Clause should be removed. Unless it is to cater for a Member of County Assembly (MCA) who can get it when his or her term expires but other than that, this Clause should be removed.

Clause 28(1) states that-

“Notwithstanding the provisions of section 29, any member who retires on attaining the early retirement age is entitled to make withdrawals in accordance with section 29.”

It is my opinion that this needs to be specified. What does an early retirement mean in this Scheme?

In Clause 29, we are told that the Board will maintain a reserve account. If we leave this provision the way it is, we will be exposing the trustees---

(Sen. Farhiya's microphone went off)

The Temporary Speaker (Sen. Halake): Sen. Farhiya, in view of the long list of Members who are waiting to contribute, I will give you an additional two minutes. Please conclude.

Sen. Farhiya: Thank you, Madam Temporary Speaker. If you leave it the way it is, you will expose the trustee to undue litigation. If a reserve fund is created though I do not recommend for it to be created but if it is created, then every time a member leaves, it should be redistributed to determine the share of the member who is leaving and he or she should leave with his contribution of the reserve fund.

Every Member has commented on Clause 48 but I want to be more specific. Regarding the penalty, Kshs5 million is too little. What if somebody took Kshs100 million? I recommend that anybody who misappropriates funds for this Scheme should pay three times what they took. The suggestion that the imprisonment should not exceed two years is not strong enough and should be adjusted to 10 years. Otherwise, we will have looters finding their home within this Scheme.

Thank you, Madam Temporary Speaker.

Sen. Cherargei: Thank you, Madam Temporary Speaker. Allow me to congratulate you on your nomination as the Temporary Speaker. You have discharged your mandate very well since yesterday, when you took the role of the Temporary Speaker and we are proud of you.

I happen to be a Member of the Committee on Labour and Social Welfare. I know that most of my colleagues want to contribute to this Bill and that is why the list is long. This Bill has elicited a lot of reactions and concerns. After the gazette notice that was issued in 2010 by the National Treasury, there was the establishment of the County Pension Fund (CPF). I have heard a lot of Senators raise their concerns on why they need these issues to be relooked. I know that the National Assembly has already made its points and forwarded them here.

The title of this Bill should be amended from the long title. We should just say that it is the County Pension Fund Bill instead of saying the County Governments Retirement Scheme Bill (National Assembly Bills No. 10 of 2018). When it reaches to that point, we should amend that for us to look at the County Pension Fund. As we talk, we have around 50,000 members who are in this County Pension Fund. It is important to

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note that we are importing from Section 132 of the County Governments Act No. 17 of 2012 which gives the county governments authority to have such a County Pension Fund. Therefore, it is important.

I know that this preceded the Local Authorities Provident Fund Act and that is why there is this conversation about the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND) that is already here. I want to look at Clause 6(1) and (2) which say that-

“(1) The management of the Scheme shall be vested in a Board of Trustees of the Scheme.

(2) The Board shall consist of the following members-”

They have indicated that the people shall be nominated by trade unions, they shall be representing the County Public Service Boards (CPSBs) and the chief executive but interestingly, in the principle of Article 10 which talks of the National Values and Principles of Governance, in light of the Bill of Rights, I would have expected the inclusion of the young people and persons with disabilities (PWDs).

However, I want to laud Clause 6(3) which states that-

“The Speaker of the Senate shall convene a meeting of the County Assembly Service Boards for the purpose of nominating the representatives under subsection 2(f)”

This is critical considering that the Senate is the protector and custodian of the Constitution and devolution.

Madam Temporary Speaker, Clause 7 states that-

“A person is qualified for appointment as a Trustee if that person-

(a) is a citizen of Kenya;

(b) holds a degree from a university recognized in Kenya;

(c) has at least five years' experience in-

(i) finance;

(ii) law;

(iii) economics;

(iv) actuarial science; or,

(v) any other profession or work experience directly relevant to the functions of the Board; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.”

Madam Temporary Speaker, when we issue regulations and guidelines, we should look at the certificate of good conduct, Credit Reference Bureau (CRB) ratings among others so that we give effect to Clause 8. We must be specific so that people meet the requirements of leadership and integrity.

Madam Temporary Speaker, I will rush because I know my colleagues have a great interest on this Bill. I know the functions of the Board will be critical. However, the

history of many boards is not good. As Sen. Orengo said yesterday, some of these boards have made the work of the management to be inefficient and ineffective. However, we believe this Board will assist in ensuring that there is prudent management of monies collected on behalf of employees of the county governments or any other contributory to this Fund, so that they are not siphoned by predators who want to dip their hands into the cookie jar. For example, there have been allegations of corruption in the National Social Security Fund (NSSF). Therefore, we hope that the proposed Board will ensure that it protects the contributions of the people and ensure efficient management of the Scheme.

Madam Temporary Speaker, there is an aspect of transition. I do not want to go to the specific provision on administration. However, I request that we amend that Clause so that we have an external administrator for the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND). For example, LAPTRUST has assets of Kshs1.6 billion. They have around 230 employees and 50,000 members in county pension firms. Therefore, it is important to amend this Clause so that we move from in-house issues. We also need to look at the employees that work for these organisations.

Madam Temporary Speaker, the appointed administrator should ensure that the technical Committees are well taken care of. Therefore, the Board must appoint external administrators to completely prevent commingled assets of the different schemes that arise if an in-house administrator is appointed to the Scheme. Therefore, to allow fairness, we must have external or corporate administrators.

I am happy that my good Chairperson and the Senator for Nairobi, Sen. Sakaja, who is christened “*siasa safi*” is here so that he can listen to these issues. I know that he is worried about the *matatu* madness. However, I am happy that the madness has been suspended and now he can focus on this serious matter.

Madam Temporary Speaker, we must have the technical committee as recommended in the administrative service of the Scheme which is important. We will look at the powers of the Board in Clause 14 and introduce some amendments.

Clause 22(1) (c) states that-

“The Board shall appoint a custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act-

(c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries”

That is why we need an external or corporate administrator for the transition of any assets and liabilities between different funds, for example, LAPTRUST and LAPFUND. We must protect the custodian so that we prevent what has been happening in many schemes across the country and internationally.

Madam Temporary Speaker, Clause 26 (1) states that-

“A member shall not withdraw membership or retirement benefit from the Scheme while the member is in employment of a Sponsor”.

Clause 26(2) states that-

“A member may withdraw benefits from their account before normal retirement age in the following circumstances –

- (a) resignation;
- (b) dismissal;
- (c) ill health;
- (d) emigration.”

Madam Temporary Speaker, there are issues of matrimonial succession. When a person retires, it is difficult for them to follow up on their money and some of them die while following because we have made the process so complicated. Therefore, we hope by making it a one Scheme, we will have a one stop shop so that when a person retires, he or she does not need to call his or her Senator or any other leader saying that the NSSF or the Teachers Service Commission (TSC) have not paid them. These are the complaints that we get from people who have retired and have been following up on their dues. Therefore, the retirement scheme should integrate the registration of members and ensure that they expand.

Madam Temporary Speaker, I agree with Clause 26(3)(b) which states that-

“Where a member leaves employment after one year of membership but before attaining the specified early retirement age, the member may opt for payment of-”

There is the Retirement Benefits Authority Act which is also in place. If a person is employed within the East African region, for example, in Tanzania and they have been contributing to another fund, we should accommodate them. We should also find a way to integrate a Kenyan working in South Sudan who wants to contribute to the Scheme but has been contributing to other schemes in that country.

Madam Temporary Speaker Clause 28(2) states that-

“The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in any of the following documents –

- (a) birth certificate;
- (b) national identification card; or
- (c) or a valid passport.”

May be, we should either use the national identification or a valid passport. This is because it is not easy for Kenyans to track these documents because they do not use them daily.

I am told the reason he is filing some of the cases is because he is doing what they call ‘kipindire’ and might want to run for governor. We need an integrated registration process. When people fail to perform their duty, they will always create excuses. I am longing for a country where we will have an integrated form of registration. Those are the issues we have been discussing in my Committee of Justice, Legal Affairs and Human Rights about the Independent Electoral and Boundaries Commission (IEBC). Instead of

requiring an Identity Card and a voter's card, we need one card, like it happens in developed countries. With my Identity Card I should be able to vote, access my social security, the National Hospital Insurance Fund (NHIF) and any other service that is provided for under Article 43 of the Constitution.

Madam Temporary Speaker, Sen. Farhiya has elaborated on the penalties and I agree with her that they are very lenient. Not keeping proper books of accounts by the Board should also be punishable. We should have corporate governance in terms of running such boards. Corporate governance should be ensured in such situations. People should not just sit in a board without keeping proper books of account and go scot-free. If there is lack of due diligence by the Board or management, they must be held accountable.

Madam Temporary Speaker, this is a good Bill, but we shall be thinking of renaming the title, which is very long. We will also be proposing radical changes, so that it fits the demands. I say with a lot of conviction that the reason many people, including us and our staff in Parliament, sacrifice to have statutory deductions, is to ensure that there is a soft landing after retiring from active public service. We, therefore, hope that when such a law will come into effect, it will ensure transparency, equity, fairness and prudent use of resources. It should not be money lying idle for some few individuals to misappropriate. Let us learn from the experience of organisations in this country and internationally, where people have taken advantage and misused resources.

Madam Temporary Speaker, there are many young people in this country who do not have many opportunities and enough income. Therefore, when they pay Kshs200 to the NSSF, it should be protected. We need to teach people to earn their pay. You should not live beyond your means.

The Building Bridges Initiative team has a working document. I expected them to come up with proposals to ensure that the people who are in employment and the unemployed are all well taken care of. However, their document is discussing how to expand the Executive and have a three-tier Government.

(The red light went off)

Madam Temporary Speaker, please, add me two minutes so that I can conclude?

The Temporary Speaker (Sen. Halake): Order, Senator! I will add you two minutes, only if you keep to the subject matter.

Sen. Cherargei: Madam Temporary Speaker, the Building Bridges Initiatives team is proposing a three-tier Government, when we are still trying to ensure that devolution works. The purpose of this Bill is to ensure that devolution works. We should not be concerned about how to expand by creating another--- In fact, the reason people fight in this country is because of negative ethnicity and corruption. It is also because we have many unemployed people and workers whose rights have been trampled on. Some counties and companies are not remitting statutory deductions.

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I thank my good and able Chair, and the future governor of this county. You should ensure that we move on because---

Sen. Sakaja: On a point of order, Madam Temporary Speaker

The Temporary Speaker (Sen. Halake): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Madam Temporary Speaker, Sen. Olekina is excited that I am standing on this side.

Is it in order for Sen. Charagei to repeatedly imply that I have any interest in becoming the Governor of Nairobi City County? Is he wishing me good or bad fortune?

(Laughter)

I have not declared my aspirations for any such seat. Currently, I am the Senator for Nairobi City County. I am happy to serve as a Senator for Nairobi City County until God tells me otherwise in the future.

The Temporary Speaker (Sen. Halake): Sen. Charagei, were you declaring for him or what were you doing?

Sen. Charagei: Madam Temporary Speaker, you know even when you read the Bible and the Quran, God used His prophets to pass His messages. God has used me as a prophet to tell Sen. Sakaja that his future in Nairobi politics is bright. You should receive the blessings. The future can mean even 2027 or 2032 and he might become the President of this country. He should receive the blessings because God uses different ways to get messages home.

The Temporary Speaker (Sen. Halake): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker for giving me an opportunity to contribute to this very important Bill. I will go straight to the point without deliberating. I support the Bill. I love this Senate because what we do here is to protect the interests of our counties and their governments.

This Bill is quite timely. I am sure during the Third Reading of this Bill we will be proposing some amendments. I am happy that this Bill is proposing to set up an umbrella pension scheme with better benefits than what currently exists.

I always sympathize with employees of the national Government who are transferred to work in the county governments. Looking at this Bill, I am concerned about employees who are 50 years and above and are about to retire because they will be excluded from joining this Scheme. My proposal would be to amend that provision of this Bill, so that everyone who has been seconded to the county governments benefits.

My proposal is that if you have been working for the national Government for all those years, you must be paid your retirement benefits once you retire. It pains me to see people who have worked for this Government for many years chasing their retirement, day in day out, with less success. Some die even before they receive their benefits.

Clause 53(3) of the Bill says:

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“A person who, at the commencement date, is an employee of the national Government and whose remaining period of service is five years or less, is not eligible to join Cap.189, the Scheme and shall have his or her pension paid out under Cap. 195 of the provisions of the Pensions Act and the Widows and Children Pensions Act or any other relevant legislation.”

I will be proposing amendments to provide that all those employees who are seconded to the county governments, the Director of the Pension Services who sits at the National Treasury should calculate everything that is due to those employees and forward to this new Scheme which is being set up.

It is very uncouth and uncomfortable for people who have retired to keep coming to Nairobi chasing their unpaid dues. In fact, in this legislation that we are proposing, we should come up with an amendment that sets up a time limit on when someone should receive their payment. I should not come and follow up my retirement dues.

This is one of the provisions which I will be recommending; that we bring in some amendments so that everyone, regardless of age, can join this pension fund. I am happy that this Bill is trying to bring in some order.

There are a few provisions which are provided for in the Public Finance Management (PFM) Act, if you look at Section 157(2) which says-

“(2) A receiver of county government revenue is responsible to the County Executive Committee member for Finance for ensuring that the revenue for which the receiver is responsible, is collected or recovered, and is accounted for.”

I would like to borrow something from the PFM Act, which we can put here based on the Fund manager. I heard my sister, Sen. Farhiya talking a lot about the Fund manager. I wanted to clarify that a Fund manager is someone like Britam, who invests the money on behalf of the Scheme – which I support. When I was in the United States of America (USA), I used to contribute under the 41K. I used to get monthly statements showing how much I had contributed and how much I had earned in returns from the Fund manager.

What this Bill does not provide for – which is something that concerns me – is where and when the profits are being redistributed. The Bill is silent on the issues of losses. Suppose whatever has been invested out there, the Fund managers in that particular year did not make any money and you are supposed to pay these fund managers from the profits of the investments, how are you going to be able to pay them from the losses of the investment?

Madam Temporary Speaker, that is one of the things that we have to be very careful, so that the money that our county government staff are contributing, which is being proposed is 7.5 per cent--- In fact, what I would even suggest is that the 7.5 per cent should be an option, because some people would want to contribute more. For

example, when I came to *Bunge* there were so many companies coming here telling me to join their Sacco and contribute a certain amount of money.

I am sure that there are so many Members of Parliament here who are contributing to three or four Saccos because by the time they retire, they can go to them and try to claim their money. The provision that proposes to reduce the contribution from 12 to 7.5 per cent, that should actually be left open. It should be an option where, as an employee of the county government you are given an option; you are asked whether you willing to contribute 12 per cent or 7.5 per cent. There should be some form of flexibility in the employees' contribution.

Madam Temporary Speaker, I am happy with what the employer will contribute; 15 per cent is very good. However, on that note, I am happy that this Bill introduces punitive measures for counties that fail to contribute. In fact, my proposal would be that, just like in the PFM Act, where a fund receiver on behalf of the county government provides quarterly reports to the National Treasury and to the Commission on Revenue Allocation (CRA), we should find a way of ensuring that anyone or any county government that deducts money for the pension and their contribution, must on a quarterly basis submit their returns of the deductions to the Controller of Budget.

That should also be pegged on the equitable share of revenue; such that before the Controller of Budget approves money to be sent to the county government, the first thing that they have to check is whether that county government behaved. They will also check whether the county government remitted their entire deductions. This is because you have no business deducting money from me, keeping it and not forwarding it to the fund. Therefore, that flexibility of 12 per cent should be maintained.

On the issue of punitive sanctions for county governments, it should be put in such a way that it is mandatory. I am not so happy about the penalties that are charged to county governments, because this is money that can be used in other things. The national Government can deduct some of that money and send it directly to the fund. Therefore, if the county government can be made to also submit the quarterly returns of their members' deductions, then the fund must also agree that they have received this money. If so, it is fair enough and the Controller of Budget can release the entire amount which is due to the counties. However, in the event that some counties have become clever; they have deducted money and used it for other things, arguing that the Controller of Budget has not released the money, then the Controller of Budget should deduct that money at source. This is because we have been complaining.

Earlier on today, Madam Temporary Speaker, we were about to debate the issue of the Managed Equipment Scheme (MES), which most governors do not understand whether that money is being deducted from their equitable share or not. In this case, it should be made very clear because we are busy fighting about our welfare. What is important about our current welfare when we can hustle? The most important time is when we have retired because you know that you worked.

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You will know, as a county government employee, that you went to the office very early in the morning; you appeared with your governor, clerk or the speaker of the county assembly. You were also grilled at the Senate and you worked for days and then, at the end of the day, you have nothing to show to your family. Therefore, this has to be made very clear; that if you deduct money from me, you must make sure that you remit it to the fund. If you contribute, as you are supposed to contribute for my retirement, then you must remit that money. Otherwise, penalizing them or telling them to pay a certain amount of fee as penalty will not help.

Madam Temporary Speaker, the other important thing that is lacking in this Bill, and I hope we can be very serious with it, has to do with the issue of the money not remitted either to the Local Authorities Provident Fund (LAPFUND) or the Local Authorities Pensions Trust (LAPTRUST), depending on which scheme county governments were contributing. I know, as a fact, that the figure is at the rate of about Kshs30 billion. This is a figure that we need to figure out. During this transition period, this Fund should compute how much money has not been forwarded to them by the county governments. The National Treasury should then deduct this money, because there is no way that these county governments can remit that money to the Fund. The Kenya Revenue Authority (KRA) has taken that step; they have started deducting money from these county governments. Therefore, that is one of the most important things that I noted in the provisions of the transitional clause.

Madam Temporary Speaker, my last point on this Bill has got to do with Clause 43 of the Bill, which states-

“The annual investment income earned by the Scheme shall, after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board, be credited to members' accounts on a pro-rata basis.”

I want to reiterate the point I made that it is important that we amend this Bill, to ensure that when members contribute to this Fund, they should be alive to the fact that when their money is invested out there, there are risks. In the event the fund managers are not able to return any profits, they should be okay with some of the money being paid from their earnings. I know that people will be wary about their contributions because they are protected, but we should also ensure that the fund managers who run this Fund are cushioned in a way. This will ensure that they do not bring about losses every time. We need to think about how to add that.

Clause 45 states-

“Where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.”

I will bring an amendment to delete this Clause, because if will are trying to be neat, there is no point of us saying that there is another superior legislation than this, which is supposed to be taking care of my welfare.

Madam Temporary Speaker, I just want to summarize by saying that I support this Bill fully. I believe that everyone who cares about the counties and the future of their constituents will support this Bill. I hope that when passed, it will bring to an end to the nasty competition, which is out there, between private bodies and state-owned corporations in terms of managing the retirement scheme.

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

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

Sen. Kihika.

Sen. Kihika: Thank you, Madam Temporary Speaker. Before I begin, let me also congratulate you on the good work that you have begun today of chairing in this House. We welcome that and are happy that you are there.

Looking at this Bill that has been debated for the last few days, I am one of the people who are very happy that it found its way to the Floor of this House. I used to be the Speaker of Nakuru County Assembly and have seen first-hand the very unhealthy competition between LAPFUND and LAPTRUST. Therefore, I believe that it is time that we get an Act of Parliament to establish the county governments' retirement scheme for employees of all the counties.

Madam Temporary Speaker, as my colleagues have said, since there has been no law on this, many county governments have been deducting their employees' money and not remitting it to the Fund, be it LAPTRUST or LAPFUND. I am made to believe that since 2013, about Kshs12 billion has not been submitted. That is of real concern. When you are an employee and look at your pay slips and see deductions made, so you sleep soundly knowing that when you retire you will be well taken care off.

Therefore, if that money is not remitted, there will be a crisis when that person retires. It will mean that, that person has no pension to draw. We cannot, as country, allow that to happen. We have seen it happen in many instances. It just breaks my heart because it involves old people, who have worked their entire lives and should be enjoying their pensions. These are not gifts, but money that they worked very hard to contribute, so that they can enjoy in their retirement.

Madam Temporary Speaker, I am quite happy that we are now at a point where we are debating this Bill. I have also heard many Senators talk about the different amendments they would want to see in this Bill. As long as we get to a consensus and pass the Bill, we will be doing one of the primary roles of this House, which is to protect the counties. The counties exist because of the people who work there.

Madam Temporary Speaker, what I like most and would like to point out in this Bill, beyond what we have seen as the Objects and the Purposes of the Bill which is great, is that they have stated there that it will provide for establishment of the Scheme and payment of retirement benefits. We are talking about this. It is important. Once we have this as law, then governors will not pick and choose when they want to submit these deductions that they have made on their employees. We will now have a law and it will be mandatory. They will not have a choice in that matter. So I am glad that we are here.

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I am also happy to see that under Clause 4, under this established County Governments Retirement Scheme, it will be a body corporate with perpetual succession and a common Chief Executive Officer (CEO) and shall in its corporate name be capable of suing and being sued. We have had some people talk about wanting to put this in a private trust, which I believe would be an extremely bad move. That is not the way to handle this public money. A private trust will not be as accountable as what we have here under this Bill.

Madam Temporary Speaker, as we proceed and look at Clause 3, we are able to see the specifications of the benefits that are being offered, because I have heard some Senators talk about, we do not know what is being offered or what the beneficiaries of this will get. So, that has very well articulated the specifications of the benefits offered.

When I look at Clause 6, however, I am also as concerned and would wish to see an amendment brought hopefully by the Committee on Labour and Social Welfare or if not, we shall bring those individually. I am concerned about the Chairperson being appointed by the Cabinet Secretary. This is County Government retirement scheme ---

Sen. Olekina: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Halake): Sen Kihika, would you like to be informed by Sen. Olekina?

Sen. Kihika: Sure, Madam Temporary Speaker.

Sen. Olekina: Madam Temporary Speaker, I would like to inform my dear colleague, the distinguished Senator, because I have heard that issue being repeated severally. If you read the Bill properly, which I have read, it says that the Cabinet Secretary shall appoint. However, when you go behind who he or she is appointing from, the Cabinet Secretary is appointing the board Chair from the existing members, and those members are forwarded by the contributors. Sorry, he or she is actually just gazzeting, he or she is not appointing.

Sen. Kihika: My dear friend the Senator for Narok County, I am sure, you have stated that you have read the Bill and so have I and our colleagues. When you look at Clause 6(2) (a) it says-

“The Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d), (e), (f) and (g).”

So, yes the different groups, which are what I was getting to, be they the County Public Service Board (CPSB) or County Assembly Service Board (CASB), have nominees, and then, the chairperson is appointed by the Cabinet Secretary. I have a problem with that. I refer you to Clause 6 (2)(a). It is very clear and articulated.

Therefore, I would want to see these representatives or trustees appoint their own chairperson, but not have the interference of the Cabinet Secretary on a matter that is such a county matter. This is how the national Government keeps diluting the powers of the county governments. I do not believe it is a good idea to have the Cabinet Secretary making the appointments.

We have also seen the representative of the CPSBs and the CASBs as well. I like that because it recognises that there are two different arms of government at the county government level and not just leaving it with the executive.

However, I would also like to state that ---

The Temporary Speaker (Sen. Halake): Order, Sen. Kihika. Time is up. You have a balance of 12 minutes plus one – taking into account the interruption and the point of information - when debate on this Bill resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Halake): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House therefore, stands adjourned until tomorrow, Thursday, 6th December, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m..